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EMPLOYMENT LAW UPDATES

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LABOUR & EMPLOYMENT **BYTES**

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MATERNITY BENEFITS HAVE TO BE GRANTED EVEN IF THE PERIOD OF BENEFIT OVERSHOOTS THE TERM OF CONTRACTUAL EMPLOYMENT: SUPREME COURT

A 3-judge bench of the Supreme Court comprising Justice Aniruddha Bose, Justice Sanjay Kumar and Justice SVN Bhatti held that maternity benefits have to be granted even if the period of benefit overshoots the term of contractual employment. Maternity benefits can travel beyond the term of contractual employment. The court directed the employer to pay maternity benefits as would have been available in terms of Sections 5 and 8 of the Maternity Benefits Act, 1961 and payment to be made within 3 months. [1]

REFUSING PATERNITY LEAVE WOULD AMOUNT TO A VIOLATION OF THE RIGHT TO LIFE OF THE CHILD GUARANTEED UNDER ARTICLE 21 OF THE CONSTITUTION OF INDIA: MADRAS HIGH COURT

The Madras High Court, with Justice L. Victoria Gowri presiding, noted that the rights assured to every child under Articles 21 and 15(3) of the Indian Constitution encompass the fundamental right of biological or adopting parents to avail maternity, paternity, or parental leave. The court ruled that the Police Department's denial of paternity leave to the petitioner is tantamount to infringing on the child's right to life, as encompassed under Article 21 of the Indian Constitution. In the present case, the court allowed extension of time for the petitioner to submit an explanation for his unauthorized absence and submit the necessary explanation along with the medical records of his wife and an apology letter. The employer is also directed to consider the case of the petitioner with a considerate mind and pass appropriate orders reinstating the petitioner within a period of four weeks from the date of receipt of copy of the order. [2]

[1] Dr. Kavita Yadav v. The Secretary, Ministry of Health and Family Welfare

[2] B. Saravanan v Deputy Inspector General of Police, W.P.(MD). No.19561 of 2023

THE PRINCIPAL EMPLOYER IS LIABLE ONLY TO THE EXTENT OF THE COMPENSATION AMOUNT: BOMBAY HIGH COURT

The Bombay High Court bench comprising Justice SG Chapalgaonkar held that the principal employer's liability in case of accidental death/injury of contractor's employee is limited to the compensation amount under Section 12 of the Employee Compensation Act, 1923 and does not include penalty and interest on delayed compensation or for default. [3]

THE DEFINITION OF BASIC WAGE SHOULD NOT BE CONFLATED WITH THE MINIMUM WAGE

The Supreme Court held that the Employees' Provident Fund and Miscellaneous Provisions Act, 1952's ("EPF Act") definition of "basic wage" should not be conflated with the "minimum wage" under the Minimum Wages Act, 1948. The court laid down the importance of adhering to the specific definitions as provided under the EPF Act for determining the contribution payable under the EPF Act. [4]

KARNATAKA AMENDS FACTORIES ACT

The Karnataka government has brought out significant changes to the Factories Act, 1948 by Amendment Act of 2023. The Amendment Act empowers the government to extend the maximum hours of work per day to twelve hours (inclusive of interval for rest), subject to maximum of 48 hours per week, in respect of any group or class or description of factories on such conditions as it may deem expedient, subject to the written consent of such worker for such work. The government may also by notification extend the total number of hours of work of a worker without an interval to 6 hours in respect of any group or class or description of factories on such conditions as it may deem expedient.

Further, the government may by notification in the Official Gazette increase the spread over up to 12 hours inclusive of his intervals for rest in respect of any group or class or description of factories on such conditions as it may deem expedient. The overtime work has been extended from 75 hours in a quarter to 144 hours and

written consent of the worker is required before overtime work.

Further, it has allowed women to work between 7 PM to 6 AM in any factory with their consent to work in night shift, provided that the employer complies with certain conditions including prevention, deterrence of sexual harassment and mechanism for resolution and prosecution of sexual harassment, appropriate working conditions including hygiene, safety, security and leisure. The employer is also required to provide transportation facilities to the women workers where the vehicle is equipped with CCTV camera and GPS and must hire drivers only after appropriate screening and collection of biodata. The routes are to be selected in such a manner that no women employees are picked up first and dropped last. Further, there shall not be less than twelve consecutive hours of rest or gap between the last shift and night shift wherever a woman worker is changed from day shift to night shift and vice versa.

