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TL E-BULLETIN

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Welcome to the 6th 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 PRESCRIBES THE DATE OF EXTENSION / ENFORCEMENT OF MEDICAL BENEFITS 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 13th September, 2022 has prescribed the date of extension /enforcement of medical benefits in all the areas of Ramanathapuram & Sivagangai Districts, in the State of Tamil Nadu.

As per the said Notification, it has fixed the 1st September, 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 Ramanathapuram and Sivagangai districts, in the state of Tamil Nadu.

GOVERNMENT OF HIMACHAL PRADESH DECLARES PAID HOLIDAY ON THE DAY OF POLLING -14TH SEPTEMBER, 2022 ON ACCOUNT OF GENERAL ELECTIONS TO GRAM PANCHAYAT SAINJ.

The Government of Himachal Pradesh vide its Notification dated 29th August, 2022 has declared a grant of "Paid Holiday" on the 14th September, 2022 (Wednesday) on account of the General Elections to Gram Panchayat Sainj, Development Block Theog, Shimla District. The following has been stated in the said Notification:

(i) Occupiers / Managers of Factories / Industrial Establishments and Shops and other Commercial Establishments situated in the District of Shimla to grant additional paid holiday to the workers employed in factories, industrial establishments and shops and commercial establishments on the Day of Polling - 14th September, 2022.

(ii) 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 Gram Panchayat, on the production of certificate from the concerned Presiding Officer that the employee has actually casted his / her vote.

Furthermore, reference to Section 158-Q of The Himachal Pradesh Panchayati Raj Act, 1994-"Grant of Paid Holiday to Employees on the Day of Poll", has been made wherein:

1. Every person employed in any business, trade, industrial undertaking or any other establishment and entitled to vote at election to the Panchayat bodies shall, on the day of poll, be granted a holiday.

2. No deduction or abatement of the wages of any such person shall be made on account of holiday having been granted in accordance with sub-section (1) 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.

3. If an employer contravenes the provision of sub-sections (1) & (2), then such employer shall be punishable with fine which may extend to ₹500.

4. 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.

GOVERNMENT OF NCT OF DELHI ISSUES CIRCULAR INTIMATING THE CONTRACTORS IN THE STATE TOWARDS PAYMENT OF BONUS FOR THE FORTHCOMING DEEPAWALI FESTIVAL SEASON.

It has come to the notice of the Government Offices that many Contractors have not been disbursing the bonus payable to the outsourced workers and therefore, complaints regarding non-payment of bonus by such Contractors have been received.

In light of the above, a Circular of Intimation has been issued on the 15th September, 2022 to all the Contractors and their establishments to mandatorily disburse the bonus payable to the outsourced workers / employees in the forthcoming Deepawali Festival Season. The essence of the said Circular is as follows:

(1) All Contractor's establishments are covered under The Payment of Bonus Act, 1965 who have employed 20 or more workers on any day during the accounting year. Therefore, it is a statutory responsibility of the Contractor to pay bonus to its employees since respective contractors are their employers.

(2) In case of default, the establishments / contractors are liable for prosecution for non-payment of bonus under Section 28 of the Act and in addition to prosecution, the due amount of bonus is recoverable under section 33 (C) (1) of The Industrial Disputes Act, 1947 and the said amount if not paid, is recovered as arrears of land revenue.

(3) Further, provisions of the Contract Labour (Regulation and Abolition) Act, 1970, imposes responsibility on the Principal Employer to ensure compliance of various Labour Laws by their respective Contractors.

Since Non-Payment of Bonus is a serious issue, therefore all the Principal Employers are urged upon to ensure disbursement of bonus to outsourced workers / employees by their Contractors in the forthcoming Deepwali Festival Season.

ESIC LAUNCHES A NEW FACILITY OF ONLINE SUBMISSIONS FOR MATERNITY CLAIMS.

The Employee's State Insurance Corporation (ESIC), vide its Circular dated 22nd September, 2022 has launched a new facility of online submission for Maternity Claims by the Insured Woman through the IP Portal. The Insured Woman (I.W.) whose UAN number has been seeded in the system, can claim for Maternity Benefit through the said IP Portal and further that, a User Manual for submission of online request for Cash Benefit by the Insured Woman(I.W.) has also been published on the IP Portal.

ESIC PRESCRIBES THE DATE OF ENFORCEMENT OF CERTAIN PROVISIONS OF THE ESI ACT IN ALL THE AREAS OF KRISHNAGIRI AND TIRUCHIRAPPALLI DISTRICT & IN ALL THE AREAS OF PERAMBALUR DISTRICT, TAMIL NADU.

