



# THE LABOURTORIALS

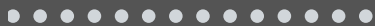
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Monthly updates on Industrial and Labour Laws

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## Word of the month:



### UNFAIR LABOUR PRACTICE-

Unfair labour practice are actions taken by the Employer, Union or the Workmen under the Industrial Disputes Act. Some of these rules apply to the interactions between the employer and the union; others protect individual workers from unfair treatment by an employer or union.

ULP on part of the workmen includes illegal strikes; "go slow"; to incite or indulge in willful damage to employer's property connected with the industry, etc. whereas ULP on part of the employer includes malafide transfers; to interfere with, restrain from, or coerce, workmen in the exercise of their right to organize, form, join or assist a trade union; e.t.c.

## KEY HIGHLIGHTS

### LATEST FROM THE SUPREME COURT OF INDIA

- Settlement of dispute out of the Court entitles you to refund of the Court fees.

### LATEST FROM THE HIGH COURTS

- Devise mechanism to ensure award copies reach litigants, set up Special Cell to monitor complaints: Madras High Court to Labour Commissioner.
- Madras High Court ruled that Workmen cannot be driven from pillar to post for compensation owing to disputes between Insurance Company and employer.

### LATEST FROM THE STATE GOVERNMENTS

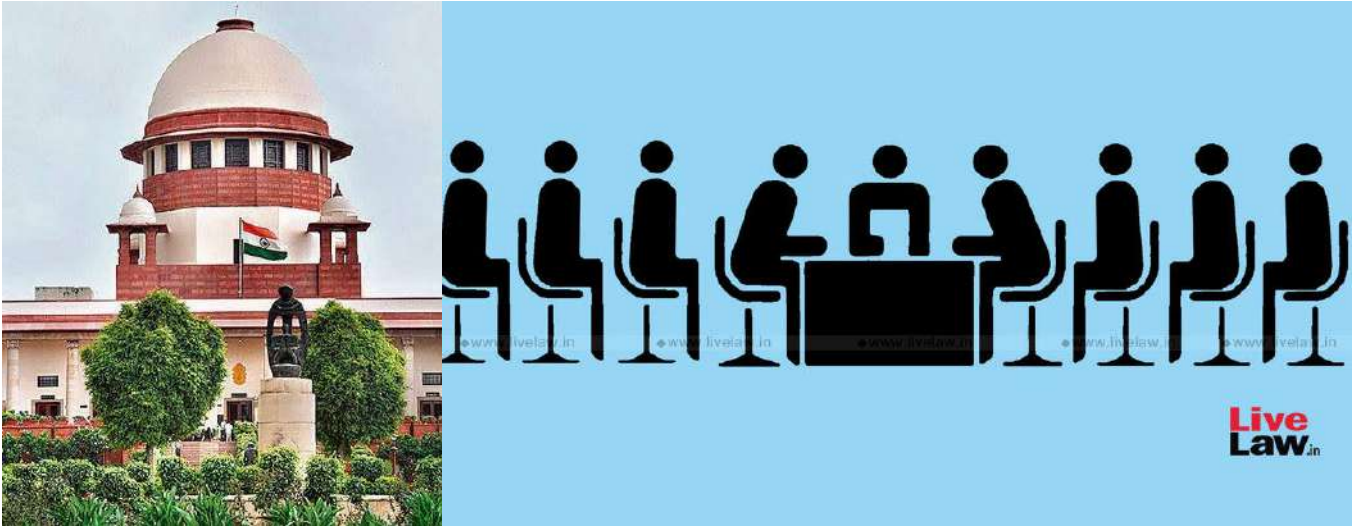
- Govt. of Bihar brings in the Draft rules on Code on Wages (Bihar) Rules, 2021 and Industrial Relation (Bihar) Rules, 2021.

### FROM THE VAULT

- Do not close deals with handshakes!

# LATEST FROM THE SUPREME COURT OF INDIA

Settlement of dispute out of the Court entitles you to refund of the Court fees.



Litigants who settle their disputes privately outside courts without court intervention under Section 89 of the Code of Civil Procedure (CPC) are also entitled to refund of their court fees, the Supreme Court ruled (**The High Court of Judicature at Madras Rep. by its Registrar General v. M.C. Subramaniam & ors**).

The purpose of Section 69A is to reward parties who have chosen to withdraw their litigations in favour of more conciliatory dispute

settlement mechanisms, thus saving the time and resources of the Court, by enabling them to claim a refund of the court fees deposited by them. Such refund of court fee, though it may not be connected to the substance of the dispute between the parties, is certainly an ancillary economic incentive for pushing them towards exploring alternative methods of dispute settlement.

