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TL E-BULLETIN

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Welcome to the 2nd 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.

ESIC ISSUES NOTIFICATION REGARDING THE ENFORCEMENT OF MEDICAL BENEFITS IN NAGAPATTINAM DISTRICT, TAMIL NADU

In its Notification dated 6th May, 2022, the Director General has fixed the 1st April, 2022 as the date from, which the medical benefits as laid down in the Regulation 95-A and the Tamil Nadu Employee's State Insurance (Medical Benefits) Rules, 1955 shall be extended to the families of insured persons in the entire area of Nagapattinam District in the State of Tamil Nadu.

Therefore, reading Regulation 95-A of the Employee's State Insurance (General) Regulations, 1950 in conjunction with the Tamil Nadu Employees' State Insurance (Medical Benefit) Rules, 1955, medical benefits are hereby proposed to be enforced in the entire area of Nagapattinam District, in the State of Tamil Nadu, effective from the 1st April, 2022.

ESIC ISSUES CIRCULAR ON THE STATE-WISE UPDATED LIST OF ESIC IMPLEMENTATION

The ESIC vide its Circular dated 12th May, 2022, has furnished the State-wise updated list of ESIC implementation across such Notified Districts. The Circular mentions that as on the 10th May, 2022 :

(1) 13 States / UT's whose entire area is notified under the ESIC Scheme;
(2) 22 States / UT's where the ESIC Scheme is partially notified and;
(3) Only 1 State / UT (Lakshadweep) where the ESIC Scheme is not implemented.

Therefore, the Summary of Notified Districts as on 10th May, 2022 are as follows:

(A) Fully Notified Districts – 442;   (B) Partially Notified Districts - 154

Total : 596

MOLE ISSUES NOTIFICATION DECLARING THE SERVICES ENGAGED IN COAL INDUSTRY TO BE A PUBLIC UTILITY SERVICE

The Ministry of Labour and Employment (MOLE), in its Notification dated 26th May, 2022 has declared the services engaged in the Coal Industry to be a Public Utility Service. As per the said Notification, the Central Government is satisfied that public interest so requires that the services engaged in the Coal Industry, as covered under Item 4 of the First Schedule to the Industrial Disputes Act, 1947 to be a Public Utility Service. Thus, the Notification shall stand effective from the 27th May, 2022 for a period of 6months.

UTTAR PRADESH ISSUES NOTIFICATION EXEMPTING WOMEN WORKERS WORKING IN NIGHT SHIFTS IN FACTORIES

The Government of Uttar Pradesh has issued a Notification dated 27th May, 2022, exempting the women workers from the restrictions on working in the night shifts in Factories, with certain prescribed conditions governing the same. The conditions are as follows:

(i)No Women worker shall be bound to work without her written consent before 06:00 AM and after 07:00 PM.
(ii)No Women worker shall be terminated from her employment if she denies to work between 07:00 PM to 06:00 AM.
(iii)Women worker working between 07:00 PM to 06:00 AM shall be provided free transportation form her residence to workplace by the employer of the factory and back.
(iv)Women worker working between 07:00 PM to 06:00 AM shall be provided food by employer of the factory.
(v)Women worker working between 07:00 PM to 06:00 AM shall be provided sufficient supervision during working hours and journey thereof.
(vi)Employer shall ensure toilets, washrooms, changing-room, drinking facilities and light near the work place.
(vii)During the working between 07:00 PM to 06:00 AM, not less than 4 women worker shall be allowed to work in the premises or a particular department.
(viii)Employer shall intimate the arrangement proposed by him in connection to the employment of female workers to Inspector of factories of region concerned, for verification, affording him a maximum period of 7 days for such verification.
(ix)The employer shall send a monthly report electronically or otherwise to the Inspector of factories of region concerned about the details of women workers engaged during night shift and shall also send express report whenever there is some untoward incident to the Inspector of factories of region concerned, and local Police Station as well.
(x)The Inspector of factories shall enforce the safe working conditions of women worker and carefully take note of the non-compliance in their inspection from time to time.
(xi)Employer shall take appropriate steps to prevent sexual harassment. The employer shall maintain a complaint mechanism in the factory itself as prescribed in the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 or in any other related enactments.
(xii)The women worker shall be made aware of their rights in particular by prominently displaying the guideline as may be required.
(xiii)Permission shall be deemed cancelled automatically on violation of any conditions prescribed above by employer of the factory.

MOLE ISSUES NOTIFICATION EXTENDING THE PROVISIONS OF ESI ACT TO CERTAIN CLASSES OF ESTABLISHMENTS IN THE AREAS OF THE UNION TERRITORY OF ANDAMAN & NICOBAR ISLAND

In its Official Notification dated 28th March, 2022, the Central Government in consultation with the Employee's State Insurance Corporation gave notice of its intention to extend the provisions of the Employee's State Insurance Act, 1948 to certain classes of establishments as duly specified in the Schedule to the said Notification after 1 month from the date of that notification.

As there have been no objections and suggestions received within the said period of 1 month in respect of the said Notification, the Central Government in consultation with the Employee's State Insurance Corporation, hereby extends the provisions of the Employee State Insurance Act, 1948 to certain classes of establishments as specified in the Schedule annexed in the said Notification, to the Areas of the Union Territory of Andaman and Nicobar Islands., with effect from 1st June, 2022.

