

THE LABOURTORIALS[®]

MONTHLY UPDATES ON INDUSTRIAL AND LABOUR LAWS

WORD OF THE MONTH

NON-COMPETE AGREEMENT

A noncompete agreement is a contract restricting an employee from obtaining employment with a competitor within a specified industry, distance and/or time frame.

KEY HIGHLIGHTS

LATEST FROM THE SUPREME COURT OF INDIA

- Employers have to deposit employees' contribution towards EPF/ESI within due date to avail deduction under Income Tax Act.
- Married daughter can't be said to be dependent on mother for compassionate appointment.
- Compassionate employment can't be claimed several years after employee's death as its object is to help family to meet sudden crisis.

LATEST FROM THE CENTRAL GOVERNMENT

- Alert for all employers to exercise stricter control and vigil while registering employees on ESIC portal: ESIC
- Admissibility of assurance benefits payable in lieu of EDLI Scheme, 1976: EPFO

LATEST FROM THE STATE GOVERNMENTS

- Revised minimum wages.
- Implementation of actions under stage-IV of revised Graded Response Action Plan in Delhi-NCR steps to be taken.
- List of holidays for the year 2023.



LATEST FROM THE SUPREME COURT OF INDIA

Employers have to deposit employees' contribution towards EPF/ESI to avail deduction U/Sections 36(1) (va) & 43B of Income Tax Act.

The SC observed that **employers have to deposit the employee's contribution towards EPF/ESI on or before the due date for availing deduction under Sections 36(1)(va) and 43B of the Income Tax Act, 1961.**

The court observed that there is a marked distinction between the nature and character of the two amounts viz. the employers' contribution and employees' contribution required to be deposited by the employer. The first one i.e., the employer's liability is to be paid out of its income whereas the second is deemed an income, by definition, since it is the deduction from the employees' income and *held in trust by the employer.*

In the present cases, the employers had belatedly deposited their employees' contribution towards EPF and ESI, considering due dates under relevant acts and regulations. The Assessing Officer ruled that by virtue of Section 36(1)(va) read with Section 2(24)(x) of the IT Act, such sums received by the appellants constituted "income".

It was held that those **amounts**



PC | The Supreme Court of India

could not have been allowed as deductions under Section 36(1)(va) of the IT Act when the payment was made beyond the relevant due date under the respective acts.

Before the Apex Court bench, it was submitted that The memorandum introducing the Finance Bill clearly stated that the provisions - especially second proviso to Section 43B was introduced to ensure timely payments were made by the employer to the concerned fund (EPF, ESI, etc.) and avoid the mischief of employers retaining amounts for long periods.

The essential objective of Section 43B is to ensure that **if assessee are following the mercantile method of**

accounting, nevertheless, the deduction of such liabilities, based only on book entries, would not be given. To pass muster, actual payments were a necessary precondition for allowing the expenditure.

Hence the employer has to deposit both employer's contribution and employees' contribution of EPF/ESI within a due date to claim deduction under the Income Tax Act.

Checkmate Services Pvt. Ltd. vs Commissioner of Income Tax-I

[Click here](#) to read judgement.



Compassionate employment can't be claimed several years after employee's death as its object is to help family to meet sudden crisis.

The purpose of **compassionate appointment is to enable the family to tide over the sudden crisis, i.e., after the death of the sole bread-winner.** After a period of 24 years from the death of the deceased employee, the applicant shall not be entitled to the appointment on compassionate ground. **Fertilizers and Chemicals Travancore Ltd. versus Anusree K.B.**

Advocate for the respondent submitted that when the

deceased employee died in the year 1995, the respondent was minor and, on attaining the age of majority, the respondent daughter made an application for appointment on compassionate ground.

On filing the application, she was called for the interview but the same was rejected on various grounds. The primary test of scheme that the deceased employee should be the "sole bread winner of his family", his wife was gainfully employed with the Kerala State Health Services Department at

the time of his death and also on the ground that 24 years have lapsed since the date of death of the deceased employee. Also the Respondent was lawfully married at the time of making the application.

The apex Court, after referring to various cases including **N.C Santhosh vs. State of Karnataka**, reiterated that the **compassionate ground is a concession and not a right.**

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

Married daughter can't be said to be dependent on mother for compassionate appointment

The SC held that the married daughter cannot be said to be dependent on her deceased mother and therefore, is not eligible for compassionate appointment. **The State of Maharashtra And Anr. Versus Ms. Madhuri Maruti Vidhate**

The apex Court observed that compassionate appointment was introduced keeping in mind that a family would not be able to make both ends meet, considering the fact the sole bread-winner had died. Therefore, a provision is made to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. **"The whole object of granting compassionate employment is, thus, to enable the family to tide over the sudden crisis.** The object is not to give such family a post much less a post for post held by the deceased."

[Click here](#) to read the judgement

Qualification prevailing on the date of applying for compassionate appointment is to be considered.

