

TL E-BULLETIN

- **LABOUR REGULATORY UPDATES**
- **LABOUR CODE UPDATES**
- **JUDGMENTS**



VOL 1 | ISSUE 5
AUGUST 2022



Welcome to the 5th Edition of Volume 1 of the TL E-Bulletin, brought to you by TeamLease Services. This E-Bulletin comprises of Labour Regulatory Updates, recent significant Judgments and Orders & insights into the Labour Code Updates.

1. LABOUR REGULATORY UPDATES

In this section, we aim to provide insights and recent updates on various Acts of Labour Laws, in the form of Official Notifications, Circulars, Amendments, etc., that have been published and notified in the past one month, governing on the impact and regulation of labour and employment laws.

EPFO ISSUES CIRCULAR PRESCRIBING ON THE STANDARD OPERATIONAL PROCEDURE TO SETTLE DEATH CLAIMS DUE TO INDUSTRIAL ACCIDENT.

Vide its Circular dated 3rd August, 2022, the Employee's Provident Fund Organization (EPFO) has prescribed the Standard Operational Procedure to settle claims in cases of death due to Industrial Accident. The procedure for the same is as follows:

- (1) In case of Industrial death which occurred due to any reason, the information in this regard with full particulars of all the deceased persons may be provided to the Regional PF Commissioner, in order to have an immediate follow up action to settle their claims can be taken on priority.
- (2) The family members of those already enrolled as PF member are eligible for the following benefits under EPF Act, 1952 and schemes framed thereunder-
 - (a) EPF accumulation in their EPF account with up to date Interest.
 - (b) EDLI benefits as per Employee's Deposit Linked Insurance Scheme, 1976.
 - (c) Monthly Family Pension as per EPS, 1995 i.e., Widow / Widower will get monthly Family Pension till their Death or Re-marriage, whichever is earlier.
 - (d) Monthly Children Pension up-to 2 Children till 25 years of age, when one children will attend 25 years, thereafter 3rd Children will start receiving Children Pension till 25 years of age and so on.
 - (e) Similarly, Orphan Monthly Pension up-to 2 Orphans at a time up-to 25 years thereafter, 3rd Orphan will start receiving Monthly Orphan Pension till 25 years of age and so on.
 - (f) Disable children are eligible for monthly Pension till their Life as per EPS, 1995.
 - (g) Nominee monthly Pension Life -Long in case, deceased member has no family.
 - (h) Dependent Parents Monthly Pension is eligible to Parents Life-Long in case, deceased member has no family and no Nominee. First Parent monthly Pension shall be given to the Father and after his death, Mother will be eligible for Life-Long Monthly Pension.
 - (i) Family members of those who are eligible to be enrolled as PF Member shall also get above mentioned benefits under the Act.

Furthermore, on failure of the provision of the said mentioned information to the Regional PF Commissioner, the same shall be treated as violation under the provision of the EPF Act, 1952 and Schemes framed thereunder and shall be liable for action as per law.

GOVERNMENT OF HIMACHAL PRADESH DECLARES PAID HOLIDAY ON THE DAY OF POLL- 10TH AUGUST, 2022 ON ACCOUNT OF BY - ELECTIONS.

The Government of Himachal Pradesh vide its Notification dated 1st August, 2022 has declared a grant of "Paid Holiday" on the 10th August, 2022 (Wednesday) on account of the By- Election in Panchayati Raj Institutions, only to the voters of respective Gram Panchayat, Wards of Gram Panchayat / Wards of Panchayat Samiti / Wards of Zila Parishad. Therefore, all Government Offices, Boards, Corporations, Educational Institutions & Industrial Establishments under the Industrial Disputes Act and Shops will remain closed on the said date in the area of concerned institutions.

Also, it is a paid holiday to Daily Wage Employees, within the meaning of Section 25 of The Negotiable Instruments Act, 1881 and that, Special Casual Leave may be given to those employees who are working in different places in the State but have a right to vote in the concerned institutions, on the production of certificate from the concerned Presiding Officer, that the Employee has actually cast his / her vote.