EPFO ISSUES SOPS FOR INSPECTION OF ESTABLISHMENTS

The approved SOP for conducting inspection of establishments has been made effective from 01.08.2023. As IT tools for inspection are still being developed and automated system is being operationalized in stages, the SOP will be implemented using currently available tools. The mechanism for SOP shall include periodic desk review, nudge and watch, physical inspection, preparation of inspection report and undertaking follow-up actions, obtaining recommendations on priority matrix and monitoring of inspection.

EPFO ISSUES GUIDELINES ON FILING COMPLAINTS WITH EPFO VIGILANCE

The EPFO has recently issued guidelines pertaining to EPFO and falling within its jurisdiction.

[3]Chief Executive Officer, Zilla Parishad, Ahmednagar and Anr. v. Suraiyya Rafik Khalifa and Ors. First Appeal No. 3517 of 2022

[4] Assistant Provident Fund Commissioner v. M/S G4s Security Services (India) Ltd. & Anr. Civil Appeal No. 9284 Of 2013 C.A. No. 9284 Of 2013

The guideline sets out different mechanism for filing complaints involving “Vigilance angle” or corruption matters. As per the guidelines, no action shall be taken on anonymous or pseudonymous complaints.

EPFO ISSUES SOP FOR CORRECTION IN UAN PROFILES

EPFO in an internal circular dated August 22, 2023 has released the SOP for the process of joint declaration for correction in UAN profiles by the members. A Joint Declaration is a joint request of employees, duly authenticated by the employer, for the modification/addition of the members’ basic profile parameters. The purpose of this document is to delineate the procedure of receipt of Joint Declarations for the correction in UAN profiles by the members and employer and the method of corrections to be followed by the Field Offices. The member/employer will be able to modify and mark corrections in name, father/mother name, date of joining, date of birth, gender, Aadhaar number, the reason for leaving the job, nationality, etc.

THE GOVERNMENT OF TELANGANA APPOINTS APPELLATE AUTHORITY TO HEAR APPEALS IN POSH MATTERS

The Government of Telangana by its notification dated August 11, 2023 empowers eight Labour Courts and Industrial Tribunals as the Appellate Authority in their respective jurisdictions to exercise the functions of Appellate Authority under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal Act), 2013 (the “POSH Act”) in respect of the Industrial Establishments in relation to which the State Government is the appropriate authority for preferring appeals in the cases of Sexual Harassment of Women at Workplace.

THE GUIDELINES FOR NATIONAL APPRENTICESHIP PROMOTION SCHEME-2 (NAPS-2)

The Ministry of Skill Development & Entrepreneurship released the guidelines on August 25, 2023 for the National Apprenticeship Promotion Scheme-2 (NAPS-2). The primary aim of NAPS-2 is to boost apprenticeship training across the nation by offering partial stipend

assistance to apprentices registered under the Apprentices Act, 1961.

The scheme also focuses on enhancing the infrastructure of the apprenticeship ecosystem and offering guidance to involved parties. The ultimate objective is to cultivate a skilled labour force for the nation by emphasizing hands-on, practical training. A special emphasis of the scheme is to boost apprentice registrations in smaller establishments, notably the Micro, Small, and Medium Enterprises (MSMEs), and in less-developed regions such as aspirational districts.

The Government of India shall provide partial stipend support limited to 25% of the stipend paid, up to a maximum of INR 1,500/- per month, per apprentice which will be directly credited to the bank account of the apprentice. To qualify for a partial stipend under NAPS-2, apprentices must be between 14 and 35 years old. The program aims to register 46 lakh apprentices within 4 years. The guidelines for NAPS-2 specify that Central and State Government Departments, as well as Central and State Public Sector Enterprises, including Public Sector Banks, won’t receive any stipend support under this scheme.

The registration, creation of courses, posting of opportunities, grievance redressal and all other activities in relation to the lifecycle of the apprenticeship shall take place through the official online apprenticeship portal. The scheme will have three-tier monitoring at central, state/UT and regional levels. The sunset date of NAPS-2 will be 31st March 2026.

MEGHALAYA ALLOWS SHOPS AND ESTABLISHMENTS TO BE OPEN THROUGHOUT THE YEAR

The Government of Meghalaya vide notification dated August 3, 2023 permits all the establishments registered under the Act in the State of Meghalaya to keep open on all 365 days of the year, for a further period of 1 year i.e., up to 31st December 2023, subject to certain prescribed conditions such as one paid leave per week, display of list of holidays for a month on a notice board, paid leave on national and festival

holidays, an hour of rest period after five hours of continuous work, normal hours of work not exceeding 9 hours in a day or 48 hours in a week, adequate safety and security arrangements for employees and visitors if the establishment remains open after 10. P.M, provision of separate lockers, security and restrooms at the workplace for female employees, compliance with the POSH Act, etc.