The SC observed that the qualification prevailing on the date of applying for compassionate appointment is to be considered and not the date on which the application for compassionate appointment is considered. **Delhi Jal Board vs Nirmala Devi**

[Click here](#) to read judgement.



LATEST FROM THE CENTRAL GOVERNMENTS

Alert for all employers to exercise stricter control and vigil while registering employees in ESIC portal: ESIC

ESI has been scrutinizing records of employers on a routine basis. Whilst scrutinizing the employee database attached to the employers, it was found that the bank account numbers of many employees were tagged to a single common bank account number. In fact, **each employee should have a unique bank account number.** But many employees having the same bank account number is seen as a flaw.

Further, it paves way for misuse of benefits payable to the insured person by some vested interests. Some HR Personnels/ external consultants assigned

with this task of employee registration for the firm, using the firm's login credentials, were suspected to carry out this modus operandi to misappropriate and siphon off the benefit payments into their account.

The above act amounts to **'cheating'** as per IPC and moreover, since the interpolation is being done using the firm's credentials, **"the firm" too becomes a party to the connivance and stands exposed to prosecution under IPC.**

In view of the above scenario, ESIC wishes to alert all the

employers to exercise stricter control and vigil over usage of login credentials while registering the employees in ESIC portal to avoid such pitfalls.

All employers are requested to ascertain that bank and other details of employees are properly fed into the portal while registering the employees. Also, please ensure that the data is fed in only on the basis of valid supporting documents.

[Click here](#) to read circular.

Admissibility of assurance benefits payable in lieu of EDLI Scheme, 1976: EPFO

EPFO has received complaints and references that where an employer has died while in service, some offices are rejecting claims on ground of non-payment of contribution on previous few days and therefore, the EDLI benefits are not payable on account of such NCP days. Accordingly, all ZOs/ROs are advised to settle those claims and ensure that the persons entitled to receive EDLI benefits are not deprived of their rightful claims.

[Click here](#) to read more.

TRIVIA

The ESIC has issued a State-wise updated list of notified/non-notified districts under ESIC 2.0/Vision 2022. The consolidated status of district wise notification in respect of the same is enclosed as Annexure A.

[Click here](#) to read circular.



LATEST FROM THE STATE GOVERNMENTS

REVISED MINIMUM WAGES

Some states have revised the rates of Minimum wages. Click on the link below to for updated rates.

S. NO.	STATE	W.E.F.	CLICK HERE TO VIEW NOTIFICATION
1.	Uttar Pradesh	01.10.2022	Government Notification
2.	Chhattisgarh	01.10.2022 – 31.03.2023	Government Notification
3.	Bihar	01.10.2022 – 31.03.2023	Government Notification
4.	Madhya Pradesh	01.10.2022	Government Notification
5.	Punjab	01.08.2022	Government Notification
6.	Haryana	01.07.2022	Government Notification
7.	Delhi	01.10.2022	Government Notification
8.	Jammu & Kashmir	17.10.2022	Government Notification

Implementation of actions under stage- IV of revised Graded Response Action Plan in Delhi-NCR steps to be taken.

The sub-Committee reviewed the air quality scenario in the region as well as the forecasts for meteorological conditions and air quality index of Delhi. In an effort to prevent deterioration of the air-quality, certain restrictions are imposed on the industries.

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



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Conditions for exemptions from restrictions on employing women workers during night shift: Govt. of Telangana.



The Government of Telangana

The Government of Telangana has exempted all the shops and establishments from the applicability of provision related to working hours of women between 8.30 P.M. to 6.00 A.M, subject to the prescribed conditions including prevention of acts of sexual harassment, prior consent from women workers for such employment, etc.

[Click here](#) to read notification.

Enforcement of provisions of ESI Act in the Salem District of Tamil Nadu.

The Government of India implemented the provisions towards Chapter IV (Contribution), Chapter V (Benefits), and Chapter VI (Adjudication of Disputes and Claims) of the Employees' State Insurance Act, 1948 (ESI Act), effective from 1st day of November 2022, in all the areas of Salem district in the State of Tamil Nadu.

[Click here](#) to read notification.

Direction for payment of bonus in Dadra & Nagar Haveli and Daman & Diu

The Administration of Dadra & Nagar Haveli and Daman & Diu directed all the Industrial and other Establishments to ensure payment of bonus to all eligible employees, and submission of Annual Return in Form 'D' under Payment of Bonus Act, 1965.

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

LIST OF HOLIDAYS FOR THE YEAR 2023

Some states have released the List of Holidays for the year 2023. Click on the link below to for the complete list of holidays.

S. NO.	STATE	CLICK HERE TO VIEW NOTIFICATION
1.	Himachal Pradesh	Government Notification
2.	Tamil Nadu	Government Notification
3.	Puducherry	Government Notification
4.	Kerala	Government Notification

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Success is best when it's shared.”

Howard Schultz

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- 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
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