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EMPLOYMENT LAW UPDATES

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TELANGANA TO TAKE STRICT ACTION AGAINST NON-DECLARATION OF HOLIDAY FOR CASTING OF VOTES

In light of previous instances of non-declaration of holiday for casting of votes by certain private establishments including IT companies in Telangana, the Chief Electoral Officer has vide Memorandum dated November 28th, 2023 bearing No.: 5087/Elecs.A/A1/2023 requested the Commissioner of Labour, to check whether all organisations/companies have granted a holiday on November 30th, 2023 for casting votes at the general elections to Telangana State Legislative Assembly, 2023. As per the Memorandum, stringent actions shall be initiated against non-compliant establishments under the applicable electoral and labour laws.

ESI EXTENDS MEDICAL SERVICES PAN INDIA

Employees State Insurance Corporation of India (“ESI”) has through office letter dated November 13th, 2023 bearing No.: U-13/14/ATR/ESIC/38/2021/01(1076) extended the portability of its service delivery pan India. As a result, insured persons and beneficiaries under ESI may, irrespective of the dispensary allotted on their beneficiary card, avail consultation and issuance of medicines from any hospital/dispensary across India under the Dhanwanthri module. Further, medicines may be issued for chronic diseases up to 90 days as and when required.

UPLOADING OF DETAILS AND DOCUMENTS ON THE WEBSITE BY CONTRACTORS AND PRINCIPAL EMPLOYERS UNDER CLRA MADE NOT MANDATORY

By virtue of past orders of the Office of the Commissioner (Labour), Government of NCT of Delhi, contractors deploying contract labour were required to upload details of category of workmen, wages and statutory records on their official website. If the contractor does not have his own website, the same had to be uploaded by the principal employer on his website until uploaded by the contractor. Further, hard copies of all requisite information had to be submitted to the concerned registering/licensing officer.

Presently, the Department Committee through an Office Order dated November 10th, 2023 bearing F. No.: DLC (HQ-II)/CLA/2022/5633-5635 has examined this requirement and recommended for it to not be mandatory in view of the extant “Ease of Doing Business” framework and for reducing compliances that overburden the employers and hamper business processes. However, the processing of registration/applications under the Contract Labour (Regulation and Abolition) Act, 1970 shall be strictly in accordance with the provisions of the said Act and rules made thereunder.

GUIDELINES ISSUED BY ESI FOR SETTING UP IN-HOUSE HAEMODIALYSIS FACILITIES

Employees State Insurance Corporation (“ESIC”) has issued guidelines through an Office Letter dated November 10th, 2023 bearing No.: U-16015/18/2023-Med-I (488707) for developing in-house haemodialysis facilities under the Pradhan Mantri National Dialysis Programme (PMNDP) in ESIC hospitals for providing better care and integrated service delivery for critical patients and overall beneficiary satisfaction. The key recommendations for the development of in-house dialysis are as follows:

-Each hospital must identify the total number of patients who have registered for dialysis services and work out the total number of dialysis machines required basis patient load.

-The Broad Specialty department shall initiate the process of an in-house dialysis unit and post doctors/residents as per the needs.

-Standard guidelines for setting up of Haemodialysis unit are to be followed.

-While a nephrologist is recommended for hospitals with up to 200 beds, for hospitals with more than 200 beds, it is mandatory to have their own nephrologist and development of in-house dialysis services.

-The minimum staff pattern for a proposed dialysis unit includes nephrologist, dialysis doctors, dialysis

technicians, dialysis nurses, dialysis attendants, medical social worker, dietician and sweepers. The staff shall bear the prescribed training and undertake the job responsibilities, auditing and updating as required, from time to time.

ADDITION OF PAYMENT BANK ACCOUNTS FOR PAYMENT OF EPF BENEFITS TO SUBSCRIBERS

The Employees Provident Fund Organisation has through a circular dated November 1st, 2023 bearing File No.: BKG/1/2021-BKG/C-32521/181 informed that Reserve Bank of India has included two payment banks namely Paytm Payments Bank Limited and Airtel Payments Bank Limited in the second schedule to the Reserve Bank of India Act, 1934. Consequently, Regional and Zonal Officers have been advised to settle payment of EPF benefits through the said banks as well among others.

