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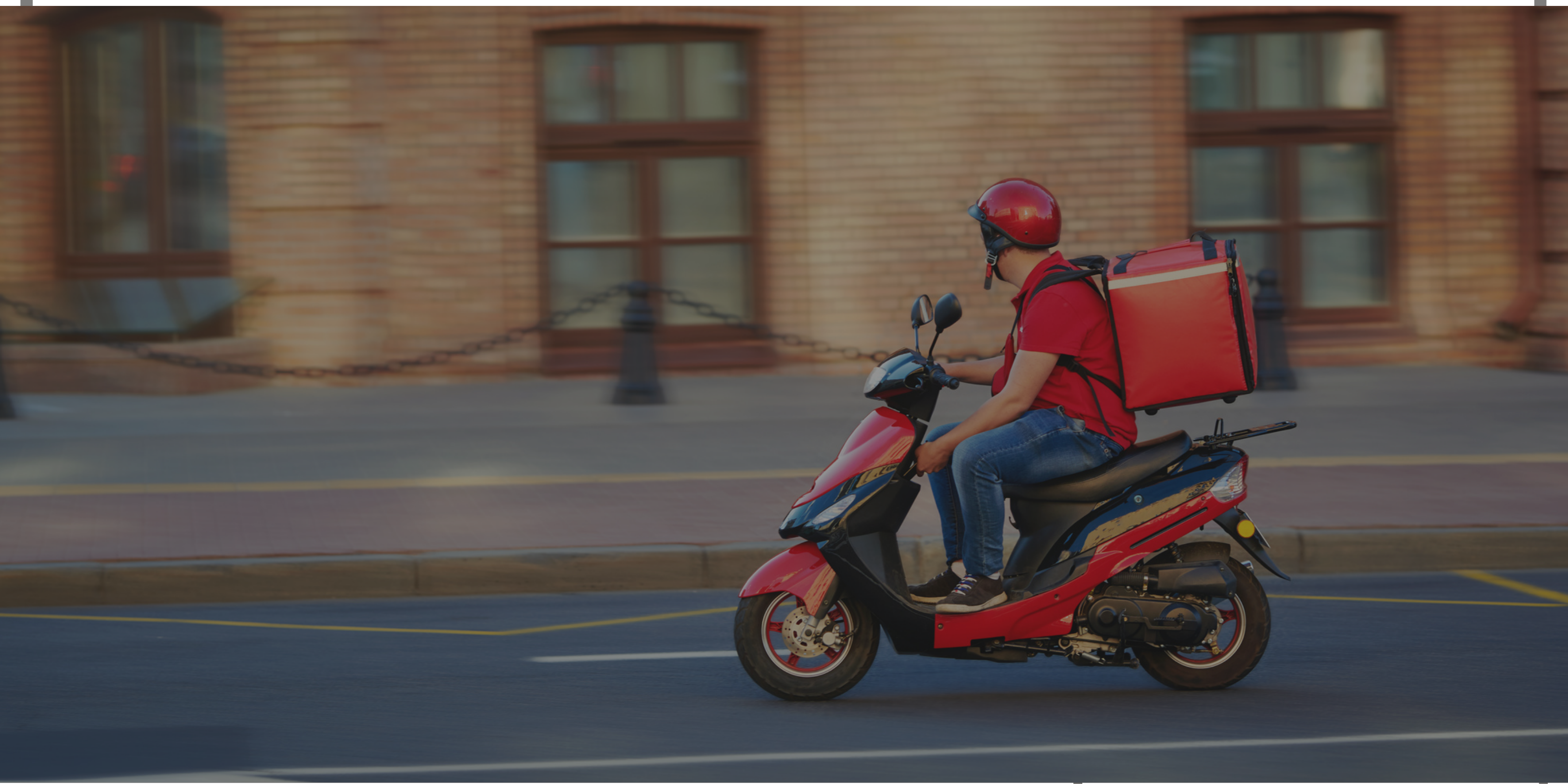

UCS POV

BY BALA HARISH
ASSOCIATE VICE PRESIDENT

GIG WORK AND PLATFORM WORK COMPLIANCE ON THE CARDS

With e-commerce business models have taken over the market, companies like Uber, Ola, Zomato and Swiggy rely on services of gig and platform workers.

