



THE LABOURTORIALS

P. K. AGARWAL &
ASSOCIATES
9999009685

Monthly updates on Industrial and Labour Laws

JAN. 2021
ISSUE NO. 6

KEY HIGHLIGHTS

LATEST FROM THE SUPREME COURT OF INDIA.

- EPF Act provisions are applicable to private security agencies.
- Gratuity can be withheld for recovery of dues

LATEST FROM THE HIGH COURTS

- Government employee entitled to maternity leave even if the child is born shortly before joining service: Rajasthan High Court

LATEST FROM THE CENTRAL GOVT.

- For the first time, Work From Home becomes official Working Model as per Govt Rules.
- Class 2 DSC discontinued, Only Class 3 DSC will be issued.

LATEST FROM THE STATE GOVT.

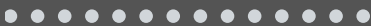
- Online compliance for ease of doing business.

FROM THE VAULT

- New incentives for Businesses covered in PF to boost Employment.
- Will the new Wage Code increase Company's payroll costs?



Word of the month:



CONTRACT OF SERVICE -

- has an employer-employee relationship,
- employee does business for the employer,
- may be covered by the Employment Act.

CONTRACT FOR SERVICE -

- has a client-contractor type of relationship,
- contractor carries out business on their own account,
- not covered by the Employment Act.



LATEST FROM THE SUPREME COURT OF INDIA

The Hon'ble Court rules out: EPF Act provisions applicable to private security agencies.

A bench comprising of Justice Navin Sinha and Justice Surya Kant in Panther Security Service Pvt. Ltd. v. EPFO and anr. said that the appellant company is engaged in the specialized and expert services of providing trained and efficient security guards to its clients on a payment basis.

The apex court rejected the firm's contention that it only levied a service charge for facilitation and the salary was paid to the Chowkidars by the client who engaged their services.

The bench held that the provisions of the Private Security Agencies (Regulation) Act, 2005 make it clear that the firm is the employer of such security guards and are paid wages by it. Hence, the provisions of the Employees' Provident Fund Act are applicable to private security agencies providing personnel to the clients.

[Click here](#) to view the judgment.



EPF

Employees Provident Fund

Gratuity can be withheld for recovery of dues: SC

The case had arisen out of an order by the Hon'ble High Court of Jharkhand, which snubbed an attempt by the Steel Authority of India Ltd (SAIL) to recover penal rent amounting to Rs 1.95 lakh from an employee, who did not clear his dues and overstayed in the official accommodation in Bokaro after his retirement in 2016.

A bench headed by Justice Sanjay

Kishan Kaul held that there is no prohibition against recovering dues including penal rent -- the rent with penalty for overstaying in official accommodation -- from an employee's gratuity.

In doing so, the Hon'ble Supreme Court cited a 2005 judgment from its court where it upheld recovery of the penal rent from an employee for unauthorised occupation of the

accommodation provided to him by the employer. In this judgment, although the court acknowledged that pensionary benefit such as gratuity is not a "bounty", it held that recoveries of dues can be made from gratuity without the consent of the employee concerned.

[Click here](#) to view the judgment.

LATEST FROM THE HIGH COURTS

Government employee entitled to maternity leave even if the child is born shortly before joining service: Rajasthan High Court

A Single Bench of Justice Dinesh Mehta issued an order to this effect, interpreting Rule 103 of the Rajasthan Service Rules, which governs the grant of maternity leave to female government servants.

"..it is declared that a female Government servant is entitled to avail maternity leave, if she joins within the period of confinement, i.e. 15 days before to three months after the childbirth, regardless of the fact that the child was born prior to joining or before issuance of appointment order..", the Court held.

The petitioner's child was born on

15-05-2016, and she was given an appointment on the post of Physical Training Instructor (PTI), Grade-III on 04-06-2016 and joined on 06-06-2016. She applied for maternity leave on 21-06-2016 and didn't attend office from 26-06-2016 to 10-11-2016. The petitioner's leave application came to be dealt with by the respondents whereby 90 days' leave without payment was sanctioned. By another communication dated 17-07-2019, the petitioner has sanctioned a total of 142 days' leave, out of which 90 days were considered as leave without pay as per

communication dated 13-08-2018, and 52 days' leave was treated as extraordinary leave (EOL), that too without payment. Despite the completion of a probation period of two years, the respondents extended the petitioner's probation period by 112 days and confirmed her services w.e.f. 26-09-2018.

The Court observed that it was an employee-centric beneficial provision, incorporated to obviate hardship faced by a mother. It had no connection to the date or event of childbirth.

[Click here](#) to read the final Order.



Courtesy: racolblegal.com

LATEST FROM THE CENTRAL GOVERNMENT

For the first time, Work From Home becomes official Working Model as per Govt Rules.



