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TL E-BULLETIN

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Welcome to the 8th 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.

GOVERNMENT OF HARYANA DECLARES GRANT OF PAID HOLIDAY ON ACCOUNT OF GENERAL ELECTIONS.

The Haryana Government vide its Notification, dated 4th November, 2022 has declared a grant of "Paid Holiday" on the 22nd November, 2022 (Tuesday) and on the 25th November, 2022 (Friday) across certain districts, for all the workers / employees enrolled as voters in Zila Parisads, Panchayat Samitis and Gram Panchayats working in all the shops and commercial establishments within the State of Haryana to enable them to cast their votes.

As per the Notification, the following has been stated:

(1) Firstly, on account of the General Elections of the Members of Zila Parisads and Panchayat Samitis, in the districts of Faridabad, Fatehabad,Hisar and Palwal on the 22nd November, 2022 (Tuesday), grant of Paid Holiday to all the workers / employees enrolled as voters in Zila Parisads & Panchayat Samitis working in all the shops and commercial establishments within the State of Haryana, has been allowed.

(2) Secondly, on account of the General Elections of all Panches & Sarpanches of all Gram Panchayats on the 25th November, 2022 (Friday), grant of Paid Holiday to all the workers / employees enrolled as voters in the said Gram Panchayats working in all the shops and commercial establishments within the State of Haryana, has been allowed.

Therefore, the said grant of 'Paid Holiday' has been extended and allowed only to provide opportunity to all the workers/employees working in all Shops and Commercial Establishments, in the said districts to exercise their franchise.

ESIC PRESCRIBES THE DATE OF EXTENSION OF MEDICAL BENEFITS UNDER TAMIL NADU ESI (MEDICAL BENEFITS) RULES, 1955 IN ALL THE AREAS OF CHENGALPATTU, KARUR & SALEM DISTRICTS - STATE OF TAMIL NADU.

The Employee's State Insurance Corporation (ESIC) vide its Notification dated 4th November, 2022 has prescribed the date of extension / enforcement of medical benefits in the entire area of Chengalpattu, Karur & Salem districts, in the state of Tamil Nadu.

Whereas, the ESIC has hereby fixed the 1st November, 2022 as the date from which the Medical Benefits as laid down in Regulation 95-A of the Employee's State Insurance (General) Regulations, 1950 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 Chengalpattu, Karur & Salem districts, in the state of Tamil Nadu.

GOVERNMENT OF SIKKIM DECLARES GRANT OF PAID HOLIDAY ON ACCOUNT OF GENERAL PANCHAYAT ELECTIONS.

The Sikkim Government, vide its Notification, dated 7th November, 2022 has declared a grant of "Paid Holiday" on the 10th November, 2022 (Thursday) on the Poll Day, for all voters of Gram Panchayats and Zila Panchayats, where the elections are being held.

As per the Notification, the following has been stated:

(1) Firstly, all the Educational Institutions and Commercial establishments located within the Gram Panchayat and Zilla Panchayat areas where elections are being held shall remain closed.

(2)Secondly, the employees of State Government Organizations and Banks/Financial Institutions/Organizations who are registered voters of the Gram Panchayat Wards and Zilla Territorial Constituencies where the elections are being held shall be granted Paid Holiday on production of voter card to their Controlling Officer.

Further, the electors of the Gram Panchayat Wards and Zilla Panchayat Territorial Constituencies, who are stationed and working outside these areas shall also be granted Paid Holiday on production of voter card to their Employer.

MOLE LAUNCHES ESIC ONLINE MATERNITY BENEFIT CLAIM PORTAL.

The Ministry of Labour and Employment (MOLE) vide its Press Release dated 11th November, 2022, has launched the Online Maternity Benefit Claim Portal to ease the process of claiming maternity benefits for Insured Women as the process has now been made online, where the beneficiaries at their convenience, can now claim the maternity benefits from anywhere.