The crux of the said Notification is as follows:

- (1) To the Employees working in the Commercial and Industrial Establishments to which the provisions of the Negotiable Instruments Act do not apply, to declare the 10th August, 2022 as a Paid Holiday.
- (2) Paid Holiday under the Shops and Commercial Establishment Act, for all shops and commercial establishments instead of usual day observed by them as closed day during the week.
- (3) To the Factories situated in the State of Himachal Pradesh, to grant an additional Paid Holiday to the Industrial Workers on the Polling Day, as provided under Section 158-Q of The Himachal Pradesh Panchayati Raj Act, 1994.

GOVERNMENT OF NCT OF DELHI LAUNCHES SERVICE NAMED ONLINE APPLICATION FOR EXEMPTION UNDER THE PROVISIONS OF DELHI SHOPS & ESTABLISHMENTS ACT, 1954.

Vide the Office Order dated 5th August, 2022, the Government of NCT of Delhi has stipulated the launch of a service named "Online Application for Exemption under the provisions of Delhi Shops & Establishments Act, 1954."

The essence of the said Order is as follows:

- (1) The online portal for receiving the Application under Sections 14, 15 & 16 of the Delhi Shops & Establishments Act, 1954 is available on the mentioned URL, w.e.f 8th August, 2022.
- (2) Section 14 - Application can be made online relating to the Exemption under Section 14 for allowing Young person and Women to work between 9 PM to 7 AM during the Summer and between 8 PM to 8 AM in the Winter.
- (3) Section 15 - Application can be made online relating to the Exemption under Section 15 for allowing changing the working hours.
- (4) Section 16 - Application can be made online relating to the Exemption under Section 16 for allowing opening of Shops / Establishment on weekly off day or on 3 National Holidays of India.

Therefore, all the concerned stakeholders are directed to utilize the said mentioned services available on the website, w.e.f 8th August, 2022 and henceforth, no physical application shall be entertained / received.

GOVERNMENT OF MADHYA PRADESH PRESCRIBES CONDITIONS FOR EXEMPTION FROM RESTRICTIONS ON EMPLOYING WOMEN WORKERS DURING NIGHT SHIFTS IN SHOPS AND ESTABLISHMENTS.

The Government of Madhya Pradesh vide its Notification dated 1st August, 2022, has prescribed certain significant conditions for exemption from restrictions on employing women workers during night shifts, i.e., between 9 PM to 7 AM in all Shops and Commercial Establishments.

Following are the terms and conditions for exempting women workers during night shifts in shops and commercial establishments-

- (1) It shall be the duty of the employer or other responsible persons at workplaces or institutions to prevent the commission of acts of sexual harassment and to proceed for prosecution of acts of sexual harassment by taking all steps required.
- (2) All employers or persons in charge of work place or establishment related to shops and commercial establishment should take appropriate steps to prevent sexual harassment and they should take the following steps:
 - (i) Express prohibition of sexual harassment in any form such as unwelcome sexual behaviour either directly or by implication or to gain contact or demand sexual favour or make sexually coloured remarks or showing pornography or any other unwelcome physical contact of sexual nature;
 - (ii) The rules or regulations shall be framed by the management of the establishment relating to conduct and discipline prohibiting sexual harassment and provide for appropriate penalties in such rules against the offenders and also introduce amendments wherever necessary which are existing in the Standing Orders;
 - (iii) Provide appropriate working conditions in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment;
- (3) In case of any criminal case, the employer shall initiate appropriate action in accordance with the penal law without delay and also ensure that victims or witnesses are not victimized or discriminated while dealing with the complaints of sexual harassment and wherever necessary, at the request of the affected worker, shift or transfer the perpetrator, if circumstances warrant. The employer shall take appropriate disciplinary action if such conduct amounts to misconduct in employment.
- (4) The employer of the Shops and Commercial Establishment shall maintain a complaint mechanism in the establishment itself and the said mechanism should ensure time-bound treatment of complaints. Such mechanism should provide, when necessary a Complaint Committee, a Special Counsellor or other support services and maintain confidentiality in such matters.
- (5) Such Complaint Committee should be headed by a woman and not less than half of its members should be women, besides a NGO's representation in the Committee and such person should be familiar with the issues of sexual harassment.
- (6) The Female Employees should be made aware of their rights in particular by prominently notifying the guidelines on the subject.
- (7) Wherever there is a harassment at the instance of a third party, either by an act or omission, the employer and person in charge of the establishment, should take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

