



THE LABOURTORIALS

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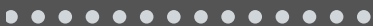
Monthly updates on Industrial and Labour Laws

FEB. 2021
ISSUE NO. 7



A healthy workforce is your most essential asset.

Word of the month:



WHISTLE BLOWER-

- Whistle blower protection is contained in the Whistleblower Protection Act of 1989. The Act provides protection to employees against retaliation for reporting illegal acts of employers. An employer may not rightfully retaliate in any way, such as discharging, demoting, suspending or harassing the whistle blower. Employer retaliation of any kind may result in the whistle blower bringing a personal grievance against the employer.

KEY HIGHLIGHTS

LATEST FROM THE SUPREME COURT OF INDIA.

- The SC withdrew its Order that upheld the Kerela HC verdict approving pension in accordance with the salary.
- A workman can be dismissed without disciplinary inquiry if justified before the Labour Court.

LATEST FROM THE HIGH COURTS

- Sexual harassment of woman posted in different State on digital platform constitutes harassment in the common workplace: Rajasthan HC

FROM THE VAULT

- Sexual harassment of women at Workplace Act: Call for Compliance.
- What does the Finance Ministry has in bag for our dear employer/employees?

LATEST FROM THE SUPREME COURT OF INDIA

The SC to reconsider its Order that upheld the Kerala HC verdict approving pension in accordance with the salary.



The Supreme Court of India

The Central Govt. had demanded a stay on the Kerala HC Order approving pension in accordance to salary. The UOI clarified that if the benefit would get conferred upon employees retrospectively it would create a great imbalance. The ceiling of Rs. 15,000 was fixed targeting the economically and socially backward class. If the

ceiling is removed, the EPS will have a shortage of Rs. 15,28,519.47. Since, the HC Order, the EPFO was handed over Rs. 839.76 crore. If the appeal from MOLE is approved, recovery of pension will not be possible. Due to the Court verdict, pension increased by up to 50%. Such a significant increase cannot be

recovered during the superannuation of a person, the Centre pointed out. This decision to reconsider the previous Order has disappointed lakhs of EPF pensioners. But at the same time, the apex Court not instantly staying the Kerala HC Order is a relief. [Click here](#) to view the Order.

A workman can be dismissed without disciplinary inquiry if justified before the Labour Court.

The SC observed that dismissal of a workman by his/her employer cannot be interfered with merely on the ground that it did not conduct a disciplinary inquiry if the latter could justify the action before the Labour Court.

A three-judge Bench of the SC said:

"The High Court has not even adverted to the said evidence and has disposed of the Writ Petition on the sole ground that the school has not conducted a disciplinary inquiry before discharging the respondent from service. The School has led sufficient evidence before the Respondent had abandoned her service from 01.07.1997 when she got married and moved to another district, which was not denied by her in her evidence."

[Click here](#) to read the Judgment.



LATEST FROM THE HIGH COURTS

Sexual harassment of woman posted in different State on digital platform constitutes harassment in the common workplace: Rajasthan HC

In this case, a senior official of the Bank of Baroda was accused of harassing a woman posted in a different State through messages sent beyond working hours.

Since the Bank of Baroda Officer Employees' (Discipline and Appeal) Regulations, 1976 stated that inquiry could only be initiated if sexual harassment occurred in the workplace, the accused disputed the charges on the ground that no such action had occurred in a common workplace. The Court rejected this contention, observing:

"In the present digital world, workplace for employees working in the Bank and who have earlier worked in the same Branch and later on shifted to different branches which may be situated in different States has to be treated completely as one workplace on a digital platform. Thus, if a person may be posted in Jaipur and acts on a digital platform harassing another lady who may be posted in a different state, it would come within the ambit of being harassed in a common workplace."

Additionally, it was submitted that the allegedly obscene messages were sent after working hours. The Court rejected this contention as well, observing that the accused held a senior-level position. As such, his work timings were not confined to being between 10.30 am and 4.30 pm.

Finding the case of the petitioner to be without any basis, the writ petition was accordingly dismissed.

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

Enforcement Officer has no power to decide the eligibility under the Acts: Karnataka HC

The Karnataka High Court in a recent judgment held that the Enforcement Officer has no power to determine whether artists of the Temple (petitioner) are covered under the EPF & MP Act, 1952.