However, the notification restricts employment of female employees after 7:00 P.M. Their written consent in this regard shall be taken as adequate safety and security arrangements of female employees shall be made during working hours and it shall be ensured that they safely reach home after their work is over. In addition to these terms and conditions, all the provisions of the Meghalaya Shops and Establishment Act, 2003 and other relevant Laws shall be applicable to the establishment. In case of violation of any of the aforesaid terms and conditions or any other provision of the Meghalaya Shops and Establishment Act, 2003, the exemption shall be cancelled after giving a due opportunity of being heard by the Competent Authority.

PUNJAB BUILDING AND OTHER CONSTRUCTION WORKERS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) (AMENDMENT) RULES, 2023

The notification amending the said Rules has been published on August 11, 2023. The amendment requires any building worker desirous of obtaining membership of the Fund to produce a certificate from the employer or contractor or any other person or authority or officer authorized by the Board in Form XXVII. It is pertinent to note that Form No. XXVII has been substituted with a modified form. Additionally, the contribution made by the worker who has registered as a member shall be remitted in advance for a period of one year at the time of applying for registration or renewal of registration. Such payment shall be made in any of the banks specified by the Board in the district in which the member resides or in cash receipt.

THE MAHARASHTRA INDUSTRY, TRADE AND INVESTMENT FACILITATION ACT, 2023

The government of Maharashtra notified the Maharashtra Industry, Trade and Investment Facilitation

Act, 2023 on August 14, 2023, which aims to create an effective Single Window System for delivery of services related to issuing of permissions required for establishing and operating industries; to enhance State's competitiveness on trade and for investments; to develop an ecosystem to ensure Ease of Doing Business including grievance redressal mechanism in the State; and to develop and maintain a portal for providing all necessary information required for investment in the State of Maharashtra and for the matters connected therewith or incidental thereto. The Act shall be deemed to have come into force on the July 3, 2023.

As per the Act, an entrepreneur or investor or any other person duly authorised by entrepreneur or investor, desiring to set up a new industrial undertaking or continuing operation of an existing industrial undertaking in the State, may make an application with prescribed fee to obtain such permissions required therefor under the relevant law as the State Government may by notification in the Official Gazette specify, in electronic form, through the Single Window System. The Maharashtra Industry, Trade and Investment Facilitation Cell (MAITRI) has been appointed as the Nodal Agency for Single Window System in Maharashtra, for the purposes of this Act.

ESIC CIRCULAR ON REVIEW OF OLD ACCIDENT CASES

The ESIC in its circular dated August 10, 2023 has issued internal instructions to review all pending Accident Reports and take necessary action to dispose of such pending cases. The circular further mentions that in case of non-production of records by the employer, necessary legal action may be taken against the wilful defaulting employers in accordance with the provisions under the ESI Act, 1948, ESI (Central) Rules, 1950 & ESI (General) Regulations, 1950, if required, after completing all necessary formalities. However, the prosecution action against the employers may be taken only in exceptional cases and not as a routine matter.

RELAXATION IN ELIGIBILITY CONDITIONS FOR THE SICKNESS AND MATERNITY BENEFIT FOR THE BENEFIT PERIOD 01.01.2021 TO 30.06.2021.

In light of the non-functioning of certain establishments during the Covid-19 period, the Employees' State Insurance (Central) Rules, 1950 has been amended with respective effect from January 1, 2021 (and operational till June 30, 2021) to relax the contributory conditions for availing the sickness and maternity benefits by insured persons for the benefit period between January 1, 2021 and June 30, 2021.

THE RIGHTS OF PERSONS WITH DISABILITIES (AMENDMENT) RULES, 2023

The government of India vide notification dated August 9, 2023, makes the Rights of Persons with Disabilities (Amendment) Rules, 2023 to amend the Rights of Persons with Disabilities Rules, 2017. These rules added Accessibility Standards for HealthCare as notified by the Government of India in the Ministry of Health and Family Welfare, vide notification number F.No. T.21017/20/2021-NCD.I (NPPCD)/Part., dated May 4, 2023.

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