ESI ISSUES GUIDELINES FOR THE HOME DELIVERY OF DRUGS AND HOME SAMPLE COLLECTIONS

In order to reduce long travel and undue hardships for availing medical facilities suffered by beneficiaries, the Employees State Insurance Corporation (“ESIC”) has through a circular dated November 3rd, 2023 bearing No.: V-14/11/15/2014/Med.I (Policy) has extended the facility of home delivery of drugs and home sample collection to entitled insured persons and beneficiaries and framed guidelines for its implementation. Some imperative features are as follows:

A) Delivery of drugs:

-Eligibility: It is applicable to all senior citizens (above 60 years) with chronic illnesses entitled to treatment with ESIC, receiving consultations from hospitals and prescribed medicines for more than 30 days. Further, all beneficiaries, ESIC employees and their dependents, pensioners seeking teleconsultation through e-sanjeevani/dhanwantri for chronic ailments requiring medicines for 30 days or more.

-Hospitals must float a bid on GeM portal for hiring of services for doorstep delivery of drugs inclusive of packaging, collection and electronic information to the

beneficiary through SMS/Whatsapp regarding dispatch of drugs and confirmation of delivery to them.

-After consultation, the treating doctor will generate an online prescription for the beneficiary concerned. If desirous of home delivery, the eligible patient can click home delivery option on prescription page. The drugs should be delivered within a maximum of 48 hours (excluding the day of prescription).

B) Home Sample Collection:

-Eligibility: All insured persons and ESIC employees above 40 years are eligible for home sample collection enrolment facility once a year. Further, all senior citizens and their spouses above 60 years are eligible to avail such facility once a year.

-The services are offered only in identified districts decided by the Dean/MS of concerned hospitals. The services may be availed by eligible beneficiaries through AAA+ app. A nodal office for monitoring sample collection, quality control and report dispatch shall be designated in respect of each concerned hospital. Further, the hospital shall also develop its own SOP basis local needs, process flow requirements, guidance from vendors and grievance redressal.

CENTRAL GOVERNMENT TO AMEND SEZ RULES TO PERMIT HYBRID WORK MODEL

The Central Government has issued a notification dated November 7th, 2023 for amending Special Economic Zones Rules, 2006 by substituting rule 43-A. These amendments shall come into force on the date of their publication in the Official Gazette. Some of the key amendments are as follows:

-A Unit may permit employees who are of IT & ITES sectors, temporarily incapacitated, travelling and working offsite to work from any place outside the Special Economic Zone basis its requirements. Such permission shall be applicable up to December 31st, 2024;

-Hybrid work facility may cover all the employees of



the Unit. Moreover, the Development Commission must be intimated by the Unit through e-mail on or before the date of permitting hybrid work facility;

-The list of employees who have been permitted hybrid work shall be maintained by the Unit and submitted for verification whenever required by the Development Commissioner;

-The Unit may provide duty free goods such as laptops etc., for hybrid work to the employees and the same shall be allowed to be taken out of the Special Economic Zone on a temporary basis; and

-The Unit shall appropriately account for the export revenue with respect to products and services resulting from the work for which hybrid work is permitted.

REPLY FROM EMPLOYERS FOR REGISTRATION OF EMPLOYEES UNDER ESI

The Employees' State Insurance Corporation has reiterated through office circular dated November 6th, 2023 bearing No.: P-11/12/Misc./SST Misuse/2019-Rev-II that, in compliance with extant guidelines for registration of employees, the employer is required to submit relevant reply/records within 15 days of issue of show cause notice in the prescribed proforma to the concerned authority. After verifying the records, the authority can accept the date of appointment declared by the employer. Accordingly, the employer can file contributions of the employees from the date of appointment. All cases where the employer has submitted a request with requisite documents may be processed within 7 days.