The Press Release states as follows:

(1) The newly introduced facility will ease the process of claiming maternity benefits for Insured Women as the process has now been made online, where the beneficiaries, at their convenience can now claim the maternity benefits from anywhere.
(2) Earlier, the beneficiaries, for claiming the Maternity Benefits had to visit the respective branch offices physically but now with the introduction of this new facility, one can avail the benefits at their convenience.
(3) Maternity Benefit is given to the insured women in the form of cash benefit in case of certain contingencies such as in the advanced stage of pregnancy, after delivery / in the unfortunate event of confinement or miscarriage and who meet the eligibility conditions.
(4) Payment at the rate of 100% of wages is paid for of 26 weeks as maternity benefit to the insured woman by ESIC, to compensate for the loss of income during her childbirth.
(5) It is stated that a total of 18.69 lakh women beneficiaries have been provided maternity benefit of Rs 37.37 crore during the year 2021-22.

GOVERNMENT OF GUJARAT DECLARES GRANT OF PAID HOLIDAY ON ACCOUNT OF GENERAL ELECTIONS.

The Election Commission of India, vide its Press Release dated 7th November, 2022, has declared the General Election to the Legislative Assembly of Gujarat, 2022 and a Grant of 'Paid Holiday' to Employees on the Day of Poll, i.e., 1st December, 2022 (Thursday) and 5th December, 2022 (Monday), across phases (Phase I) & (Phase II) in the mentioned Assembly Constituencies.

The Press Release states as follows:

(1) Reference to Section 135-B of the Representation of the People Act, 1951, which provides for the grant of Paid Holiday to the Employees, on the day of poll.

Section 135-B: Grant of Paid Holiday to Employees on the Day of Poll

(i) Every person employed in any business, trade, industrial undertaking or any other establishment and entitled to vote at an election to the House of the People or the Legislative Assesmbly of a State, shall on the day of poll, be granted a Holiday.
(ii) No deduction or abatement of the wages of any such person shall be made on account of holiday having been granted above and if such person is employed on the basis that he would not ordinarily receive wages for such a day, he shall nonetheless be paid for such day the wages, he would have drawn had not a holiday been granted to him on that day.
(iii) If an Employer contravenes the provisions of sub-section (1) or sub-section (2), then such Employer shall be punishable with fine which may extend to ₹500.
(iv) This Section shall not apply to any elector whose absence may cause danger or substantial loss in respect of the employment in which he is engaged.

(2) Further, the said provisions under Section 135-B of the Representation of the People Act, 1951, requires that all the electors who are Employees of Establishments and Shops, including those which work on shift basis, shall be granted a "Paid Holiday" on the day of poll, in the Constituency where the General Election is to be held.

(3) Where a person is ordinarily resident of the Constituency and registered as an elector, may be serving / employed in an industrial undertaking or an establishment, located outside the Constituency, in such a situation, even those electors including casual workers working outside the constituency concerned, would be entitled to the benefit of a "Paid Holiday", as extended under Section 135-B(1) of the Act.

(4) The daily wage / casual workers are also entitled for a holiday and wages on the Poll Day, as provided under Section 135-B of the Act.

GOVERNMENT OF HARYANA ISSUES NOTIFICATION ON THE EXEMPTION TO ADULT WORKERS WORKING IN FACTORIES FROM SECTION 52 (1) OF THE FACTORIES ACT, 1948 ON ACCOUNT OF GENERAL ELECTION OF PANCHAYATI RAJ INSTITUTIONS.

The Haryana Government vide its Notification, dated 10th November, 2022, has exempted all the adult workers working in factories situated in the State of Haryana, who are voters in the districts of Faridabad, Fatehabad, Hisar and Palwal, entitled to vote at an election to the Panchayati Raj Institutions on the day of polling from the operations of Section 52(1) of The Factories Act, 1948. Further, no adult worker who is enrolled as the voters shall be required or allowed to work on the polling day.

As per the Notification, the following has been stated:

(1) Firstly, exemption to all the adult workers, enrolled as voters in Faridabad, Fatehabad, Hisar and Palwal Districts, from the operation of Section 52(1) of the Factories Act, 1948, for the week commencing from 20th November, 2022 till 26th November, 2022 for the election of Members of the Zila Parishads and Panchayat Samitis in the said districts, on the Polling Day (22.11.2022) (Tuesday).