Work from home | The Hindu



सत्यमेव जयते

MINISTRY OF LABOUR AND EMPLOYMENT

GOVERNMENT OF INDIA

The concept of "Work From Home" has been made popular both in the government and the private sector by the pandemic. Therefore, the government has decided to make it a part of efficient work culture in Industrial establishments through its Standing Orders. It is mandatory for industrial establishments that have over 300 workers to have a standing order that is approved by the state or central government.

Pursuant to section 29 of the Industrial Relations Code, 2020; the Central Government has published the draft Model Standing Orders for the Manufacturing Sector, Mining Sector, and Service Sector in the official gazette, inviting suggestions/objections from the stakeholders within a period of thirty days commencing from 31st December 2020.

The Model Standing Orders provide that:

- Subject to conditions of appointment or agreement, the employer may allow a worker to work from home for such period or periods as may be determined by the employer. This will apply to all those working in the industrial establishments covered under the Occupational Safety, Health, and Working Conditions Code, 2020.
- It provides for flexibility to employees within the weekly working hour limit of 48 hours, which has been fixed under the labour code.
- It provides for shift working, where more than one shift may be worked in a department or any section of a department of the industrial establishment at the discretion of the employer.

- The establishment will have to intimate the payment of wages made to a worker through SMS or e-mail or WhatsApp or by issuing a slip.
- An employer can suspend a worker on charges of misconduct pending inquiry into complaints or charges. The inquiry will have to be completed within 90 days from the date of suspension.
- In reference to the IT industries, "involvement in unauthorized access of any IT system, the computer network of the employer/customer/client has been prescribed as misconduct.
- Habitual (offender) with respect to indiscipline has been defined if the worker found guilty of any misconduct three or more times in the preceding twelve months.

FOR YOUR INFORMATION

- ESIC has announced One-time relaxation for ESIC Payment for the period April to September 2020. Hence, any payment that is still pending for the said period, can be deposited by 15/01/2021. [Click here](#) to view the notification.

- As per the recent update on the EPF portal, minimum administration charges (A/C No. 2) of Rs. 500/- have to be deposited with every EPF challan.

Example :

In case we are filing a separate challan of 1 employee with EPF wages for Rs. 14000/-, admin charges for the same should be Rs. 70/- (0.5% of Rs. 14000/-),

But as per the new update, we have to deposit a minimum of Rs. 500/- as admin charge (A/c No. 2).

Hence, it is suggested to prepare/upload ECR in bulk to avoid the unnecessary burden of Admin charges.

Details:-		Remitted as per ECR (₹)	PMRPY/PMRPF Benefit (₹)	ABRY Benefit (₹)	Net Payable (₹)
Total EPF Contribution EE Share (A/C 1)		1,680	-	0	1680
Total EPS Contribution (A/C 10)		1,166	0	0	1166
Total Difference Between EPF & EPS (ER Share A/C 1)		514	0	0	514
Total EDLI Contribution (ER Share A/C 21) *		<input type="text" value="70"/>	-	-	70
Total EPF Charges (A/C 2)	Administration *	<input type="text" value="0"/>	-	-	0
	Inspection *	<input type="text" value="0"/>	-	-	0
Total EDLI Charges (A/C 22)	Administration *	<input type="text" value="0"/>	-	-	0
	Inspection *	<input type="text" value="0"/>	-	-	0
Total Refund of Advance (A/C 1)		0	-	-	0
Total		3430	0	0	3430

Employer Details :-	
Total number of Employees in the month *	<input type="text"/>
Number of excluded employees *	<input type="text"/>
Gross wages of the Excluded Employees (₹) *	<input type="text"/>

Note : ECR remittance can't happen with admin charges below Rs.500/- (Charge @0.5% of total PF wages).

Class 2 DSC discontinued, Only Class 3 DSC will be issued

- CLASS 2 Digital Signature Certificate will discontinue from 1st January, 2021
- Government DSC would require a Video.
- There would be no Traditional DSC (No Paper based DSC) from 1st January 2021.
- ALL DSC have to be downloaded within 30 Days after approval.
- CLASS 3 will be used in all department (more Clearance and guidelines will be shared in coming days).
- CA shall issue only class 3 individual signing certificate (both organizational & personal) to subscribers on tokens from 01.01.2021 onwards.

LATEST FROM THE STATE GOVERNMENTS

The year 2020 has been tough for everybody. 'A doom year' as some people say. For the employers, it was the loss in business, delay in payments, and much more. On the other hand, for employees, it was the loss of jobs, paycuts, the pressure at work and whatnot.