AMENDMENT TO JAMMU AND KASHMIR BUILDING AND OTHER CONSTRUCTION WORKERS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICES) RULES, 2006

The Government of Jammu and Kashmir has brought about following significant amendments to Jammu and Kashmir Building and Other Construction Workers (Regulation of Employment and Conditions of Services) Rules, 2006 through notification dated November 7th, 2023:

-Beneficiary's children shall be entitled to financial assistance from the Board in the form of scholarship, stipulated for each class/course, as applicable;

-The Board shall provide financial assistance of INR 50,000/- for the marriage of a construction worker or his/her dependent real sons and daughters. Such assistance shall be restricted to two dependents only. An application for financial assistance shall be submitted along with the requisite documents, at least 3 months prior to the actual date of marriage or within 2 months from the actual date when the marriage has taken place.

MANIPUR NOTIFIES MANIPUR SHOPS AND ESTABLISHMENTS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 2021

The Government of Manipur has published the Manipur Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2021 through notification dated November 2nd, 2023 bearing No.: 2/29/2021-Leg/L. It shall be deemed to have come into force with effect from June 29th, 2021 and extend to all shops and establishments employing at least 10 workers. The said Act consolidates and amends laws relating to regulation of employment and incidental matters among others including registration of establishments, duties of employers, leave and holidays and welfare provisions.

PRODUCTION/DISTRIBUTION OF FUEL GASES NOTIFIED AS PUBLIC UTILITY SERVICE

For the purposes of the Industrial Disputes Act, 1947, the Central Government has notified the services engaged in the processing, production or distribution of fuel gases (coal gas, natural gas and the like) to be a public utility service vide notification bearing No. S.O. 4879(E) for a period of 6 months from the date of notification i.e. November 9th, 2023.

MINISTRY OF LABOUR AND EMPLOYMENT RELEASES HANDBOOK ON CONVERGENCE

The Ministry of Labour and Employment has released a Handbook on the Convergence of various organisations under it for achieving convergence at the field level through collaborative efforts amongst verticals for information exchange, grievance redressal and awareness creation with respect to various services of the Ministry and its organisations. It sets out elaborate Standard Operating Procedures for the updation of digital map of offices of the Ministry, monthly cross-functional team meeting at each State or Union Territory, tours by the officers of Ministry/Bureau heads and outreach activities for organised and unorganised sectors.

TRANSFER OF ACCOUNTS AFTER MEMBER'S DEATH FOR CALCULATION OF ASSURANCE BENEFIT UNDER EDLI SCHEME, 1976

The Employees' Provident Fund vide letter dated November 25th, 2023 bearing No.: Pension/EDLI Matters/2023/2168 has reiterated that in the event that the provident fund account has not been transferred during the member's lifetime due to non-submission of transfer application or any other reason, the Regional Provident Fund Commissioner upon intimation may arrange for transfer of account without insisting on a transfer application and settle the deceased member's account. As per the recent amendments to the EDLI Scheme, continuous services for 12 months with 2 different organisations shall be counted for calculating EDLI benefits. However, it would be subject to transfer of previous membership of the deceased to the present PF account. Thus, it is imperative to ensure verification, flagging and merging of previous membership under a UAN to the present PF account in order to ensure that the deceased worker's family is not deprived of applicable EDLI benefits.

PUNJAB & HARYANA HIGH COURT DECLARES 75% RESERVATION IN PRIVATE SECTOR JOBS IN HARYANA TO LOCALS AS UNCONSTITUTIONAL

The Haryana State Employment of Local Candidates Act, 2020 was enacted by the Haryana Government to provide 75% employment to local candidates by employers in Haryana. It applies to employers operating in the form of a company, society, trust, limited liability partnership,

partnership firm and any person employing 10 persons or more on salary, wages or remuneration (excluding any Central or State government or any organization owned by them). The said Act was challenged through 9 separate writ petitions i.e. CWP nos. 26573 of 2021 and other connected matters before the Punjab and Haryana High Court for infringement of right to equal employment, residence and settlement under Article 14 and for placing unreasonable, manifestly arbitrary restrictions against right to carry on business and trade under Article 19. Subsequently, the court held the said Act unconstitutional and violative of Part-III of the Constitution of India.