(2) Secondly, exemption to all the adult workers, enrolled as voters in Faridabad, Fatehabad, Hisar and Palwal Districts, from the operation of Section 52(1) of the Factories Act, 1948 for the week commencing from 27th November, 2022 till 03rd December, 2022, for the election of the members of Gram Panchayats and Sarpanch in the said districts, on the Polling Day (25.11.2022) (Friday).

ESIC PRESCRIBES THE DATE OF ENFORCEMENT OF CERTAIN PROVISIONS OF THE ESI ACT IN ALL THE AREAS OF DINDIGUL DISTRICT- STATE OF TAMIL NADU.

The Employee's State Insurance Corporation (ESIC) vide the Ministry of Labour and Employment (MOLE) Notification dated 16th November, 2022 has prescribed the date of enforcement of certain provisions of the Employee's State Insurance Act, 1948 in all the areas of Dindigul district, in addition to the already notified areas of the said district, in the State of Tamil Nadu, to be effective from 01st December, 2022.

As per the said Notification, the following provisions of the Employee's State Insurance Act, 1948 are being enforced in all the areas of Dindigul district, in addition to the already notified areas of the said district, in the State of Tamil Nadu.

(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.

Further to the said Notification, following has also been stated:

(a) All Factories and Establishments, including educational institutions and hospitals situated in this district, employing 10 or more persons, should register themselves under the ESI Act, within 10 days through the ESIC portal.

(b) Further, the Employers should register their coverable employees drawing wages of ₹21,000/- or below a month online.

ESIC ISSUES THE LIST OF HOLIDAYS FOR THE CALENDAR YEAR 2023, IN THE OFFICES OF ESI CORPORATION IN KERALA REGION.

The Employees' State Insurance Corporation (ESIC), vide its Office Order dated 16th November, 2022, has issued the List of Holidays for the Year 2023 in the Offices of ESI Corporation in the Kerala Region. The Government of Goa, vide its Notification dated 19th October, 2022, has prescribed the list of Public Holidays for the Calendar Year 2023.

Following details are mentioned under the said Office Order:

(1) Closed Holidays for the Year 2023 in the Offices of ESI Corporation in the Kerala Region.
(2) In addition to the Closed Holidays, each Employee shall be entitled to avail with prior permission of the Competent Authority, any 2 holidays to be chosen from the Restricted Holidays.
(3) Further, in case the holiday is declared on a different date by the State Government, this Office will remain closed on the holiday declared by the State Government.

GOVERNMENT OF NCT OF DELHI DECLARES GRANT OF PAID HOLIDAY ON ACCOUNT OF GENERAL ELECTION IN DELHI.

The State Election Commission, NCT of Delhi, vide its Notice dated 28th November, 2022 has announced General Election to 250 wards of Municipal Corporation of Delhi to be held on 04th December, 2022 (Sunday). Subsequently, the Office of State Election Commission NCT of Delhi has advised that all establishments, Factories, other business establishments in Delhi should ensure that the electors residing in such Wards and working in different establishments of NCT of Delhi should be granted paid holiday on the day of poll i.e. on 04th December, 2022(Sunday) to enable them to cast their vote.

Accordingly, all such employers of Industrial Establishments/Factories /Shops and Commercial Establishments in NCT of Delhi shall grant paid holiday on the 04th December, 2022(Sunday) to their employees who are electors of these Wards, as mentioned above to enable them to cast their vote on the day of polling in case scheduled day is a working day for them/electors.

GOVERNMENT OF HARYANA DECLARES GRANT OF PAID HOLIDAY ON ACCOUNT OF BYE-ELECTION TO 21- SARDARSHAHAR ASSEMBLY CONSTITUENCY, CHURU DISTRICT OF RAJASTHAN.

On the Account of the Bye Election to 21-Sardarshahar Assembly Constituency of Churu District, Rajasthan, the Government of Haryana, vide its Notification dated 25th November, 2022, has declared Paid Holiday on the 5th December 2022 (Monday), for the employees in Shops and Commercial Establishments within the state of Haryana, who are enrolled as voters in the said constituency of Rajasthan.