Admittedly, there may be situations wherein the parties

have after the course of a long-drawn trial, or multiple frivolous litigations approached the Court seeking refund of court fees in the guise of having settled their disputes. In such cases, the Court may, having regard to the previous conduct of the parties and the principles of equity, refuse to grant relief under the relevant rules pertaining to court fees.

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

## LATEST FROM THE HIGH COURTS

**Devise mechanism to ensure award copies reach litigants, set up Special Cell to monitor complaints: Madras High Court to Labour Commissioner.**

After both sides to a labour case informed that they had not received copies of the award passed by a labour Court, the Madras High Court has directed the Commissioner of Labour to ensure that order copies are properly sent to the parties via registered post or other modes by which its receipt can be recorded (**Tmt. Vanaja and ors. v. Sri Saravana Transport and anr**).

"The Special Cell must contain a separate telephone number and a website enabling the workmen or the learned counsels appearing for the parties to register their complaint", the Court said.

## **Madras High Court ruled that Workmen cannot be driven from pillar to post for compensation owing to disputes between Insurance Company and employer.**

The Madras High Court recently emphasised that workmen should not be driven from pillar to post for obtaining compensation under the Workmen's Compensation Act, merely on account of disputes between the insurance company and the employer over who is liable to pay the amount.

"... in the event of employer or the Insurance Company shifting its responsibility, the Courts are expected **to act swiftly and pay 'just compensation' immediately** and liberty may be granted to the Insurance Company concerned to initiate action against the employer for recovery in accordance with law," the order said.

The Court further noted that there are cases where an employer may even collude with the insurance company to deprive workmen of compensation, which would entail a violation of social justice principles in the Constitution of India.

The Court also said that **insurance contracts that go against the objects of the Workmen's Compensation Act ought to be viewed as invalid.**

### **IN THE PRESENT CASE**

The case before the Court concerned an order passed by the Deputy Commissioner of Labour.

The insurance company had entered into a contract with the employer to provide insurance cover for the workmen on the

basis of taking Rs. 9,000 as the salary payable for 20 employees. This was below the minimum wage payable under the Minimum Wages Act, the HC noted.

Pertinently, the Labour Court passed a compensation award that was greater than the premium amount paid by the employer to the insurance company for the workman's insurance. As such, the Deputy Commissioner of Labour directed the employer to pay the remaining part of the compensation award.

Aggrieved, the claimants moved the High Court, raising concern that workmen were not in a position to recover the compensation amount from the employer.

In coming to the claimants' aid, Justice Subramaniam ruled that courts should ensure that the compensation which is just, is to be disbursed as expeditiously as possible in order to save the victim.

Thereafter, "possible relief can be granted to the Insurance Company to sue the employer or to recover the money or to recover the premium or otherwise by following the procedures contemplated in law," the Court said.

The Court rejected the Insurance company's contention that they should not be made to pay the claimant an amount beyond what was agreed to in the

contract between the insurance company and the employer. The insurance company had argued that the workmen is in no way connected to insurance company and that it is only the contract which bound the insurance company.

Justice Subramaniam observed that while that the insurance policy is not a statutory policy, it should be borne in mind that the policy is for the welfare of the workmen.

"...the benefits are connected with the workmen. Therefore, the relationship between the employer, Insurance Company and the workmen are inseparable," the Court said.

The Court also took critical note that the insurance company, in this case, ought to have known that the salary referred to in the insurance contract was below the minimum wages payable to the employees of a construction company under the law.

The Court emphasised that **the insurance premiums must be calculated based on the minimum wages prescribed, and not at the whims and fancies of the insurance company.** The Judge added that an insurance company cannot simply shift their liability by stating that they are bound only by the terms and conditions of the contract.

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



# LATEST FROM THE CENTRAL GOVERNMENT

## Ministry of Labour and Employment publishes the Code on Wages (Central Advisory Board) Rules, 2021.

The Ministry of Labour and Employment has geared up to achieve its target of implementing the four Labour Codes by 1st April, 2021. In furtherance of its efforts, MOLE publishes the Code on Wages (Central Advisory Board) Rules, 2021 which constitutes Central Advisory Board and nominates person to the board and rolls out the functions and methods of the meetings.