He has to only collect information to an extent whether artists of the Yakshagana Mela are coverable under the EPF Scheme or not. After collecting such information, he is required to forward the same to the competent authority for holding an inquiry. Thereafter, the competent authority has to determine whether artists of Yakshagana Mela are covered by the provisions of EPF & MP Act, 1952.

Therefore the Order of the Enforcement Officer, determining the penal action for causing an obstruction or failing to produce any records for inspection, and the eligibility of the artists to the EPF Act, was set aside by the Hon'ble Court.

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

Cooks must be paid Minimum Wages: Allahabad HC

"Persons employed as cooks throughout the State of Uttar Pradesh are being paid such paltry amounts which clearly qualify as forced labour", noted the Allahabad High Court while directing the State Government and UOI to ensure those cooks are not paid wages less than the minimum wages prescribed under the Minimum Wages Act.

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



Female cooks preparing for the feast..

LATEST FROM THE CENTRAL GOVERNMENT

Facility for Principal Employer to view EPF compliances of their employees engaged by or through Contractor now Introduced.

A new facility has been added in the login of all employers to declare their Contractors (registered with EPFO) and the period of the contract so that they as Principal employers may through their login view & monitor the compliance in respect of their contract employees reported in ECR by their contractors.

With this facility, Principal Employers can view the amount of wages on which the EPF dues have been remitted by the contractor as compared to the wages and EPF employer's share paid to the contractor under the contract.

[Click here](#) to know in detail.

EPF contributions can be invested in Units of Debt Exchange Traded Funds.

The Ministry of Labor and Employment has amended its previous notification on 04.01.2021 to include Units of Debt Exchange Traded Funds (ETFs) as an instrument in which EPF contributions can be invested.

Units of Debt Exchange Traded Funds (ETFs) regulated by the Securities and Exchange Board of India and managed by an asset management company appointed as per an agreement with the Government of India, specifically meant to invest in the bonds of the Central Public Sector Enterprises, Central Public Sector Undertakings, Central Public Financial Institutions, and other Government organizations.

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

rd 2020 in the Digital Governance Category EPFO Helpdesk is operational from 7 Skip to main content A+ A-

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About Us:
• EPFO is one of the World's largest Social Security Organisations in terms of clientele and the volume of financial transactions undertaken. At present it maintains 19.34 crore accounts (Annual Report 2016-17) pertaining to its members.
• The Employees' Provident Fund came into existence with the promulgation of the Employees' Provident Funds Ordinance on the 15th replaced by the Employees' Provident Funds Act, 1952. Funds Bill was introduced in the Parliament as Bill Number a Bill to provide for the institution of provident funds and other establishments. The Act is now referred as

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A glimpse of the EPF online window

Do you know?

The latest data available on the MGNREGA portal shows that till January 10 in the current financial year, over 10 crore individuals across the country worked under the scheme, which is 21 percent higher than the 7.89 crore figure for 2019-2020. With two months still remaining in the current financial year, the number is expected to go up further. Under MGNREGS, every rural household, whose adult members volunteer to do unskilled manual work, is entitled to at least 100 days of wage employment in a financial year. This is one of the most successful scheme of the nation.

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LATEST FROM THE STATE GOVERNMENTS

Government of Gujarat Publishes Inter-State Migrant Workmen (Regulation and Employment Conditions of Service) (Gujarat) (Amendment) Rules, 2020.

The State Government of Gujarat has amended the Inter-State Migrant Workmen (Regulation and Employment Conditions of Service) (Gujarat) Rules, 1981.

Through this amendment, the ministry has deleted provisions 14 and 15 which specifies the displacement allowance and journey allowance payable to the employees.

Further form IX which specifies the application for renewal of license has been deleted.

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

Kerala extends the benefit of maternity leave to the female officers appointed on a contract basis.

The Kerala Government vide its notification dated 4th January 2021 January, has extended the benefit of maternity leave to females employed on full pay as per rule 100 under Kerala service rules up to a period of 180 days or till the expiry of the existing contract, whichever is earlier subject to the condition that the leave will not be admissible from a date before 3 weeks from the expected date of confinement certified by a medical officer.

However, the employee shall not be entitled to the above benefit unless she has actually worked under the employer for a period of not less than 80 days immediately preceding her expected date of delivery or date of miscarriage.

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

Haryana Labour Welfare Board directs employees to claim their unpaid dues.