Gig workers perform work or participates in a work arrangement and earns from such work activities outside of a traditional employer-employee relationship as per (Section 2 (35) of The Code on Social Security, 2020. ***Platform work*** is an employment model in which organisations or individuals use an online platform to access other organisations or individuals to solve specific problems or to provide specific services in exchange for payment.

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Currently, the legal status of gig and platform worker in India is that of an independent contractor. This provision supports the same by specifically referring to the absence of a traditional employer-employee relationship. A key difference between ordinary employees and independent contractors is the degree of control an employer has over how the work is done.

Existing Rules for Gig Workers:
Gig work, being a relatively new form of workforce engagement, remains untested in Indian Courts, and with the absence of specific legislation, gig workers cannot claim consequential benefits such as minimum wages, hours of work, overtime, leave and so on as compared to most traditional long-term employees. This is because the existing labour laws in place do not include the nature of work done by gig workers.

Currently, the Indian labour laws recognize three main categories of employees: government employees, employees in Public Sector Undertakings (PSUs) and private sector employees. All these employees are ensured certain working conditions under the Minimum Wages Act, the Shop & Establishment Act with a defined set number of hours of work, compensation for termination, salary timelines and so on. At present, gig workers lack the ‘employee’ status under Indian law, thereby resulting in several shortfalls, such as an inability to represent their interests, unfair contracts, no guaranteed wages, social security etc. The CLRA Act regulates engagement of contract labour including work done through third-party contractors. Though there is scope for considering the gig workers or platform workers under the definition of Contractor under this law, this is yet to be applied and discussed in length by the Judiciary or Labour department.

Gig Work Under the New Labour Codes:
For the first time, the Labour code has brought freelancers, also known as ‘gig workers’, and platform workers who access other organisations using online platforms under the social security net. A notable feature of the Code is that it extends the protection of welfare measures to gig workers and platform workers.

The 2020 Code mandates that the Central Government should frame a scheme for the welfare of these classes of employees concerning (i) life and disability cover; (ii) health and maternity benefits; (iii) old age protection; (iv) education; and (v) any other benefit as may be determined by the Central Govt. (Chapter IX) . It also provides for setting up a Gig and Platform Workers’ Social Security Fund for meeting the social security and welfare needs of these workers. The Code also makes provisions for registration of all three categories of workers – unorganised workers, gig workers and platform workers.

The Social Security Code proposes a National Social Security Board which shall recommend to the Central Government for formulating suitable schemes for different sections of unorganised workers, gig workers and platform workers. Also, aggregators employing gig workers will have to contribute 1-2% of their annual turnover for social security, with the total contribution not exceeding 5% of the amount payable by the aggregator to gig and platform workers.

From the above, it is clear that the government intends to recognise the compliance of the gig and platform workers under social security and health coverage under the Labour Codes. The introduction of social security schemes and other related benefits for such workers brings with it the added challenge and responsibility of ensuring compliance. Therefore, employers need to remain alert with the new developments on this front.

In this edition, we have included an article by Uber CEO, Dara Khosrowshahi from Economic Times where he weighs in on the potential of gig and platform workforce engagement.