- (8) The employer of the Shops and Commercial Establishment shall provide proper lighting not only inside the establishment, but also in the surroundings of the establishment and in all places where the female workers may move out of necessity in the course of their work.
- (9) The employer shall see that the women workers are employed in a batch not less than 10 and the total of the women workers employed in a night time shall not be less than 2/3rd of the total strength.
- (10) Sufficient women security shall be provided during the night time at entry as well as exit points.
- (11) Sufficient number of waiting sheds shall be provided for the female workers to arrive in advance and also leave after the working hours.
- (12) Separate canteen facility shall be provided for the female workers.
- (13) Separate transportation facility shall be provided by the employer or the owner of the establishment. The employer shall ensure pick up and drop transport facility under security from the women employee's residence to the work place during the night shift.
- (14) The employer shall appoint not less than 2 Female Wardens at night who shall go round and work as Special Welfare Assistants.
- (15) The establishment shall provide appropriate medical facilities and also make available at any time of urgency, necessary telephone connections and where more than 100 Female workers are employed at night, a separate vehicle be kept ready to meet the emergent situation such as hospitalization.
- (16) Wherever the Shops & Commercial Establishments provides boarding and lodging arrangements for the female workers, the same shall be kept exclusively for the woman under the control of women wardens or supervisors.
- (17) During night time, not less than 1/3rd of strength of the supervisors or shift-in-charge or foreman or other supervisory staff shall be women.
- (18) There shall be not less than 12 consecutive hours of rest or gap between the last period and the night period, whenever a woman worker is changed from day period to night period and so also from night period to day period.
- (19) The provisions of the Madhya Pradesh Shops & Establishments Act, 1958 and other statutory provisions with respect to the hours of work and the payment of equal remuneration and all other labour legislations shall be followed by the employer.
- (20) Apart from the facilities, which is permissible under the Madhya Pradesh Shops & Establishments Act, 1958, an additional holiday shall be permitted for the women workers during menstruation period, which shall be a paid holiday for the night time.
- (21) The Female workers who work in night shall have a monthly meeting through their representatives with the Principal Employer once in 8 weeks as Grievance day and the Employer shall try to cope all just and reasonable grievances.
- (22) The employer shall be at liberty to employ female workers as a whole or in part during the night period, provided, the above directions be complied with.
- (23) The Employer shall send a Monthly Report to the Govt. Labour Officer / Assistant Labour Commissioner about the details of employees engaged during night time and shall also send report immediately whenever there is some untoward incident to the Govt. Labour Officer / Assistant Labour Commissioner and Local Police Station as well.

ESIC PRESCRIBES THE DATE OF ENFORCEMENT OF CERTAIN PROVISIONS OF THE ESI ACT IN ALL THE AREAS OF RAMANATHAPURAM & SIVAGANGAI DISTRICTS, TAMIL NADU.

The Employee's State Insurance Corporation (ESIC) vide the Ministry of Labour and Employment (MOLE) Notification dated 10th August, 2022 has prescribed the date of enforcement of certain provisions of the Employees' State Insurance Act, 1948 in all the areas of Ramanathapuram & Sivagangai Districts, in the State of Tamil Nadu.

As per the said Notification, the following provisions of the Employee's State Insurance Act, 1948 are being enforced in all the areas of Ramanathapuram & Sivagangai Districts, in the State of Tamil Nadu, effective from 1st September, 2022:

- (i) Sections 38, 39, 40, 41, 42, 43 and sections 45A to 45H of Chapter IV, which specifies Contributions.
- (ii) Sections 46 to 73 of Chapter V, which specifies Benefits and;
- (iii) Sections 74, 75, sub-sections (2) to (4) of section 76, 80, 82 and 83 of Chapter VI, which specifies Adjudication Of Dispute And Claim.

GOVERNMENT OF HIMACHAL PRADESH PRESCRIBES CONDITIONS FOR EXEMPTION FROM RESTRICTIONS ON EMPLOYING WOMEN WORKERS DURING NIGHT SHIFTS IN FACTORIES.

The Government of Himachal Pradesh vide its Notification dated 12th August, 2022 has prescribed certain conditions permitting the employment of women workers in Factories during night shifts i.e., from 07:00 PM to 06:00 AM across the state. The said permission shall be valid for 3 years from the date of publication of the Notification, subject to the conditions prescribed.