The Haryana Labour Welfare Board has directed the employees to claim their dues from the Board giving full particulars within one year and after completion of 1 year the amount will be declared as 'Abandoned Property' and the Board shall have full right to utilize the amount in accordance with the provision of section 10 of the Punjab Labour Welfare Fund Act, 1965 for the welfare activities of workers in the State of Haryana.

The Board has issued Notice to the employees through their establishments to the fact that the number of unpaid accumulations on account of monthly wages/salary/overtime/bonus/gratuity etc. due to the employees during their service has been received by the Haryana Labour Welfare Board through their establishments, therefore the concerned employees shall claim their dues within a year.

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



Work from home made things better for pregnant women.

FROM THE VAULT

Sexual Harassment of Women at Workplace Act: Call for Compliance.

The Prevention of Sexual Harassment of Women at Workplace Act (PoSH Act) is an Indian law enacted with the objective of making workplaces safer for women by preventing, prohibiting, and redressing acts of sexual harassment against them in the workplace.

Any employer of a workplace with 10 or more employees is required to constitute an Internal Committee (IC). The IC is responsible for hearing and redressing any complaints pertaining to sexual harassment in such a workplace.

The PoSH Act also places a duty upon each employer to organize periodic sensitization workshops for all their employees so they are well versed with the provisions of the Act, the organization's redressal procedures, and the consequences of engaging in acts that constitute sexual harassment. Such workshops/training sessions must be organized by individuals who are experts or experienced in POSH sensitization.



Workshop for the Core committee.

The Act takes a strong stand against non-compliance with its provisions. If an employer fails to either constitute an Internal Committee, furnish annual return or discharge any of the other duties placed upon them under the act, they shall be punished with a fine which may extend to fifty thousand rupees (Rs. 50,000). Further, on the consecutive contravention, they may be either fined twice the amount as the fine for the first contravention or face cancellation of their license, permit or registration for carrying on their business or activity.

Certainly. Besides the legal and financial costs of non-compliance with the PoSH Act, an unsafe workplace can lead to a general impairment of your employee's psychological well-being and reduce your productivity. Workplaces with a greater number of instances of workplace harassment also suffer from higher employee turnover rates.

Effective compliance with the PoSH Act makes workplaces safer, increases employee satisfaction, reduces employee turnover, and saves companies from other costs associated with sexual harassment.

- Kavita Agarwal (Principal Associate, P.K. Agarwal & Associates)



Workshop for the workers.

What does the Finance Ministry has in bag for our dear employer/employees?

The consultants remarked the Budget 2021 to be a well-planned book for major structural changes for dispersion of welfare benefits to the employees. The Budget reflects a system of free and fair allotment of resources whereby the honesty and income of the working class are respected, valued, and well protected. The year 2020 brought downfall for people and the govt. as well. So, we should not have expected much rebate from them.

Highlights of the Budget:

1. Interest on your PF will be taxed if you contribute more than Rs. 2.5 Lakhs annually.

Up till now, the interest earned on PF was exempted from Income Tax. But with the announcement of Budget 2021, Individuals whose Provident Fund contribution is Rs. 2.5 Lakhs and above in a financial year (beginning from 2021-22) will not be able to seek tax exemption on the interest earned. TV Somnathan, Expenditure Secretary added that "The number of people who contribute the sum we have indicated is less than 1% of total contributors in the EPFO." Also, this will apply to the Employee's contribution only and not that of the employer's. It will hit high-income salaried people who use the Voluntary Provident Fund to earn tax-free interest.



Union Budget 2021

2. Labour Welfare:

Ahead of implementation of Labour codes, the Govt of India announces that the **Minimum wages and Employees State Insurance will be applicable to all categories of workers**. The Gig workers are also eligible for all the Social Security benefits. The Code on Social Security, 2020, defines "Gig Worker" as "a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship". Further, **Women will be allowed to work in all categories of employment** with adequate protection.

3. Late contribution to PF will make the employer ineligible to the deduction:

In case the employee's PF contribution or contribution to Superannuation or any other fund was deducted but not deposited by the employer within the time (i.e. by 15th of the following month) it will not be allowed as a deduction for the employer. The Government has taken this initiative because for the employees this means a loss of interest or income. In cases where an employer later becomes unviable, non-deposit results in a permanent loss for the employees.

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"Teamwork is the ability to work together towards a common vision. The ability to direct individual accomplishments towards organizational objectives. It is the fuel that allows common people to attain uncommon results."

- Andrew Carnegie



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- Compliance under all labour related statutes;
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- Providing time to time consultancy on all labor-related matters.