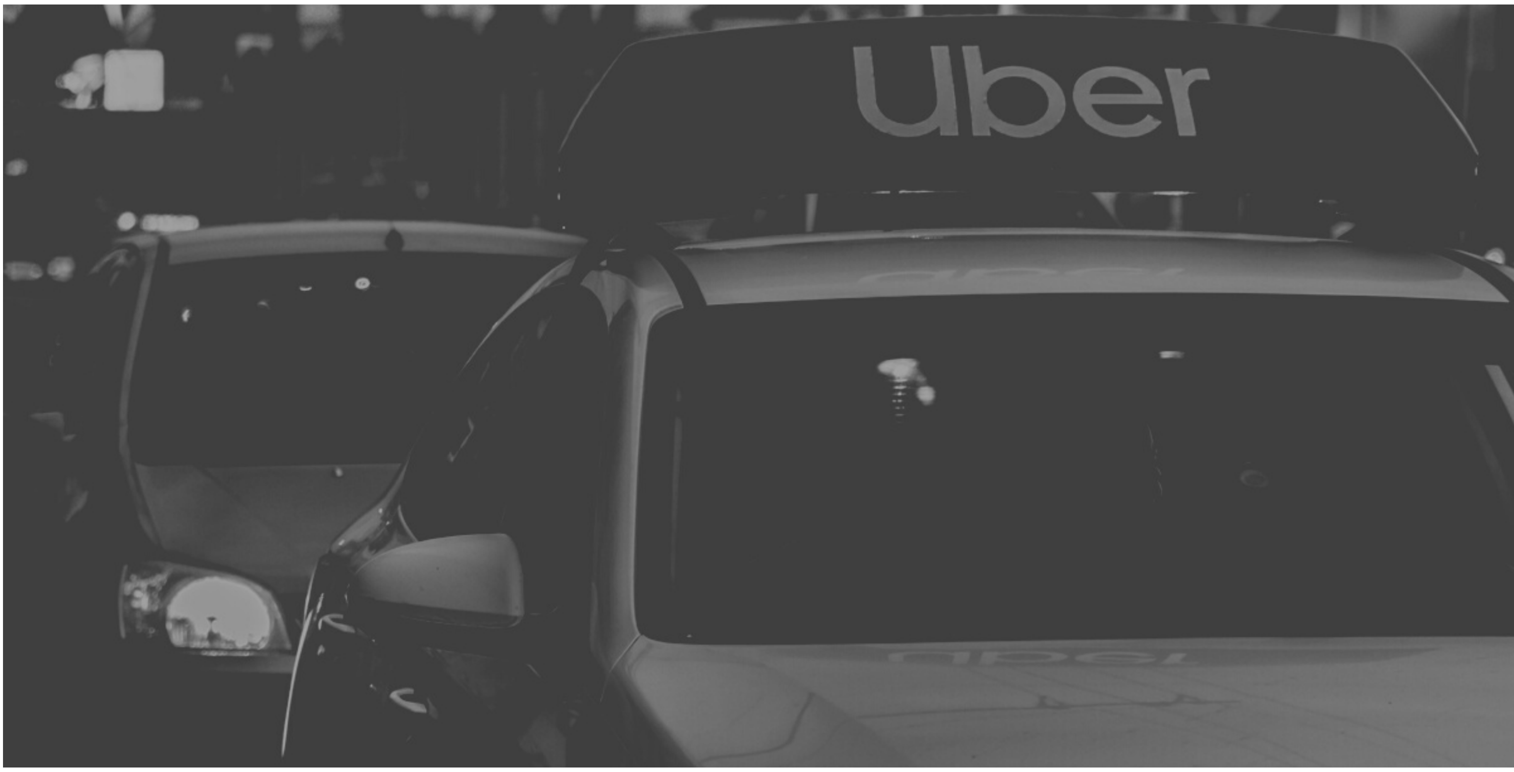
A Gig the World Can Follow

Source: Economic Times

Every year, millions of young Indians enter the country's rapidly expanding workforce. By 2030, it's estimated that the Indian government will need to create work opportunities for 60 million new workers. This represents a significant challenge for GoI. Since Uber launched in India seven years ago, the company is proud to have created work opportunities for lakhs of Indians. Such workers have been an important feature driving

India’s thriving digital economy. But over the past few months, their future has been muddied by ongoing Covid-19 pandemic that has made India’s economy contract 23.9% between April and June. That’s why the work of Indian policy makers in passing the Code on Social Security (CoSS) is so important. CoSS sets India apart as one of the first countries to establish new nationwide social security benefits and protections for gig and platform workers. The new law recognises that all workers and not just those classified as employees deserve to have a basic safety net, providing over 450 million Indian workers benefits such as life, disability and accident insurance; health and maternity benefits; as well as old-age protection. CoSS truly has the power to transform people’s lives.

