



# EMPLOYMENT CORNER BULLETIN

VOLUME 3: AUGUST 2023 - OCTOBER 2023

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We welcome you to the 3<sup>rd</sup> Edition of Volume 3 of IndusLaw's Employment Corner Bulletin. The bulletin highlights the key statutory and judicial updates for the period between August 2023 and October 2023. We also bring to your attention certain key D&I and HR initiatives being implemented by employers across India.

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## STATUTORY UPDATES

### The Government of Tamil Nadu introduces draft amendments to the Tamil Nadu Shops and Establishments Rules, 1948

The Government of Tamil Nadu, via a notification dated October 9, 2023, introduced draft amendments to the Tamil Nadu Shops and Establishments Rules, 1948 ("**Rules**"). The draft amendments are still under consideration and the Government has invited public comments on them till December 9, 2023. The key amendments are as follows:

- a. New establishments incorporated after the commencement of the Tamil Nadu Shops & Establishments (Amendment) Act, 2018 ("**Amendment Act**") are required to be registered as per the prescribed process. The employers of the establishments existing before the commencement of the Amendment Act are required to furnish the details of their establishments to the concerned area Inspector through the designated web portal. Currently, there are no registration requirements under the Tamil Nadu Shops and Establishments Act, 1947.
- b. Establishments should make adequate arrangements for the provision of first aid.
- c. The upper limit for penalty for any contravention of the Rules has been increased from INR 50 to INR 2000.

### EPFO releases SOP for management and regulation of exempted establishments

On October 6, 2023, the Employees' Provident Fund Organisation ("**EPFO**") issued the Standard Operating Procedure ("**SOP**") for the management and regulation of the establishments exempted from the purview of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ("**EPF Act**"). Broadly, the SOP provides the following:

- a. Responsibilities of the exempted establishments including constitution of a Board of Trustees for the administration of their provident fund in the

prescribed manner, submission of undertakings as required by law, regular submission of online returns to the EPFO, provision of a grievance redressal machinery and publication of their and their trust fund's annual report on their website among others.

- b. Responsibilities of the Board of Trustees in exempted establishments including receiving the members' monthly remittances, maintenance of detailed accounts of the members and informing the respective regional offices about change in the legal status of the exempted establishment, if any, among others.
- c. Responsibilities of regional, zonal and head offices under the EPFO including monitoring of online returns filed by the exempted establishments and compliance audits and conducting outreach programmes among others.
- d. Mechanism, timelines and prescribed forms for undertaking the respective responsibilities and compliances mentioned in the SOP.
- e. 3-level monitoring mechanism consisting of the regional office, zonal office and head office.
- f. A priority matrix classifying the exempted establishments into 3 categories for taking appropriate action against them based on the nature of violation of exemption conditions.

### Factories in Punjab are no longer required to comply with the working hours and weekly holidays prescribed under the Factories Act, 1948

On September 20, 2023, the Government of Punjab exempted all factories in Punjab from complying with certain provisions of the Factories Act, 1948 pertaining to the working hours and weekly holidays with respect to adult workers, subject to the following terms and conditions:

- a. The daily working hours of the workers should not exceed 12 hours and daily spread-over, including rest interval, should not exceed 13 hours.

- b. The weekly working hours of the workers including overtime hours should not exceed 60 hours and the overtime working hours of the workers should not exceed 115 hours in a quarter.
- c. No worker should be required to work for more than 7 days at a stretch. A proper logbook must be maintained for recording overtime working hours.
- d. Employers shall comply with the Minimum Wages Act, 1948 and the corresponding rules.

If any employer violates the above-mentioned conditions or any provisions of the Factories Act, 1948, the exemptions provided to the factory shall be withdrawn.

### The Rajasthan Government notifies the Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023

The Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023 ("**Gig Workers Act**") received the State Governor's assent on September 12, 2023. The Gig Workers Act will come into force on the date to be notified by the State Government. Once notified, Rajasthan would become the first state in India to implement a comprehensive law to regulate the engagement of platform-based gig workers.