COURTS SHOULD CONSIDER BROADER CONTEXT IN SEXUAL HARASSMENT CASES: SUPREME COURT

A female employee had filed a complaint of sexual harassment at workplace against the respondent which was initially submitted to the Inspector General and subsequently forwarded to several authorities including Chairperson of the National Women Rights Commission. Subsequently, the complainant submitted a second complaint containing additional allegations against the respondent. Although, two initial inquiries consisting of a fact-finding inquiry and a Frontier Complaints Committee inquiry failed to substantiate the allegations, the Ministry of Home Affairs constituted the Central Complaints Committee to investigate the matter which found the respondent guilty of sexual harassment. Upon moving the High Court, the High Court held that the Central Committee's findings had overstepped its jurisdiction by considering allegations made in the second complaint. Thereafter, the Supreme Court was approached by way of Civil Appeal No. 6190/2023, wherein the High Court's decision was set aside and the order of punishment imposed by the disciplinary authority was upheld. Further, the Apex Court held that the Committee had not exceeded its jurisdiction by considering the second complaint. It further emphasized that cases involving allegations such as sexual harassment should be considered within the broader context of the entire case without being swayed by insignificant discrepancies or hyper-

-technicalities. The court should be cautious against showing any undue sympathy towards the accused in such cases.

MATERNITY LEAVE GRANTED TO MOTHER WHO BEGOT CHILDREN THROUGH SURROGACY: RAJASTHAN HIGH COURT

The petitioner employee had begotten twins through surrogacy and had applied for maternity leave of 180 days. The said application was rejected by the state authorities, citing that there are no corresponding provisions in the Rajasthan Service Rules, 1951. The said order was challenged through S.B. Civil Writ Petition No. 7853/2020 before the Rajasthan High Court. The Hon'ble High Court instructed the state government to sanction maternity leave and consequential benefits to the petitioner. In arriving at its decision, the Hon'ble High Court placed reliance on the interpretation of "maternity benefit" and "child" under the Maternity Benefit Act, 1961, definitions in general parlance and as enunciated by the courts of law from time to time. It further clarified that, for the purposes of granting maternity leave, a natural biological mother and mother who has begotten children through surrogacy cannot be differentiated. Further, it urged that the right of commissioning/surrogate mothers to avail maternity leave must be incorporated through appropriate legislation.

BANK CAN WITHHOLD PF AMOUNT ONLY WHEN ACTUAL LOSS IS PROVED TO BE CAUSED BY EMPLOYEE: SUPREME COURT

The appellant employee was compulsorily retired after the disciplinary authority found him guilty of certain acts of misconduct and was also denied employer's contribution of provident fund, gratuity, pension and leave encashment. Subsequently, he filed a writ petition before the High Court claiming the terminal benefits accruing to him which was decided in his favour but overturned by the division bench. Thereafter, the appellant approached the Supreme Court vide Civil Appeal No. 6611/2015. The Hon'ble court directed the release of provident fund and gratuity due to the employee as the bank had failed to prove the alleged loss.

WHETHER PIL IS MAINTAINABLE IN SERVICE MATTERS IS DEBATABLE: SUPREME COURT

A Public Interest Litigation was filed in 2017 challenging the appointment of teachers under the Directorate of Education, alleging that the appointed candidates do not have the requisite qualifications to be appointed as teachers. While the Delhi High Court refused to interfere with the appointments after concluding that the candidates bear requisite qualifications, the Hon'ble Apex Court in an SLP (Civil) bearing Diary No (S) 41779/2023 noted that the appointed candidates have already served for 15 years on the post. However, it observed that the question of law as to whether Public Interest Litigation is maintainable in service matters is debatable and is to be looked into in an appropriate case.