In an August opinion piece in The New York Times, I underscored how companies like Uber have a responsibility to collaborate with governments and industry players to offer all gig workers the safety net they deserve, without compromising the freedom and flexibility they desire. I believe the Indian government is one of the first to do just that changing the traditional employment system and fundamentally transforming what has been a binary choice between full-time and independent work. Workers will no longer have to choose between being an employee with benefits but less flexibility, and an independent contractor with more flexibility but no safety net. They can now get the best of both worlds. They deserve to. In India, CoSS safeguards a worker’s independent choice and allows companies like Uber to set up and play our part in creating better flexible work and earning opportunities for millions of people, which is all the more important in the light of the ongoing pandemic and economic slowdown. Along with the government and other industry players, we truly have a chance to bolster the Indian economy and play a critical part in nation-building.



Partners in Progress: The benefits the law proposes will be provided through social security schemes implemented by the central government, and Uber will be required to make financial contributions to these schemes. We stand ready to pay to give drivers the necessary security and protection, seeing our contribution to GoI's social security schemes as a priority. It offers multiple wins for drivers, Uber, our industry and the government to improve the lives of millions of its citizens. In fact, this is similar to what we are proposing in the US and elsewhere to improve the quality and security of independent work. Our view is that gig economy companies like Uber should establish and contribute to portable benefit funds. Workers would earn into these funds based on how many trips they did on an app, and then be able to withdraw that money at any time to use for benefits such as health insurance. All companies would be required to participate so that workers would accrue benefits even if they switched between apps, which many do. This builds on the foundation Uber has already created. For example, in 2018, we launched a welfare initiative in India called UberCare, which provides facilities like micro loans, school admission support for their children and free online doctor consultations. We hope that the social security schemes envisaged under the CoSS will enable more drivers to access emergency medical care benefits of the world's largest government run health scheme such as Ayushman Bharat. Indian leaders have set a new global standard with the CoSS. As the world's largest democracy, and its fifth most powerful economy, India has spoken. The rest of the world is taking notice. This article is written by Uber CEO, Dara Khosrowshahi.

Under Atal Beemit Vyakti Kalyan Yojana, You Can Get 50% Of Your Salary: Check Eligibility, Benefits

Source: The Hindustan Times

The Centre has extended the Atal Beemit Vyakti Kalyan Yojana under the Employees' State Insurance (ESI) Act till June 30 next year and announced enhanced benefits and relaxation in eligibility conditions for those who lost their jobs during the coronavirus pandemic. It has made way for 50% unemployment benefit to the subscribers from 25% with relaxed eligibility criteria up till December 31, 2020. Earlier, the financial assistance was provided within 90 days of the job loss and it has now been reduced to 30 days. The Atal Beemit Vyakti Kalyan Yojana will be available with original eligibility condition during the period January 1, 2021, to June 30, 2021, after December 31, 2020. The scheme has been effective from July 2018 and was implemented on a pilot basis for two years initially.

Here is what you need to know about the Atal Beemit Vyakti Kalyan Yojana:

1. The scheme originally provided relief in case the Insured Person (IP) lost their job to the extent of 25% of the average per day earning during the previous four contribution periods (total earning during the four-contribution period/730) to be paid up to maximum 90 days of unemployment once in the lifetime of the IP on submission of claim in form of an affidavit.
2. The insured person should have been rendered unemployed during the period the relief is claimed to avail the scheme.
3. They should have been in insurable employment for a minimum period of two years immediately before their unemployment. They should have contributed not less than 78 days during each of the preceding four contribution periods, according to the government's notification.
4. The contribution should have been paid or payable by the employer.
5. The contingency of unemployment should not have been as a result of any punishment for misconduct or superannuation or voluntary retirement.
6. Aadhaar and bank account of the insured person should be linked with the insured person database.
7. The claims can be filed directly by workers. The claim will be due 30 days after the date of unemployment as against 90 days earlier.
8. The claim can be submitted online in the prescribed claim form after which the payment will be made in the bank account of the IP within 15 days from the receipt of the duly completed claim.