### The Ministry of Skill Development and Entrepreneurship issues guidelines for the implementation of NAPS-2

On August 25, 2023, the Ministry of Skill Development and Entrepreneurship issued guidelines for the implementation of the National Apprenticeship Promotion Scheme-2 ("**NAPS-2**"). The new guidelines shall come into effect from August 25, 2023, and supersede all previous guidelines issued under the previous version of the National Apprenticeship Promotion Scheme. The new guidelines broadly provide the following:

- a. Apprentices, establishments, third party aggregators and apprenticeship advisers can submit their grievances or queries through the query redressal tool linked to the apprenticeship portal or a dedicated call centre through the NAPS-2 helpline. In case the grievance is not resolved within the stipulated time period, it will be escalated to the authorities at the State and Central level.

- b. Government of India's partial stipend support i.e., 25 percent of the amount of stipend paid to the apprentices by the employers upto a maximum of INR 1500 per apprentice per month shall now be transferred to the apprentices' bank accounts through Direct Benefit Transfer facility.
- c. Earlier, cost of basic training upto a maximum of INR 7500 per apprentice was shared by the Government of India. However, no such reimbursement shall be provided to basic training providers now.
- d. The upper age limit for apprentices has been set to 35 years at the time of registration on the portal for the establishments requiring partial stipend support from the Government of India.

### The Government of Rajasthan declares industrial units located in the Japanese International Investment Zone as 'Public Utility Service'

The Government of Rajasthan, via a notification dated August 22, 2023, has declared the industrial units located in the 'Japanese International Investment Zone' in Rajasthan as public utility service under the Industrial Disputes Act, 1947 ("**IDA**") for a period of 6 months starting from August 25, 2023. Under the IDA, there are certain additional compliances that are applicable to the establishments declared as public utility service.

### EPFO issues SOP for processing joint declarations for updating member profiles

The EPFO via a circular dated August 22, 2023, issued the SOP for processing joint declarations ("**JD**") for updating the profiles of EPFO members. The SOP has been issued in light of the irregularities arising in the member profiles owing to a lack of regulated and standardised process for their maintenance on an automated system. As a result, the members had to go through a tedious process for rectifying their details. In order to address these concerns, the new SOP provides for the following:

- a. Procedure and timeline for filing of JD applications by the members and approval of JD by the employer and the competent authority.

- b. 3-level monitoring mechanism i.e., at the regional office, zonal office and head office level for monitoring the processing of JD applications.
- c. Prescribed documents for requesting any changes or additions through a JD.

### **The Ministry of Labour and Employment declares multiple industries as 'Public Utility Service'**

The Ministry of Labour and Employment, via multiple notifications, has declared the following industries as public utility service under the IDA:

- a. Iron ore mining industry for a period of 6 months starting from October 14, 2023.
- b. Mineral oil (crude oil), motor and aviation spirit, diesel oil, kerosene oil, fuel oil, diverse hydrocarbon oils and their blends including synthetic fuels, lubricating oils and the like manufacturing or production industry for a period of 6 months starting from August 28, 2023.
- c. Iron and steel industry for a period of 6 months starting from August 17, 2023.
- d. Alumina and aluminium manufacturing and bauxite mining industry for a period of 6 months starting from August 4, 2023.

### **All establishments in Meghalaya permitted to remain open for 365 days a year**

The Government of Meghalaya, via a notification dated August 3, 2023, has permitted all establishments in Meghalaya registered under the Meghalaya Shops and Establishment Act, 2004 ("MSEA") to remain open for 365 days for a further period of 1 year till December 31, 2023, subject to the following terms and conditions:

- a. No employee is required to work for more than 9 hours in a day or 48 hours in a week.
- b. Every employee should be given a rest period of 1 hour after 5 hours of continuous work.
- c. The spread over of work of any employee should not exceed 11 hours in a day.
- d. Every employee must be given a day's holiday in a week without making any deductions in his/her wages for the same and a timetable of holidays for a

month shall be displayed on the notice board of the establishment in advance.