The Governor of Haryana hereby fixes “Monday” the 05th December, 2022 to be holiday with wages for all Shops and Commercial Establishments falling with the jurisdiction area of the State of Haryana for only those employees who are enrolled as voters in the 21-Sardarshahar Assembly Constituency of Churu District, Rajasthan, to enable them to cast their votes. Thus, it is considered necessary to provide opportunity to those who are working in the state of Haryana and enrolled as voter in the state of Rajasthan to exercise their franchise.

GOVERNMENT OF WEST BENGAL DECLARES GRANT OF HOLIDAY ON THE 26TH DECEMBER, 2022 AFTER CHRISTMAS.

The West Bengal Government, vide its Notification dated 29th November, 2022, has declared the 26th December, 2022 (Monday) as holiday being the day after "Christmas". The said holiday on the 26th December, 2022 (Monday) is granted only to the State Government Offices, Local Bodies, Statutory Bodies, Boards, Corporations and Undertakings controlled or owned by the State Government, Educational Institutions and other offices / institutions under the control of Government of West Bengal, with the exception of the Offices of Registrar of Assurances, Kolkata and Collector of Stamp Revenue, Kolkata.

ESIC PRESCRIBES THE DATE OF ENFORCEMENT OF CERTAIN PROVISIONS OF THE ESI ACT IN ALL THE AREAS OF GAJAPATI, NUAPADA, MALKANGIRI AND DEOGARH DISTRICTS-STATE OF ODISHA.

The Employee's State Insurance Corporation (ESIC) vide the Ministry of Labour and Employment (MOLE) Notification, dated 16th November, 2022 has prescribed the date of enforcement of certain provisions of the Employees' State Insurance Act, 1948 in all the areas of Gajapati district, in addition to the already notified areas of the said district, and in all the areas of Nuapada, Malkangiri and Deogarh districts, in the State of Odisha, to be effective from 01st December, 2022.

As per the said Notification, the following provisions of the Employee's State Insurance Act, 1948 are being enforced in all the areas of Gajapati district, in addition to the already notified areas of the said district, and in all the areas of Nuapada, Malkangiri and Deogarh districts, in the State of Odisha.

(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 HARYANA DECLARES GRANT OF PAID HOLIDAY ON ACCOUNT OF GENERAL ELECTION IN DELHI.

On the Account of the General Election to 250 wards of the Municipal Corporation of Delhi, the Government of Haryana, vide its Notification dated 25th November, 2022, has declared a Paid Holiday on the 4th December 2022 (Sunday), for the Employees in Shops and Commercial Establishments within the State of Haryana, who are enrolled as voters in Delhi.

The Governor of Haryana hereby fixes "Sunday" the 04th December, 2022 to be holiday with wages for all Shops and Commercial Establishments falling with the jurisdiction area of the State of Haryana for only those employees who are enrolled as voters in Delhi to enable them to cast their votes. Thus, it is considered necessary to provide opportunity to those who are working in the state of Haryana and enrolled as voter in Delhi to exercise their franchise.

CENTRAL GOVERNMENT NOTIFIES THE APPRENTICESHIP (AMENDMENT) RULES, 2022.

In exercise of the powers conferred by sub-section (1) of Section 37 of the Apprentices Act, 1961 and after consulting the Central Apprenticeship Council, the Central Government hereby makes the following rules further to amend the Apprenticeship Rules, 1992, namely: The Apprenticeship (Amendment) Rules, 2022.
In the Apprenticeship Rules, 1992, SCHEDULE-V, under Paragraph I, relating to Obligations of Employer (both in the case of major and minor Trade Apprentices), in Clause 4, for Sub-clause (a), the following sub-clause shall be substituted, namely:-

"The employer shall pay stipend to the apprentice at the rate specified from time to time under rule 11. However, the cost of stipends shall be borne by the Central Government and the employer up to such limits as may be laid down by the Central Government."

The Apprenticeship Rules, 1992, Clause 4 (a) in Paragraph I of Schedule -V, the following was stated:

"The employer shall pay stipend to the apprentice at the rate as specified from time to time under rule 11 of the Apprenticeship Rules, 1992."