Govt. Plans to Implement Labour Codes on April 1, Starts Shaping Rules

Source: Business Standard

The National Democratic Alliance (NDA) government plans to bring into effect new labour laws across the country from April 1. "We intend to implement the new labour codes from April 1. We have begun the process of giving shape to the rules that are to be framed under the codes and we are confident of finalising them in the last quarter of this fiscal year," Union Labour and Employment Secretary Apurva Chandra said. Industries will have to file a single return to the authorities under the new labour law regime. Further, the number of minimum wages that industries have to comply with is set to reduce to 12, from 540 under central labour laws and to 180-200 under state laws, from 9,000 at present.

An important task would be that states also frame their rules by March 2021. The new codes give powers to state governments to make rules as they will have jurisdiction over most of the establishments. For instance, while the central government will frame around 57 rules for the Industrial Relations Code, 2020, states will have to come up with around 40 rules. On its part, the central government, which has jurisdiction over sectors, such as coal, mining, banking, and civil aviation, is set to make public the draft rules under the three labour codes by November this year. The rules will be open for public comments for a period of 45 days. The labour secretary had written to the chief secretaries of states, asking them to frame the rules soon so that the new codes could be implemented in time. Though the codes enable the central government to implement the new labour laws in phases, the government is looking at executing them in one go. As many as 29 labour laws have been converted into four codes.

The three codes on industrial relations, social security, and occupational safety, health and working conditions will subsume 25 labour laws. The codes got the approval of Parliament during the monsoon session when the Opposition organised a boycott to oppose the farm Bills. The fourth one, the code on wages, which combined four labour laws, became law in August 2019. However, the government is yet to make the law effective as it plans to introduce all the four laws together. Apart from rationalising various provisions of the law and unifying workplace-related definitions, the government has brought about key changes to the labour laws. These include easier retrenchment norms, flexibility in hiring contract workers, equal social security benefits for fixed-term and permanent staff, social security cover for gig and migrant workers, and relaxation to smaller factories from labour laws.

Festive Bonanza! EPFO Members Likely to Get First Instalment of 8.5% Interest by Diwali

Source: Times Now

The Employees' Provident Fund Organisation (EPFO) may credit the first instalment of the 8.5% interest to its subscribers by Diwali, according to a report by Live Hindustan. In September, EPFO had decided to credit a part of 8.5% interest on employees provident fund (EPF) for 2019-20 into the account of its around 6 crore subscribers in a Meeting of the Central Board of Trustees of EPF held via virtual conferencing. The remaining 0.35 per cent rate of interest on EPF for 2019-20 would be credited into the subscribers account in December this year, the board further said.

In its statement, the EPFO said: "In view of exceptional circumstances arising out of Covid-19, the agenda regarding interest rate was reviewed by the Central Board and it recommended the same rate at 8.50% to the Central Govt. It would comprise of 8.15% from debt income and balance 0.35% (capital gain) from the sale of ETFs subject to their redemption by 31st December 2020." It further recommended to account for such capital gains in the income of the financial year 2019-20 as being an exceptional case. The retirement fund body's earnings were badly hit in March due to coronavirus pandemic.