HISTORICAL SIMILARITY IN PREVIOUS PAY SCALES CAN BE CONSIDERED TO ALLOW SAME PAY SCALE FOR SIMILAR POSTS: SUPREME COURT

The employees sought upgradation of pay scales of assistant and personal assistant posts of Ordnance Factory Board, Headquarters as had been provided to similarly placed employees of Central Secretariat Service (CSS) and Armed Force Headquarters Civil Service cadre and other similar cadres. Upon being denied pay parity by Central Administrative Tribunal, the aggrieved employees approached the High Court which ruled in favour of the employees as per the recommendations provided in the VIth Central Pay Commission. On an appeal against the High Court order, the Hon'ble Apex Court in Civil Appeal No. 1663/2016 upheld the judgement passed by the Delhi High Court and observed that historical similarity in previous pay scales can be considered by the courts for fixation of pay scale which has created anomalies.

FORMER EMPLOYEE CAN RETAIN GOVERNMENT ACCOMMODATION ONLY FOR ONE MONTH AFTER THEIR RETIREMENT: JAMMU AND KASHMIR HIGH COURT



A former government employee had been allotted a government quarter with permission to retain it until his retirement. Subsequently, he did not vacate the quarter after retirement and was issued an eviction notice. Consequently, the employee approached the High Court through a writ petition and obtained an order directing four-month occupation and rent payment. However, the former employee did not deposit rent arrears as directed. A subsequent rent notice issued was challenged by the employee and an interim order came to be passed by the court of the District Judge, Jammu. The High Court in OWP No.778/2014 held that the District Judge had exceeded its jurisdiction in passing the order and directed that quarters be vacated and payment of rent for the duration of unauthorized occupation until vacation. It observed that as the applicable rules stipulate retention only for one month after retirement, it is deemed to have been cancelled thereafter.

ANNUAL SUBMISSION OF LIFE CERTIFICATE UNDER EMPLOYEES' PENSION SCHEME, 1995

The Employees' Provident Fund Organisation ("EPFO") has issued a guideline regarding submission of life/remarriage certificate once a year under the Employees' Pension Scheme, 1995 for keeping his/her pension running. Life certificate is valid for one year from the date of submission and can be submitted once a year through various modes such as Umang app, common service centers and banks authorized to receive pension under the said scheme. In case of death of the pensioner from September 1st, 2014, half of the sanctioned amount shall be payable to the widow/widower from the date of death with a minimum pension amount of INR 1000/-. Further, along with such widow pension 25% pension shall be payable to 2 children till age of 25 years and 75% pension in case of orphan children. [1]

ELIGIBILITY CONDITIONS CAN NOT BE RELAXED FOR A POST WITHOUT WIDE PUBLICITY: SUPREME COURT

The Supreme Court in Civil Appeal No. 7602 of 2023 heard a batch of appeals concerning relaxation of prescribed eligibility qualifications by the State Government in recruitment to the post of Junior Office Assistant. The court noted that unless otherwise provided

in the applicable rules or advertisement issued thereunder, the eligibility criteria must be fulfilled by the candidate within the last date of receipt of applications as specified in the advertisement. Moreover, it is noted that settled law dictates that if the existing rules allow for the relaxation of eligibility criteria, such authority can be exercised only if such power is explicitly reserved in the advertisement. If the power of relaxation is to be exercised, wide publicity must be provided to ensure that people who are likely to benefit from it can get an opportunity to apply and compete. As the advertisement in the instant case did not reflect power to relax eligibility criteria in the instant case, the court held that the State was in the wrong.

EMPLOYEE'S MURDER DOES NOT DISENTITLE LEGAL HEIRS FROM COMPENSATION UNDER EMPLOYEES' COMPENSATION ACT: DELHI HIGH COURT

The Delhi High Court has in FAO 56/2016 and CM APPL.11273/2019 reiterated that murder of an employee during the course of his employment does not disentitle his heirs from seeking compensation under the provisions of the Employees' Compensation Act, 1923. Although the Hon'ble High Court agreed that the claimants failed to establish employer-employee relationship, it observed that the Labor Commissioner had erred in holding that the deceased's murder during the course of performance of his duties had no connection with his employment. However, as employer-employee relationship was not established by the claimants, the appeal was dismissed.