MOLE ISSUES NOTIFICATION ON THE ENFORCEMENT DATE OF CERTAIN PROVISIONS OF THE EMPLOYEE’S STATE INSURANCE ACT, 1948 IN THE BAJALI DISTRICT, STATE OF ASSAM

In its Notification dated 30th May, 2022, the Ministry of Labour and Employment (MOLE), has prescribed the date of enforcement of certain provisions of the Employee’s State Insurance Act, 1984 in the Bajali District, State of Assam effective from 1st June, 2022. The following provisions of the Employee’s State Insurance Act, 1948 are being enforced in the Bajali District, Assam:

(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.

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.

NOTIFICATION AND PUBLICATION OF DRAFT LABOUR CODE RULES – MANY STATES IN PROGRESS

A significant progress towards notifying and publishing the Draft Labour Code Rules could be discerned by majority of states, in furtherance to the very prospective implementation of Labour Codes. States / UT's like Assam, Ladakh & Andaman & Nicobar Islands have notified their Draft Labour Code Rules on Occupational Safety, Health and Working Conditions, (OSH), Industrial Relations (IR), Social Security (SS) & Wages.

At this juncture, a brief summary of the status of states in publishing their Draft Labour Code Rules is appended below:

1. Count of the Draft Wages Rules – 29 States / UT's
2. Count of the Draft Occupational Safety, Health and Working Conditions Rules – 23 States / UT's
3. Count of the Draft Industrial Relations Rules – 25 States / UT's
4. Count of the Draft Social Security Rules – 23 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. MILAN KUMAR GHOSH VS. UNION OF INDIA AND OTHERS [FMA 636 OF 2019],

In this case, the Calcutta High Court concluded that in the pendency of judicial complaints in opposition to an worker, an business enterprise can withhold gratuity and different extra retirement advantages until the belief of such complaints. Such an movement may be taken notwithstanding the Payment of Gratuity Act, 1972 (Act) having no provision for such withholding. The reasoning given via way of means of the courtroom docket considers the state of affairs wherein any quantified economic harm is due to the worker to the business enterprise, and in that case, publish the belief of complaints, gratuity may be adjusted from the loss brought on to the business enterprise.

2. STATE OF RAJASTHAN AND OTHERS VS. RAM NIWAS AND OTHERS [DB SPECIAL APPLICATION WRIT NUMBER 512 OF 2020]

In this case, the Rajasthan High Court stated Section 17-B of Industrial Disputes Act, 1947, which casts a responsibility on an enterprise to pay complete wages closing drawn through a workman throughout pendency of enchantment lawsuits earlier than Supreme Court or High Courts bobbing up out of a reinstatement order in favour of workmen. The proviso similarly states that during case the workman has been hired and receiving good enough remuneration throughout such length, such wages shall now no longer be granted to him / her / them. The High Court has clarified that the applicable length as envisaged in Section 17-B is the length starting off from the date of award made through Labour Court until the time the software for such furnish is moved through the workman. In different words, any remuneration earned through the workman earlier than passing of the award might now no longer dis-entitle him to closing drawn complete wages throughout the pendency of enchantment lawsuits. It has additionally been clarified through the Rajasthan High Court that it's far the responsibility of the enterprise, and now no longer of the workman, to aver and show that the workman turned into now no longer hired and incomes enough remuneration throughout the applicable length.

3. TALEMA ELECTRONIC INDIA PRIVATE LIMITED VS. REGIONAL DIRECTOR, ESI CORPORATION [CIVIL APPEAL NUMBER 3175 OF 2022]

In this case, the Supreme Court of India held that "Conveyance Allowance" is equal to \`travelling allowance\` and, therefore, since \`travelling allowance\` is excluded from the definition of \`wages\` under the Employees\` State Insurance Act, 1948 (ESI Act), any conveyance allowance may also stand excluded from the stated definition. Interestingly, within side the past, few High Courts along with Karnataka High Court and Bombay High Court had taken the view that fee of conveyance allowance on a uniform basis irrespective of whether or not the worker concerned had or had now no longer incurred any expenditure on his / her / their adventure to the place of business was now no longer synonymous to travelling allowance as envisaged within side the listing of excluded additives in the definition of \`wages\` under the ESI Act. These elements were, however, now no longer tested through the Supreme Court of India within side the above-noted case. Therefore, at this juncture, "conveyance allowance to be a part of "wages", unless the periodicity of the payment is more than 2 months.

4. BATA INDIA LIMITED VS. WORKMEN OF BATA INDIA LIMITED CIVIL APPEAL NO. 6794 OF 2010

The Supreme Court requested enterprise to pay complete wages to its employees inside a month however allowed it to take suitable movement for the "pass slow" approach followed through the workmen. The High Court in April 2008 had held that "pass slow" is not anything however a kind of intentional refusal to paintings and the control in one of these state of affairs might be justified in decreasing or paying pro-rata wages. It similarly found that the workmen, 40 in quantity, had given regular manufacturing however a notably huge quantity had intentionally now no longer given good enough manufacturing given the decision to "pass slow". However, the High Court held the enterprise at fault, pronouncing it need to have allowed workmen to make clear their stand earlier than making any deduction on a pro-rata foundation and had requested the control to pay deducted wages to the personnel inside a month. The High Court had given liberty to Bata to take suitable steps and continue through regulation on the "pass slow" approach followed through a huge phase of the workmen.

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