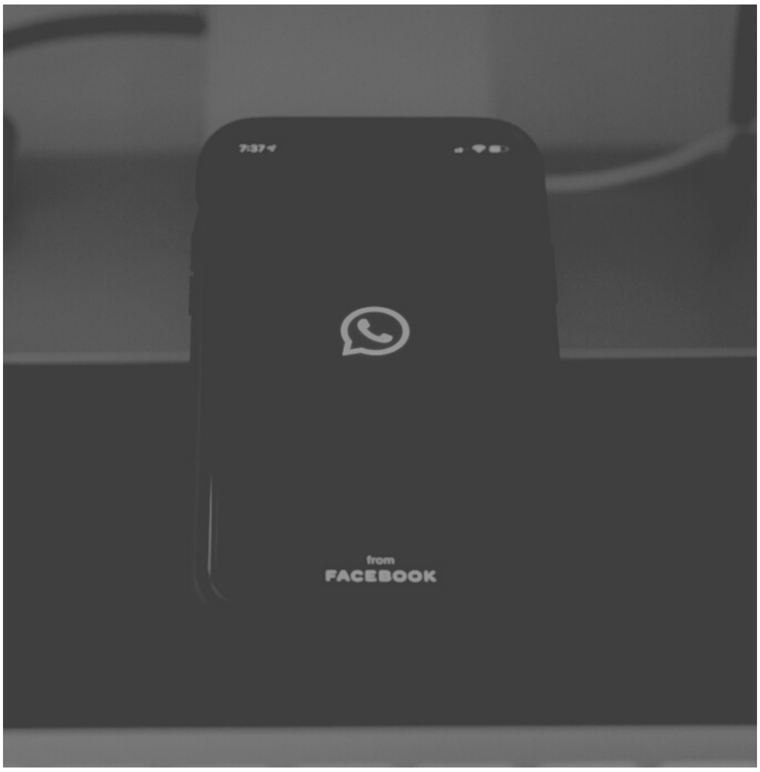
How to check account balance through sending a message:
In order to check the account balance in your EPF account, you need to link your UAN number to your Aadhaar, PAN Card or your bank account. Type EPFOHO UAN ENG and send it to 7738299899. The last three letters 'ENG' is the preferred language, in case you want to receive the message in any other language, type the first 3 letters of your preferred language such as BEN for Bengali, MAR for Marathi etc. The SMS facility is accessible in different languages such as English, Marathi, Bengali, Hindi, Gujarati, Punjabi, Telugu, Malayalam, Kannada and Tamil.

EPFO To Answer Your Queries on WhatsApp Helpline

Source: Times Now

The government's pension fund body Employees' Provident Fund Organisation (EPFO) has launched its WhatsApp-based helpline for grievance redressal of its subscribers, under its series of Nirbadh initiatives, the Ministry of Labour said in a statement. The helpline is aimed at ensuring seamless and un-interrupted service delivery to subscribers during

COVID-19 pandemic, it added. EPFO has redressed more than 1,64,040 grievances and queries through WhatsApp. This has led to a decline in registration of grievances/queries on social media like Facebook and Twitter by 30% and on EPFiGMS (EPFO's online grievance resolution portal) by 16% since the launch of WhatsApp helpline numbers. The WhatsApp helpline facility is in addition to grievance redressal forums of EPFO such as web-based EPFiGMS portal, CPGRAMS, social media pages (Facebook & Twitter) and a dedicated 24x7 call centre. This initiative will allow the PF subscribers to interact directly with EPFO's regional offices at a personalized level adhering to one-to-one guidance principle, the ministry statement added.



How to use EPFO WhatsApp helpline

The EPFO WhatsApp helpline is functional in all the 138 regional offices of EPFO. Any stakeholders can simply file grievance or seek guidance on any queries relating to services provided by EPFO, by putting a WhatsApp message on the helpline number of the concerned regional office where the PF account is maintained. Dedicated WhatsApp Helpline numbers of all regional offices are available at homepage of EPFO's official website. To ensure the expeditious resolution of the grievance and reply to the queries raised on WhatsApp, each regional office has been equipped with a dedicated team of experts. The helpline is an attempt to further strengthen the direct channel of communication between EPFO and its subscribers amid the pandemic, thereby enhancing EPFO's responsiveness and facilitating timely delivery of services to subscribers.

Haryana Withdraws Ordinance Providing 75% Quota in Private Sector Jobs

Source: The Federal

In a move seen as a setback to Haryana Deputy Chief Minister Dushyant Chautala, the state cabinet headed by Chief Minister Manohar Lal Khattar on October 16 withdrew an ordinance it had cleared two months ago to provide 75% reservation in private sector jobs. Dushyant's JJP had made a poll promise to implement the quota. The Governor did not promulgate the ordinance, reserving it for the President's consideration. The proposed legislation was sent to the Union Home Ministry for scrutiny before the President took a call.

The BJP-JJP regime intends to bring a replica bill in the Assembly after withdrawing the ordinance. A replica bill passed by the assembly will also have to be reserved for the consideration of the President, officials said. Deputy Chief Minister and JJP leader Dushyant Chautala, who piloted the private quota move, had earlier written to the Governor, seeking the withdrawal of the ordinance. However, officials said the cabinet will first have to sanction the move to withdraw the ordinance. "The ordinance has not been promulgated. Since it has been sent to the Centre for the President's consideration, it is still under progress. So, unless it's withdrawn by the Governor by writing to the Central government, a replica bill cannot be tabled in the assembly. The move to withdraw it can only be approved by the cabinet," a senior official said.