- e. Adequate safety and security arrangements should be made for employees and visitors after 10 PM on any day.
- f. New staff should be appointed in all the establishments for the extended timings.
- g. Female employees should be provided separate locker and rest rooms at the workplace. Adequate security measures should also be implemented for them.
- h. Employers hiring female employees should mandatorily constitute Internal Complaints Committees as per the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
- i. Female employees shall not be allowed to work post 7 PM unless they have consented to it in writing. Adequate safety and security and transportation arrangements for such female employees must also be made during their working hours.
- j. The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 must be implemented in the establishments.
- k. Employees will be entitled to paid national and festival holidays as per applicable law.
- l. Wages including overtime wages should be credited to the employees' savings bank account.
- m. All facilities given under the applicable labour laws should be provided to the employees.

In case of violation of any of the above-mentioned conditions or any other provisions of the MSEA, the permission to remain open for 365 days in a year can be withdrawn.

### **The Government of Maharashtra proposes menstrual leave for woman employees**

The Government of Maharashtra, via a notification dated August 3, 2023, published the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) (Amendment) Bill, 2023 wherein it has been proposed that woman employees working in shops and establishments in Maharashtra shall be entitled to paid menstruation leave to ensure that their health and wellbeing is not compromised.

## JUDICIAL DEVELOPMENTS



### SUPREME COURT OF INDIA

Sl. No.	Ratio	Brief details
1.	Two establishments can be clubbed together for coverage under the EPF Act if there is financial integrity between them (October 12, 2023)  <i>M/s Mathosri Manikbai Kothari College of Visual Arts v. APFC</i> <sup>1</sup>	The Supreme Court held that two establishments can be clubbed together for the purpose of coverage under the EPF Act if there is financial integrity between them.
2.	Supreme Court issues directions under the HIV/AIDS Act (September 26, 2023)  <i>CPL Ashish Kumar Chauhan (Retd.) v. Commanding Officer &amp; Ors.</i> <sup>2</sup>	The Supreme Court has directed employers to undertake certain measures to ensure compliances under the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 (" <b>HIV/AIDS Act</b> "). As per the directions of the Court, an employer is required to: (a) designate a complaints officer in every establishment employing 100 or more persons, (b) provide training for the use of universal precautions and post exposure prophylaxis to all persons who may be occupationally exposed to HIV/AIDS in establishments engaged in healthcare services and in establishments where there is a significant risk of occupational exposure to HIV, and (c) ensure due compliance with the HIV/AIDS Act.
3.	Termination of services of an employee on probation found unsuitable for the job shall be simpliciter termination (September 5, 2023)  <i>State of Punjab &amp; Ors. v. Jaswant Singh</i> <sup>3</sup>	The Supreme Court held that the termination order that is passed against an employee on probation on the basis of his/her unsuitability for the job and does not contain any serious allegation or act of misconduct, is in the nature of a simpliciter termination.