The Employee's State Insurance Corporation (ESIC) vide the Ministry of Labour and Employment (MOLE) Notification dated 15th September, 2022 has prescribed the date of enforcement of certain provisions of the Employee's State Insurance Act, 1948 in all the areas of Krishnagiri and Tiruchirappalli District & in all the areas of Perambalur District, in the state of Tamil Nadu, effective from 01st October, 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 Krishnagiri and Tiruchirappalli Districts & in all the areas of Perambalur District, 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.

GOVERNMENT OF GUJARAT AMENDS THE GUJARAT BUILDING AND OTHER CONSTRUCTION WORKERS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) RULES, 2003.

The Government of Gujarat has hereby amended The Gujarat Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2003, as "The Gujarat Building and Other Construction Workers (Regulation of Employment and Conditions of Service) (Amendment) Rules, 2022."

Pursuant to The Gujarat Building and Other Construction Workers (Regulation of Employment and Conditions of Service) (Amendment) Rules, 2022, following provisions have been amended:

(i) Rule 24 (1) of the Gujarat BOCW Rules, 2003, which prescribes "Grant of Certificate of Registration" - The Registering Officer, after receiving application under sub-rule (1) of rule 23 shall register the establishment and issue a certificate of registration to the applicant within 15 days of receipt of application if such applicant has complied with all the requirement as laid down in these rules and has made the application within such period as specified under clause (a) and clause (b) of sub section (1) of section 7 of the Act.

"Instead of within 15 days of receipt of application, 30 days shall be substituted."

(ii) In Rule 24, after sub-rule (1) of the Gujarat BOCW Rules, 2003, following proviso shall be added:

"Provided that if no order for compliance/ registration certificate is communicated to the applicant within 30 days from the date of receipt of the registration application, the permission applied for by the said application shall be deemed to have been granted."

ESIC RELAXES THE TIME LIMIT FOR DEPOSITING MONTHLY CONTRIBUTION FOR THE MONTH OF AUGUST, 2022.

Keeping in view the problems being faced by the Employers in depositing ESI Contribution for the month of August, 2022, the ESIC has relaxed the provision of time for payment of contribution, vide its Circular dated 15th September, 2022.

As per the Circular, the ESIC has relaxed the time limit for depositing monthly contribution for the month of August, 2022 up to 22nd September, 2022 (22.09.2022) instead of 15th September, 2022 (15.09.2022). This has been regarded as a One-time opportunity for the Employers to deposit contribution for the month of August, 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.

The 4 new proposed Labour Codes which were due to be implemented on the 1st July, 2022, seems to have been deferred as of now, owing to multiple states not adhering and considering the terms of its execution. With endless controversy surging in the corridors of many corporates as well as in the Labour Ministry on the said proposed Labour Codes, which are now slated to be effective on a later date due to the non-agreement and non-cooperation of around 6 States / UT's, its near future implementation and prominent changes that are to be effectuated, appears sparingly impracticable.

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. RAJASTHAN STATE ROAD TRANSPORT CORPORATION VS. BHARAT SINGH JHALA (DEAD) SON OF SHRI NATHU SINGH, THROUGH LEGAL HEIRS & ANR

CIVIL APPEAL NO. 6942 OF 2022

"ORDER OF TERMINATION APPROVED BY INDUSTRIAL TRIBUNAL IS BINDING ON PARTIES, LABOUR COURT CAN'T TAKE CONTRARY VIEW": SUPREME COURT

A workman was subjected to departmental inquiry for not issuing tickets to 10 passengers after collecting the fare. On conclusion of the departmental inquiry, his services were terminated. The termination was the subject matter of the approval application before the Industrial Tribunal under Section 33(2)(b) of the Industrial Act.

The Supreme Court of India recently observed that an order of termination approved by an Industrial Tribunal is binding on the parties and a Labour Court cannot take a contrary view against it.

2. MILAN KUMAR GHOSH VS. UNION OF INDIA AND OTHERS

[FMA 636 OF 2019]

"WITHHOLDING OF GRATUITY AND OTHER RETIREMENT BENEFITS JUSTIFIED TILL THE CONTINUATION OF JUDICIAL PROCEEDINGS": CALCUTTA HIGH COURT

That an employer is permitted to withhold gratuity and other supplementary retirement benefits until the end of any legal actions that are pending against an employee. Despite the Payment of Gratuity Act, 1972 lack of such a provision, such action may nonetheless be conducted. The court's rationale takes into account the event in which the employee causes the employer any quantifiable financial harm; in that situation, when the procedures are through, gratuity can be deducted from the harm done to the employer.

Referring to a previous judgment of the Supreme Court of India, debating on a comparable issue, wherein gratuity amounts were to be paid only upon the conclusion of proceedings, subject to the decision made, and has held that withholding gratuity amounts is justified up until an employee is found not guilty.

"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.**