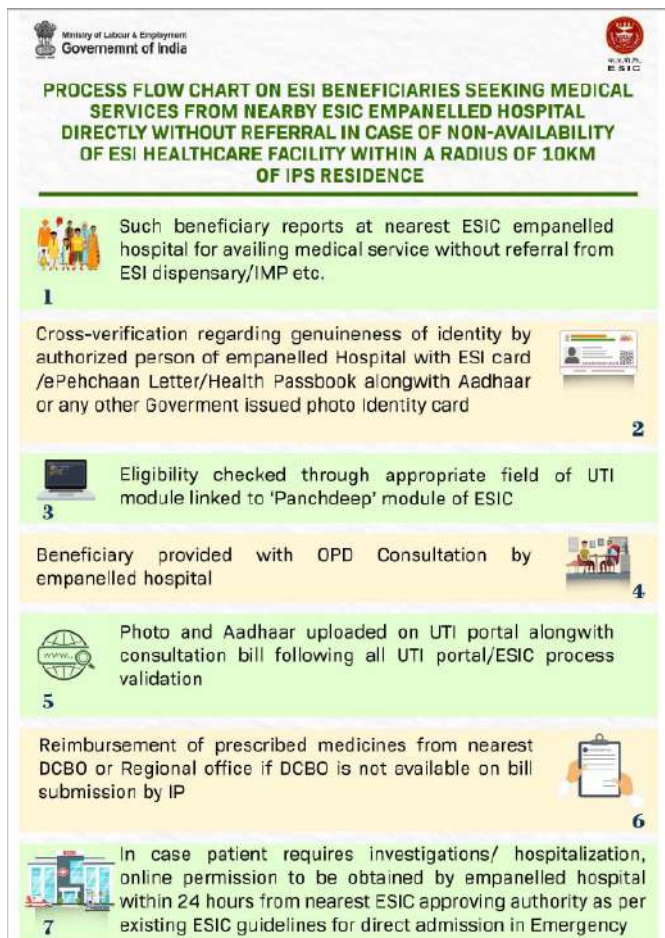
[Click here](#) to read the notification.

## TRIVIA

Interest payments to around 4 million people registered with the EPFO have not been credited though one-and-a-half months have elapsed since the govt announced its decision to make the payments for 2019-20.

This is because of the KYC mismatch of employees at the employers' end. The retirement fund manager's field officers are reaching out to these establishments, the authorities said. This has put the spotlight on EPFO, which has been in the news for the delay in interest payments for 2019-20 even before this KYC problem. In 2020, the fund manager delayed the sale of some of its equity investments to pay the announced 8.5% interest for 2019-20 as the stock market fell because of imposition of the lockdown. EPFO had said it would credit the 2019-20 interest by 31 December, where the labour ministry announced the credit in the last week of December but only a little has been done.

## ESI & PF UPDATES



## EPFO issues circular regarding Member Profile correction in name father/spouse/gender.

The EPFO has set up a procedure to make corrections in the details of its members. The corrections are divided into two categories being 'Minor Corrections' and 'Major Corrections'. The basic corrections such as change in surname of the female member after marriage or abbreviating the middle name of the member, etc. falls under the category of Minor corrections which can be done only through the portal. Further, all the Major Corrections are to be done offline in the manner as prescribed in the circular.

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

# LATEST FROM THE STATE GOVERNMENTS



## Govt. of Bihar brings in the Draft rules on Code on Wages (Bihar) Rules, 2021 and Industrial Relation (Bihar) Rules, 2021.

Following the Government of Madhya Pradesh, the Government of Bihar has notified the **Draft rules on Code of Wages (Bihar) Rules, 2021** and **Industrial Relations (Bihar) Rules, 2021** which shall extend to the whole of Bihar. The states are welcoming any comments and suggestions of the draft which shall thereafter get finally published.

## Bihar government covers registered construction workers under “Ayushman Bharat – Pradhan Mantri Jan Aarogya Yojna”.

The Notification says that:

- The Bihar Building and Other Construction Workers Welfare Board shall bear the actual cost of treatment of registered construction workers (Members) under Bihar Building and Other Construction Workers Welfare Board and their family members, those are not covered by Social, Economic, and Caste Census.
- This scheme will be operated as per the directions of the MOLE, Government of India, and Memorandum of Understanding (MoU) between State Health Authority and Bihar Building and Other Construction Workers Welfare Board.