Following are the conditions for employing women workers in Factories during night shifts, i.e., from 07:00 PM to 06:00 AM in the State of Himachal Pradesh:

1. No woman worker shall be bound to work without her consent before 06:00 AM and after 07:00 PM.
2. No woman employee shall be required or allowed to work for more than 8 hours in any day not for more than 48 hours in any week.
3. No women shall be employed against the maternity benefit provisions laid down under the Maternity Benefit Act, 1961.
4. Adequate transportation facilities along with guard shall be provided to women employee to pick up and drop at her residence.
5. The occupier shall intimate the arrangement proposed by him to the concerned Inspector of region for verification affording him a minimum period of seven days for such verification.
6. Employer shall ensure sufficient supervision during such working hours and journey thereof.
7. Employer shall provide lighting not only inside the establishment, but also surroundings of the establishment and to all places where the female employees may move as per her necessity in the course of such shift.
8. Employer shall provide appropriate medical facilities and also make available at any time of urgency by providing necessary telephone connections and where more than hundred female employees are employed in a shift, a separate vehicle shall be kept ready to meet the emergent situation such as hospitalization, whenever there is a case of injury or incidental acts of harassment etc.

9. Wherever the establishment provides boarding and lodging arrangements for the female employees, the same shall be kept exclusively for the women under the control of women wardens or supervisors.
10. The female employees who work in night shifts and regular shifts shall have a monthly meeting through their representatives with principal employer once in 8 weeks as grievance day and the employer shall comply all just and reasonable grievances.
11. Employer shall send a fortnightly report to the Inspector about the details of employees engaged during night shifts, and shall also send express report whenever there is some untoward incident to the Inspector and local Police station as well.
12. The toilets, washroom and drinking water facilities should be near to the workplace including passage towards conveniences or facilities concerning to these amenities. Further, entry and exit of women employees should be well-lit.
13. The employer shall provide safe, secure and healthy working condition such that no women employee is disadvantaged in connection with her employment.
14. The provisions of the Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act, 2013 (14 of 2013), as applicable to the establishment, shall be complied with.

ESIC PRESCRIBES THE DATE OF ENFORCEMENT OF CERTAIN PROVISIONS OF THE ESI ACT IN ALL THE AREAS OF KALAHANDI DISTRICT, ODISHA.

The Employee's State Insurance Corporation (ESIC) vide the Ministry of Labour and Employment (MOLE) Notification dated 23rd August, 2022 has prescribed the date of enforcement of certain provisions of the Employees' State Insurance Act, 1948 in all the areas of Kalahandi District, in the State of Odisha.

As per the said Notification, the following provisions of the Employee's State Insurance Act, 1948 are being enforced in all the areas of Kalahandi District, in the State of Odisha, effective from 1st September, 2022:

- (i) Sections 38, 39, 40, 41, 42, 43 and sections 45A to 45H of Chapter IV, which specifies Contributions.
- (ii) Sections 46 to 73 of Chapter V, which specifies Benefits and;
- (iii) Sections 74, 75, sub-sections (2) to (4) of section 76, 80, 82 and 83 of Chapter VI, which specifies Adjudication Of Dispute And Claim.

KERALA GOVERNMENT REVISES THE RATE OF WORKER'S WELFARE FUND CONTRIBUTION UNDER THE KERALA SHOPS & COMMERCIAL ESTABLISHMENTS WORKER'S WELFARE FUND ACT, 2006.

The Government of Kerala vide its Notification dated 19th May, 2022 has revised the rate of workers welfare fund contribution effective from 1st September, 2022. Pursuant to sub-section (3) of Section 4 of the Kerala Shops and Commercial Establishment Workers Welfare Fund Act, 2006, the rate of contribution by the self-employed person to the Fund has been revised from the existing rate of ₹20 to ₹50.

Therefore, as per this Notification, the current revised rate of Employee's contribution is ₹50 and the Employer's contribution is ₹50, total amounting to ₹100, as contrast to the existing rate of ₹40, (Employer's + Employee's Contribution) effective from 1st September, 2022.