1. Civil Appeal No. 4188 of 2013.

2. Civil Appeal No. 7175 of 2021.

3. Civil Appeal No. 11871 of 2014.

## SUPREME COURT OF INDIA

Sl. No.	Ratio	Brief details
4.	Appointment cannot be denied due to suppression of material information if the employee does not disclose the information not specifically asked for by the employer (August 22, 2023)  <i>State of West Bengal &amp; Ors. v. Mitul Kumar Jana</i> <sup>4</sup>	The Supreme Court held that an employee's appointment cannot be denied on the grounds of suppression of material information if the employee does not disclose any information which the employer has not specifically asked for.
5.	"Basic wages" cannot be equated with "minimum wage" (August 17, 2023)  <i>APFC v. M/s G4S Security Services (India) Ltd. &amp; Anr.</i> <sup>5</sup>	The Supreme Court held that the definitions of 'basic wages' under the EPF Act and 'minimum wage' under the Minimum Wages Act, 1948 cannot be equated for the purpose of giving them a different or expansive meaning as that would be contrary to the legislative intent behind them. This would have an implication on the various wage components on which the EPF contribution would have to be calculated.
6.	Fixed-term employees entitled to maternity benefits even if the period of benefit exceeds the tenure of employment (August 17, 2023)  <i>Dr. Kavita Yadav v. Secy, Ministry of Health &amp; Family Welfare Dept. &amp; Ors.</i> <sup>6</sup>	The Supreme Court held that fixed-term employees are entitled to maternity benefits even where the period of maternity benefit extends beyond the expiry of the tenure of their employment. The Court opined that the Maternity Benefit Act, 1961 envisions an entitlement to maternity benefits that is not co-terminus with an employee's period of employment.

## HIGH COURTS

Sl. No.	Ratio	Brief details
1.	No appeal to a departmental authority lies against the ICC's report under the POSH Act (October 5, 2023)  <i>Mukesh Khampariya v. State of Madhya Pradesh &amp; Ors.</i> <sup>7</sup>	The Madhya Pradesh High Court held that no appeal lies before a departmental authority of the organisation against the report of Internal Complaints Committee ("ICC") constituted as per the Sexual Harassment of Woman at Workplace (Prevention, Prohibition and Redressal), 2013 ("POSH Act") as there is no enabling provision under the legislation which allows it.
2.	Absence of a contract would not deprive a person from a reasonable remuneration for the work already performed (October 3, 2023)  <i>Bharat Sanchar Nigam Ltd. v. Vihaan Networks Ltd.</i> <sup>8</sup>	The Delhi High Court held that a person would not be deprived of a reasonable remuneration for the work performed by him/her even in the absence of a contract by virtue of Section 70 of the Indian Contract Act, 1872 <sup>9</sup> .
3.	Private sector employees entitled to all five festival holidays every year by choosing to avail them only on weekdays (September 13, 2023)  <i>Maiva Pharma Employees Union v. Joint Director &amp; Ors.</i> <sup>10</sup>	The Madras High Court held that the employees cannot be deprived of their right to enjoy all the five festival holidays provided under the Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, 1958 just because the employer chooses to offer such holidays for festivals that fall on a Sunday.

4. Civil Appeal No. 8510 of 2011.

5. Civil Appeal No. 9284 of 2013.

6. Civil Appeal No. 5010 of 2023.

7. W.P. No. 21852 of 2018.

8. O.M.P. (Comm) 405 of 2023, IA Nos. 19196 of 2023 & 19198 of 2023.

9. Section 70 of the Indian Contract Act, 1872 provides "Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."

10. W.P. No. 2247 of 2023, W.P. (Misc.) No. 2328, 2330 & 2332 of 2023.

## HIGH COURTS

Sl. No.	Ratio	Brief details
4.	Context in which an expression is used to be considered while adjudicating a case under the POSH Act (September 8, 2023) <i>Sukalyan Haldar v. State of West Bengal &amp; Ors.</i> <sup>11</sup>	The Calcutta High Court held that the context and backdrop in which an expression is used shall be considered to determine whether there was any sexual overtone to such usage while adjudicating a case under the POSH Act.
5.	Dispute under the Apprentices Act cannot be treated as an industrial dispute (August 18, 2023) <i>Indian Oil Corporation Ltd. v. Narendra Singh Shekhawat &amp; Anr.</i> <sup>12</sup>	The Rajasthan High Court held that a dispute under the Apprentices Act, 1961 (" <b>Apprentices Act</b> ") cannot be treated as an 'industrial dispute' under the IDA as Section 18 of the Apprentices Act excludes the applicability of labour laws on apprentices.
6.	Contractor cannot withhold payments to sub-contractor due to principal employer's default in payments (August 10, 2023) <i>Gannon Dunkerley &amp; Co. Ltd. v. M/s Zillion Infraprojects Pvt. Ltd.</i> <sup>13</sup>	The Delhi High Court held that a contractor cannot withhold payments to the sub-contractor on the ground that he/she was not paid by the principal employer.
7.	Employee has the right to vent against the organisation's management in a private chat (August 8, 2023) <i>A. Lakshminarayanan v. Assistant General Manager, HRM/Disciplinary Authority, Tamil Nadu Grama Bank</i> <sup>14</sup>	The Madras High Court held that an employee has the right to vent against the organisation's management in a private chat and the management cannot take action against him/her for the same.