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

## Tamil Nadu government revises facilities for creches required under maternity benefit rules.

The amendment provides that every establishment having fifty or more employees shall have the facility of Creche which shall be provided and maintained by the employer for the use of children of woman employees. There shall be one Creche for every thirty children who are below the age of six years. The amendment provides that employers shall provide creche facility in buildings with following features:

- The accommodation shall be not less than 1.5 square meters of the floor area for each child to be accommodated in a Creche and the height of roof shall not be less than 3.7 meters from the floor, with heat resistant material and water proof.
- Fire safety equipment;
- Adequately lighted and ventilated;
- Artificial lightning with emergency power backup;
- Maintained in a clean and sanitary condition;
- Sound construction with a good plinth.
- The creche shall be posted with following staff;
  1. One woman teacher cum warden who is qualified and trained in childcare;
  2. One woman ‘Creche Attender’ who is qualified or trained in midwifery;
  3. One woman ‘ayah’ for every 10 or 15 children

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

## **FOR YOUR INFORMATION**

### **Andhra Pradesh extends the due date for filing Integrated Annual Return.**

The State Government of Andhra Pradesh vide its notification dated 12th February 2021 has extended the due date for filing annual returns up to 30th April 2021 due to certain difficulties faced by the applicants in filing online return in a single desk portal.

### **Notification under Industrial Disputes (Punjab Amendment) Act, 2020 - Govt. of Punjab**

The Govt. of Punjab has made vital amendments to the Act. the Amendment mandates the Industrial Dispute to be raised in Conciliation proceeding before it is raised to the Labour Court. Further, there are amendments in the application of chapter V B which relates to Industrial establishments in which not more than 100 workmen were employed.

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

## **ONLINE COMPLIANCE**

### **Kerala publishes Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Rules, 2020 & Kerala Contract Labour (Regulation and Abolition) Rules, 2020.**

The State of Kerala has made amendments in its **Contract Labour (Regulation and Abolition) Rules** and **Kerala Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Rules, 1983**. The amendment introduces a system called the "Labour Commissionerate Automation System" for payment of fees of registration through online mode.



Courtesy: CbS Technologies Pvt. Ltd.

### **Tripura publishes Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) (Fourth Amendment) Rules, 2020 & Tripura Contract Labour (Regulation and Abolition) (Fourth Amendment) Rules, 2020.**

The State of Tripura has made amendments in its **Contract Labour (Regulation and Abolition) Rules** and **Tripura Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Rules**. The amendment provides that submission of application for registration under the act, acknowledgment of receipt of the application, issue of registration certificate, etc. shall be done through an online platform. The amendment also provides renewed forms for filing applications for registration, renewals, and returns.



# FROM THE VAULT

## Do not close deals with handshakes!

Coming from the desk of the Consultant this month we have a piece of extremely important advice for you. An Appointment letter is one of the most important documents that a company usually tends to ignore while dealing with the Human Resource.

Giving you a glimpse of practical scenarios. Be it inspection or court cases, the first document that is called for is the Appointment letter. Further, during lockdown and post lockdown a lot of companies had to terminate their extra or backup employees. Even the termination of probationers was a challenge because of the lack of 'without any notice' clause in the Appointment letter.

### What can you do?

1. Draft an Appointment letter that suits all the conditions necessary for employment in your establishment.
2. If you already have an Appointment letter, re visit the same to check if the clauses need any modification as per the current scenarios.
3. If you haven't till date issued an Appointment letter to any or all of your employees. Do it as soon as possible.



### Things to keep in mind:

1. Make sure you do not add any clause that is in violation of the provisions of law.
2. You can also take professional advice on the specific clauses so they aren't derogatory to the interest of the Management.
3. During Audit, besides other records and registers, make sure you check upon the Appointment letters to be issued by the Principal Employer or the Contractor.

The new labour codes that would probably be implemented by 1st April 2021 mandate issuance of the Appointment letters. Drafting a document is a one-time thing.

Also, documentation is one the most important part of any commercial activity. So, you need to have an organized structure. This will keep you safe, strong, secure and would cut the cost of non-compliance. Hence, do not close deals with handshakes!



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# " To win in the Marketplace you must first win in the Workplace "

P.K. Agarwal & Associates deals in :

- Compliance under all labour related statutes;
- Drafting and vetting of appointment Letters, agreements, standing orders, notices, and such other documents required by the establishment in lieu of employer-employee relationship;
- Handling of court cases under all the labour statutes before Labour Inspectors, Officers, Commissioners, Tribunals, District Courts as well as High Court and Supreme Court; and
- Providing time to time consultancy on all labor-related matters.

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