2. LABOUR CODE UPDATES

In this section, we attempt to provide a brief understanding on the Labour Code Updates for an easy ready reference. This section mainly highlights on each of the 4 proposed Labour Codes and its recent updates and changes.

A significant progress towards notifying and publishing the Labour Code Draft State Rules could be discerned from a majority of states, in furtherance to the very prospective implementation of Labour Codes.

Though, it is significant to comprehend and deduce that, as of yet, a total of 24 states have drafted, notified and published all the 4 Draft Rules on Labour Codes, inferring an imperative rise in the number of states of its intention to effectuate at the earliest. On the contrary, states / UT's like West Bengal, Nagaland, Meghalaya, Lakshadweep, Dadra and Nagar Haveli and Daman and Diu, are on the lag behind the implementation of all 4 Draft Rules.

At this juncture, a brief summary of the Publication status of States / UT's on their Draft Labour Code Rules is appended below:

1. Count of the Draft Wages Rules – 31 States / UT's
2. Count of the Draft Occupational Safety, Health and Working Conditions Rules – 25 States / UT's
3. Count of the Draft Industrial Relations Rules – 27 States / UT's
4. Count of the Draft Social Security Rules – 27 States / UT'S

3. JUDGMENTS

In this section, we aim to highlight all relevant imperative judicial decisions rendered in the recent months in the area of Labour and Employment Law.

1. SANTRAM SPINNERS LIMITED V/S BABUBHAI MAGANDAS PATEL – GUJARAT HIGH COURT

C/SCA/10741/2008

PERSON WORKING IN THE CAPACITY OF 'CONSULTANT' CANNOT BE DEEMED AS 'WORKMAN'.

The Respondent had raised an industrial dispute, inter alia, claiming that he was working in the company of the Petitioner as a Technical Maintenance In-Charge while the respondent earning a salary of ₹ 9,000 per month. Thereafter, it was alleged by him that he was terminated orally in 1997.

On the other hand, the Petitioner submitted that the Respondent did not fall within the definition of the term 'Workman' under Section 2(s) since he was employed as a Maintenance Consultant, receiving consultant fees and not a salary and that the Respondent was rendering services as a consultant raising his bills/ vouchers regularly and being paid through cheque.

It was observed that the Respondent had admitted that he had no evidence with him to prove that he was working as a 'workman' in the Petitioner Company and that his salary was fixed at ₹ 9,000 per month.

The Gujarat High Court placing reliance on the documentary evidence (such as bills, statements of tax deducted at source, etc.) produced before the Court by the Employer has held that the individual was working as a consultant and not as workman, therefore the said individual cannot seek protection under the Industrial Disputes Act, 1947. As per the Bench, there was 'ample evidence' to prove that the Respondent was employed as a technical consultant.

2. GUJARAT INSECTICIDES LTD. & OTHERS V/S PRESIDING OFFICER & OTHERS – GUJARAT HIGH COURT

C/SCA/28475/2007

PERSON WORKING IN SUPERVISORY CAPACITY CANNOT RAISE "INDUSTRIAL DISPUTE"

The Gujarat High has reiterated that a person working in "supervisory" capacity cannot raise an industrial dispute under the Industrial Disputes Act, 1947.

The Gujarat High Court took into consideration the Respondent's appointment letter and witness depositions regarding the nature of work performed by him to conclude that the Respondent was indeed discharging duty of Maintenance Engineer in Grade-9. The depositions also specified the hierarchical grading in the petitioner-company as per which, the employees above Grade-7 were of the Management Cadre.

In view of the aforesaid, where this Court is convinced that the respondent will not fall in the definition of a 'workman', the issue of raising industrial dispute will have to be decided in favour of the petitioner-company as a necessary consequence.

“WHEN A BOOK RAISES YOUR SPIRIT, AND INSPIRES YOU WITH NOBLE AND MANLY THOUGHTS, SEEK FOR NO OTHER TEST OF ITS EXCELLENCE. IT IS GOOD, AND MADE BY A GOOD WORKMAN.”

THE CONTRIBUTORS TO THIS EDITION OF THE E-BULLETIN ARE - RAJEEV KAPOOR, MAHESH KUMAR, SHUBHAM SRIVASTAVA & KSHITHIJA PRAKASHAN, (SUBJECT-MATTER EXPERTS), TEAMLEASE SERVICES LIMITED.