The government has made all its efforts to bring ease at work. It has tried to comfort the people at work from its end as much as it could do. Therefore, in case of compliance under the labour laws, the Central, as well as several state governments, have introduced an online system of inspections, online maintenance of records and registers, as well as online auto-renewal of licenses and registration. In some states, the facility for the contribution of Labour Welfare Fund has been made online. Minimum wages have been revised or we can say enhanced.

The Government of India is leaving no stone unturned to better the status of the nation in the tally of ease of doing business.

Here we have certain updates on easing compliance under labour laws from the month of December, 2020.



West Bengal and Punjab introduce non-discretionary auto-renewal of licenses to improve ease of doing business.

The State Governments of West Bengal, Punjab, and Goa in order to ensure transparency and to enable a conducive business environment in the states have decided to introduce and allow the non-discretionary auto-renewal of licenses granted under various acts.

Govt. of WB and Goa brought changes in the factories act 1948 and licenses for contractors granted under the contract labour regulation and abolition Act 1970 and licenses for contractors granted under the Inter-State Migrant Workmen Act whereas, the Government of Punjab has brought an amendment in the Factories Act. The same shall be done through the online portal on payment of prescribed license fees online.

State Govts introduce maintenance of digital registers/ electronic format instead of manual registers under labour Acts.

The State Governments of Andhra Pradesh, West Bengal, Uttarakhand and Punjab in order to improve Ease of Doing Business in the States have decided to introduce a scheme for maintenance of digital registers/ electronic format instead of manual registers under various labour Acts, applicable to all industries. Also, the Govt. of Odisha has introduced Mandatory online filing of returns, reports, notices, and undertakings under various Labour Laws.

The Government of India, Department of Industries and Commerce and promotion, Ministry of Commerce and Industry in its earlier notification has mandated establishments/business units to maintain various registers and documents electronically which shall lessen the burden of avoidable compliance.

West Bengal and Andhra Pradesh bring in an amendment to Labour Welfare Acts.

The State Government of West Bengal and Andhra Pradesh brings in an amendment to the labour welfare acts of the respective States providing that the employer shall pay the employer's and employee's contribution to the board electronically through the designated portal created and maintained by the board and shall bear the expenses if any of remitting to the board such contribution

Revision of Minimum wages

State Government of Delhi and Kerela has revised Variable Dearness Allowance (VDA) resulting in overall increase in the rates of Minimum wages given to different categories of employees.



Andhra Pradesh introduces a scheme for Third Party Certification under all the Labor Laws in the State

The Andhra Pradesh Government has introduced a scheme of Certification /Third-Party Certification under all the Labor Laws in the State. The empaneled third party agencies with prescribed qualifications shall conduct labor law audit and certification. The govt. shall set up a standing committee to evaluate the performance of the third party agencies. The audit report/ certification granted by third party agencies shall qualify as preliminary compliance of inspection procedure.

[Click here](#) to view the notification.

FOR YOUR INFORMATION

Clarification on rates of LWF Contribution for the year 2020 under the Karnataka LWF Act, 1965

Due to the repealing of the Karnataka Labour Welfare Fund (Amendment) Act, 2017 vide The Karnataka Repealing of Certain Enactments and Regional Laws Act, 2002 and 1st December 2020, there was a certain presumption that rates of LWF Contribution were restored to the earlier rates i.e. Rs. 6 and Rs. 12 for the Employees and Employers as opposed to the existing rates i.e. Rs. 20 and 40 respectively. Now the Karnataka LWF Board vide its Press Release as hosted on its website has clarified that the rates of contribution remain at the ratio of 20:40 (**Employees Rs. 20/- Employers Rs. 40/-**) respectively. Further employers shall remit contributions only through **online mode by 15th January 2021** for the calendar year 2020.

[Click here](#) to view the Press Release.

FROM THE VAULT

Govt. of India has come up with new incentives for Businesses covered in PF to boost Employment.

Introduction to the ABRV Scheme

The Government of India has come up with an Aatmnirbhar Bharat Rozgar Yojna (ABRV Scheme) to boost employment in the formal sector and incentivize the creation of new employment opportunities during the Covid recovery phase under Atmanirbhar Bharat Package 3.0.

According to the scheme **if an establishment has less than 1000 employees then 24% PF (i.e. 12% Employees share and 12% Employers share) shall be paid by the Government for their new employees employed on or after 01.10.2020.**

This benefit shall be for a period of two years from the date of employment. Also, if the employees are more than 1000, then only 12% of the Employees share shall be paid by the Government and the employer continues to pay their 12% share.

Applicability of the scheme.