However, The Apprenticeship (Amendment) Rules, 2022 has now substituted the following clause under Clause 4 (a) in Paragraph I of Schedule-V:

"The employer shall pay stipend to the apprentice at the rate specified from time to time under rule 11. However, the cost of stipends shall be borne by the Central Government and the employer up to such limits as may be laid down by the Central Government."

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.

From the past 2 months, there seems to be no progress / development on the Labour Code publication of Draft State Rules. Therefore, the status of publication of Draft State Rules as of yet, remains unchanged, with the following count of each Labour Codes:

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. EMPLOYEE'S PROVIDENT FUND ORGANISATION AND ANOTHER VS. SUNIL KUMAR AND OTHERS

[SPECIAL LEAVE PETITION (C) NUMBERS 8658-8659 OF 2019]

"EPS 2014 AMENDMENT CONSTITUTIONAL, BUT CUT-OFF AND HIGHER CONTRIBUTION BY EMPLOYEE NOT PALATABLE": SUPREME COURT

The Employees' Pension (Amendment) Scheme, 2014 (EPS Amendment) has been upheld as constitutionally lawful by the Supreme Court of India, subject to a few restrictions. The decision was made in light of challenges the Employees' Provident Fund Organization filed against rulings by the Delhi High Court, the Rajasthan High Court, and the Kerala High Court that each overturned the EPS Amendment as being unconstitutional. Having said that, the cut-off date incorporated by the EPS Amendment to permit higher payments by employees (i.e., contributions on the monthly wage surpassing INR 15,000 per month) was ruled unconstitutional by the top court on the grounds that advantageous statutes shouldn't include a deadline for claiming benefits therein.

Further, the Supreme Court of India struck down the part of the EPS Amendment that required additional contribution of 1.16% of the monthly pay in respect of the employees who wanted to contribute at higher wages, for the reason that employees ordinarily do not contribute directly to the Employees' Pension Scheme 1995.

"

However, the court has suspended the operation of this aspect of the order for 6 months during which time the legislature has been allowed to bring in amendments to the legal framework to generate additional source of funds in the employees' pension fund.

2. SIYARAM BASANTI VS. CHHATTISGARH RAJYA GRAMIN BANK AND OTHERS

[WPS NUMBER 503 OF 2020]

"FORFEITURE OF GRATUITY IS NOT AUTOMATIC ON DISMISSAL FROM SERVICE" : CHHATTISGARH HIGH COURT

The Chhattisgarh High Court addressed the question of whether the Petitioner, whose services were terminated following a departmental investigation against him, was eligible for gratuity payment. The High Court noted that the provisions of Section 4(6) of the Payment of Gratuity Act, 1972 (Gratuity Act) that deal with forfeiture of gratuity are limited to the commission of a crime involving moral turpitude while an employee does any act that results in damage, loss, or destruction of the employer's property; neither of these circumstances were present in the current case. Further, no show cause notice was issued to the Petitioner for forfeiture of gratuity, nor was any assessment done to ascertain the extent of damages or loss caused to the employer, which is in violation of the provisions of the Gratuity Act. In view of the above, the Respondent was directed to release the gratuity of the Petitioner.

3. REGIONAL DIRECTOR / RECOVERY OFFICER AND ANOTHER VS. NITINBHAI VALLABHAI PANCHSARA

[SPECIAL LEAVE PETITION (CIVIL) NUMBER 16380 OF 2022]

"EMPLOYEES' STATE INSURANCE COURT (ESI COURT) CANNOT REDUCE THE PERIOD OF INTEREST": SUPREME COURT

The Supreme Court stated that the ESI Court was not justified in decreasing the amount of time that interest on unpaid employee state insurance fund contributions could be levied (to 2 years). The defendant was obligated to pay interest under Section 39(5)(a) of the Employees State Insurance Act of 1948 (ESI Act), according to the Supreme Court, from the time the contributions became due and payable until the time they were actually paid.

The Supreme Court's ruling in the matter of Employees State Insurance Corporation vs. HMT Limited and Others [(2008) 3 SCC 35] was cited by the ESI Court. The Supreme Court made it clear that the judgement in question—which concerned Section 85-B of the ESI Act—would not be relevant when interpreting the clause under Section 39(5)(a) of the ESI Act.

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