11. W.P.A. No. 18829 of 2023.

12. S.B. Civil W.P. No. 8182 of 2005.

13. OMP(Comm) 234 of 2023 & I.A. 12401 of 2023.

14. W.P(MD)No.9754 of 2023 & WMP(MD)No.8689 of 2023.





# WHAT'S TRENDING<sup>15</sup>

## GENCOSYS ANNOUNCES A PAID PERIOD LEAVE POLICY

Gencosys has announced a paid period leave policy for its women employees. This policy has been introduced as a step towards ensuring gender equality at the workplace, improving women employees' well-being and breaking the stigma around menstruation. The organisation has also conducted workshops to raise awareness about menstrual health.

## ZOMATO HIRES A FIRST-EVER CHIEF FITNESS OFFICER

Zomato has appointed a Chief Fitness Officer ("CFO") to strengthen the health and well-being of its employees, delivery executives and restaurant partners. The CFO will work with an in-house team of trainers, nutritionists and wellbeing counsellors to monitor the well-being journey of all Zomato employees, delivery executives and restaurant partners.

## WOMAN EMPLOYEES AT THE MAHINDRA GROUP ARE NOW ENTITLED TO A 5-YEAR MATERNITY POLICY

The Mahindra Group has announced a 5-year maternity policy for its women employees wherein they will be entitled to various benefits (apart from the statutorily mandated maternity and childcare benefits) such as a yearlong pre-childbirth and 3 year-long post maternity support, baby-care allowance, emotional health and wellbeing support and a year-long childcare sabbatical.

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## OUR OFFICES

### BENGALURU

101, 1st Floor, "Embassy Classic" # 11  
Vittal Mallya Road  
Bengaluru 560 001  
T: +91 80 4072 6600  
F: +91 80 4072 6666  
E: bangalore@induslaw.com

### HYDERABAD

204, Ashoka Capitol, Road No. 2  
Banjarahills  
Hyderabad 500 034  
T: +91 40 4026 4624  
F: +91 40 4004 0979  
E: hyderabad@induslaw.com

### CHENNAI

#11, Venkatraman Street, T Nagar,  
Chennai - 600017 India  
T: +91 44 4354 6600  
F: +91 44 4354 6600  
E: chennai@induslaw.com

### DELHI & NCR

2nd Floor, Block D  
The MIRA, Mathura Road, Ishwar Nagar  
New Delhi 110 065  
T: +91 11 4782 1000  
F: +91 11 4782 1097  
E: delhi@induslaw.com

9th Floor, Block-B  
DLF Cyber Park  
Udyog Vihar Phase - 3  
Sector - 20  
Gurugram 122 008  
T: +91 12 4673 1000  
E: gurugram@induslaw.com

### MUMBAI

1502B, 15th Floor  
Tower – 1C, One Indiabulls Centre  
Senapati Bapat Marg, Lower Parel  
Mumbai – 400013  
T: +91 22 4920 7200  
F: +91 22 4920 7299  
E: mumbai@induslaw.com

#81-83, 8th Floor  
A Wing, Mittal Court  
Jamnalal Bajaj Marg  
Nariman Point  
Mumbai – 400021  
T: +91 22 4007 4400  
E: mumbai@induslaw.com