- Scheme is for employees with monthly wages less than Rs.15,000/-
- If establishment has less than 50 employees, minimum 2 new employees be added • If you have more than 50 employees, you should employ minimum 5 or more new employees.
- 'New employee' means- first time PF Registration, on or after 01.10.2020 till 30.06.2021.



State Finance Minister Anurag Thakur and Union Finance Minister Nirmala Sitharaman | PTC News

- Also, if any old employee lost or left job between 01.03.2020 to 30.09.2020, then on reemployment after 1.10.20 he shall be eligible for the benefit.
- Businesses which are not yet covered in PF but do so now shall get the benefit for ALL their employees.
- Scheme is open till 30.06.2021 i.e. the scheme is applicable on new employment till 30th June, 2021.

Example

- If an employee is at 14,999/- then Rs.1800/- (12% employee share) and Rs.1800/- (12% employer share), total Rs.3600/- per month shall be paid by the Government for 2 years.
- Total of 3600X24= Rs.86,400
- Both Employer and Employee get benefit of upto Rs.43,200/- each year (valid up to 2 years).

Instructions in brief for availing benefits

- The EPFO will credit the

contribution in Aadhaar seeded account of members in electronic manner.

- The contribution is an automated process for the govt. to make the contribution except that the employer has to file a declaration at the time of filing ECR.
- Further, for all the employers who have already filed ECRs, will get the reimbursement by way of future adjustments.

This is a huge incentive by the Govt. to encourage businesses to add new employees.

It's also beneficial for existing businesses not yet covered in PF (employees less than 20) or those who have avoided or evaded PF registration. Till now the enforcement department of PF would not only recover old PF dues, they would also recover interest and penalty. But now, such units have huge advantage for to get voluntarily covered in PF.

[Click here](#) to view notification.

Will the new Wage Code increase Company's payroll costs?

The Ministry of Labour and Employment declares that it is working with all zeal and might implement the four new labour codes from April 2021. The wage structure in the new codes is designed in a manner such that salary slips, provident fund (PF) and gratuity components, take-home pay, and even balance sheets will be impacted.

To be effective from the next financial year, the new definition of 'Wages' (which includes salaries of executives in the private sector) caps allowances at 50% of the total compensation. That means the basic pay (in government jobs it refers to basic pay + dearness allowance) will have to be 50% or more of the total salary paid to the employee covered under the Codes from April 2021.

This essentially means that:

- Most pay structures in India Inc will change because the non-allowance part is usually less, sometimes substantially lower than 50%.
- PF contributions of both employees and employers will go up.
- The take-home pay of many executives may decrease as PF contributions go up.
- But their social security amount as well as post-retirement gratuity amount will be bigger. Gratuity is calculated on the basis of basic pay, which will go up.
- Companies may see a jump in costs as their contribution to the PF rises and gratuity payout increases.

Several recruitment firms have explicitly stated that in case of executive salaries, especially in the higher brackets, allowances constitute 70 to 80 percent of the total compensation.

Therefore, the Companies are advised to revisit their salaries and adopt a smarter way to restructure pays.

According to Vishal Grover, practice reader (retirement solutions), Aon India-organisations have started to inquire about the potential changes in the compensation structures and its impact on the wage bill.

HR experts ET spoke to said they had begun to examine changes to the existing wage structure with some raising queries with HR consultants to help tweak the salary components so as to have minimum impact on their balance sheets.

Some experts see positives in the move. "Employers will find it easier to be more compliant and employees will have more social security," said Suchita Dutta, executive director of the Indian Staffing Federation.

Source: The Economic Times



Disclaimer: This document is prepared and furnished for information and knowledge enhancement of all interested. You may choose to reproduce or redistribute this document for non-commercial purposes in part or full to any other person with due acknowledgement of the author. The opinions and analysis expressed herein are entirely those of the author. Even though the content of the document has been extracted or analysed from the government notifications, orders, circulars, news reports etc., it is not to be taken as complete and accurate in all respects.

All Wealth Is The Product Of Labour

P.K. Agarwal & Associates deals in :

- Apprentices Act
- Contract Labour (R&A) Act
- Employees' Compensation Act
- EPF & MP Act
- Employee State Insurance Act
- Factories Act
- Industrial Disputes Act,
- Industrial Employment (Standing Orders) Act
- Maternity Benefit Act
- Minimum Wages Act
- Payment of Bonus Act
- Payment of Gratuity Act
- Payment of Wages Act
- Sexual Harassment of Woman at Workplace (Prevention, Prohibition & Redressal) Act
- Trade Union Act, and
- all other labour related statutes.

Drafting of Appointment Letters, Agreements, Charge sheets, Domestic Enquiry, Notices, Office Orders , Warning letters, Court cases, HR compliance audit etc .

P.K AGARWAL AND ASSOCIATES