CANDIDATE WITH BENCHMARK DISABILITY IN BOTH LEGS TO BE ALLOWED TO TAKE REVENUE INSPECTOR EXAM: UTTARAKHAND HIGH COURT

The Uttarakhand High Court has ordered the State Public Service Commission to accept the application

[1] <https://acrobat.adobe.com/id/urn:aaid:sc:AP:e817d8eb-2ecd-4d00-9889-bac68ac1299d>

of a person suffering from benchmark disability in both legs for executive officer and tax and revenue inspector examination-2023 in WPSS No. 2051/2023. The Commission had failed to earmark reservation for the persons suffering from benchmark disability of locomotor disability. As the government is required to identify posts for providing reservations to persons with benchmark disability under the relevant provisions of the Rights of Persons with Disabilities Act, 2016, the court has ordered the Commission to allow the petitioner to take part in the selection process.

DELHI HIGH COURT ORDERS RELEASE OF EX-GRATIA COMPENSATION TO KIN OF CONSTABLE WHO DIED ON COVID-19 DUTY

While hearing a plea moved by a deceased constable's wife through W.P.(C) 5923/2021, whose husband had passed away while performing his duties during the first wave of COVID-19, the Delhi High Court ordered the release of ex-gratia compensation of 1 Crore to the wife and father of the deceased. The order has been made after previous observations by the court that the Government of Delhi ought not to resile from its clear announcement for payment of ex-gratia and that compensation due to the widow of the deceased constable must not be delayed any longer.

EMPLOYER CANNOT WITHHOLD PENSION ON GROUND OF PROCEEDINGS BY THIRD PARTIES: KARNATAKA HIGH COURT

The petitioner employee retired from service upon attainment of age of superannuation. While in service, an FIR came to be registered against him at the instance of a third party under the provisions of the Prevention of Corruption Act, 1988. However, cognizance of FIR was taken after the retirement of the employee from office. The Hon'ble Karnataka High Court dismissed the appeal filed by the employer in Writ Appeal No. 100422/2023 against an order granting disbursal of all retirement benefits to the employee as proceedings instituted under the said Act was post-retirement of the employee.

PRINCIPLES OF NATURAL JUSTICE TO BE FOLLOWED FOR ISSUE OF TRANSFER ORDERS ATTACHING STIGMA TO THE CONDUCT OF THE EMPLOYEE: KERALA HIGH COURT

The Kerala High Court in W.A.No. 2001/2023 upheld quashing of a transfer order issued to a teacher referring to the provisions of the Kerala Education Rules which provided for transfer due to unsuitability, allegations of corruption, misuse of official position, disciplinary action, incompetency, etc. It was observed that the transfer order failed to mention the reason for transfer and was issued without following the principles of natural justice of initiating enquiry and opportunity of hearing to the teacher. The court noted that the transfer under extant rules involved civil consequences and thus, the principles of natural justice have to be complied with for preventing bias or prejudice against the transferred teacher.

EMPLOYEE CAN BE GRANTED SECOND MATERNITY BENEFIT WITHIN TWO YEARS FROM FIRST MATERNITY BENEFIT: ALLAHABAD HIGH COURT

The petitioner had filed a writ petition bearing No. 9110/2023 before the Allahabad High Court against an order denying her application for a second maternity leave. She sought the intervention of the court in respect of granting her second maternity leave with full salary for the period from August 14, 2023 to February 09, 2023. The Allahabad High Court emphasized the primacy of the provisions of the Maternity Benefit Act, 1961 over applicable executive instructions contained in Financial Handbook Volume II part 2 to 4 applicable to the employee. It further quashed the order rejecting the petitioner's second maternity leave and issued a writ of mandamus directing the sanctioning of maternity leave to the petitioner.



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