Former advocate general Ashok Aggarwal said it is the government's prerogative to introduce an identical bill in the legislature. However, the decision not to do so when an ordinance is reserved for the President's consideration is a step-in consonance with the highest traditions of constitutional propriety. "Once the Governor has expressed an opinion for seeking presidential assent, it is appropriate not to hurry up or make an overreach by presenting a bill in the Assembly. Let the higher constitutional functionary take a view," Aggarwal said. The law expert said the Supreme Court had held that an ordinance is also identical to a law passed by the legislature. Article 201 of the Constitution says that the President can either declare that he assents to the proposed law or that he withholds the assent. The President can also direct the governor to return it to the House for reconsideration.

The ordinance was reserved for the President's consideration as its Section 23 gave it an overriding effect over other laws and it had the potential to be repugnant to an Act of Parliament. The clause providing for preference in jobs to the local candidates domiciled in Haryana also was seemingly in contravention of Article 14 of the Constitution pertaining to equality before the law and Article 19 (1)(g) that provides for protection of certain rights to practice any profession, or to carry on any occupation, trade or business. The Constitution does not provide a time limit for the President to assent to a bill or withhold it.

Karnataka S&E Night Shift Amended Provisions

Source: Gov. Notification

The KN State Government has amended the Karnataka Shops and Commercial Establishment Act, 1961 Section 25 relating to prohibition of employment of women employees during night hours. The below mentioned provisions are substituted under Section 25:

Substituted Section 25 Conditions:

- The regulations stipulated under the Karnataka Shops & Establishment Act 1961, Sec 7(Daily and Weekly Hours), 8 (Extra wages for OT), 9 (Interval for Rest), 10 (Spread Over) and 12 (Weekly Holidays) shall continue to apply to the women employees working during night shift.
- Voluntary consent letter of women employees willing to work in the night hours to be obtained in writing.
- Free transportation facility for the woman employees with adequate security to be provided from the residence to workplace and vice versa.
- Transportation facility shall have GPS for tracking and monitoring.
- Employment of women employee shall be on rotation basis.
- Adequate number of security guards shall be posted during night shift to protect the safety of women employees.
- Sufficient drinking water, rest rooms, toilets and washing rooms and cleanliness facility with adequate water supply shall be provided separately for women employees so as to secure privacy.·
- The establishment should bear the cost of crèche facility obtained by the women employees from voluntary or other organizations.
- The company shall obtain bio-data of each driver and conduct pre- employment screening of the antecedents of all drivers, whom the employer is taking on their own. As regards the drivers employed throughout sourcing, the company shall ensure to its

satisfaction that the collection of bio-data and pre-employment screening of the antecedents of the drivers is carried out by the services provider and copy of the same to be shared with the principal employer:

- The Schedule of route of the pick-up and drop shall be decided by the supervisor office of the company only, in case of exigencies, change of drivers/routes/ shifts shall be allowed only with the prior knowledge of supervisory officers / employees;
- The telephone number, Mobile Phone number and address in related to the women employees shall not be disclosed to any unauthorized persons
- Careful selection of routes shall be made in such a way that ordinarily no women employees shall be picked up first and dropped last;
- In case if the women employee is picked-up first and dropped last, then the company shall provide strict security guards of the establishment to the night shift vehicles.
- The designated supervisor of the company/service providers may randomly check the vehicles on various routes as far as possible:
- Company shall have a control room/ travel desk for monitoring vehicle movements.
- An App in mobile may be developed and adopted by the establishment through which the women employee can contact the concerned at the time of emergency by giving signal.
- Failing to the above said rules and conditions, the Registration Certificate will be cancelled.

The major impact for the S&E registered organizations engaging Women employees in the night hours relates to the removal of below conditions:

- Minimum restriction of 5 Women employees in Night shift.
- Form R Fortnightly returns
- Form S Quarterly returns
- Form S Exemption order / renewal of exemption, etc.

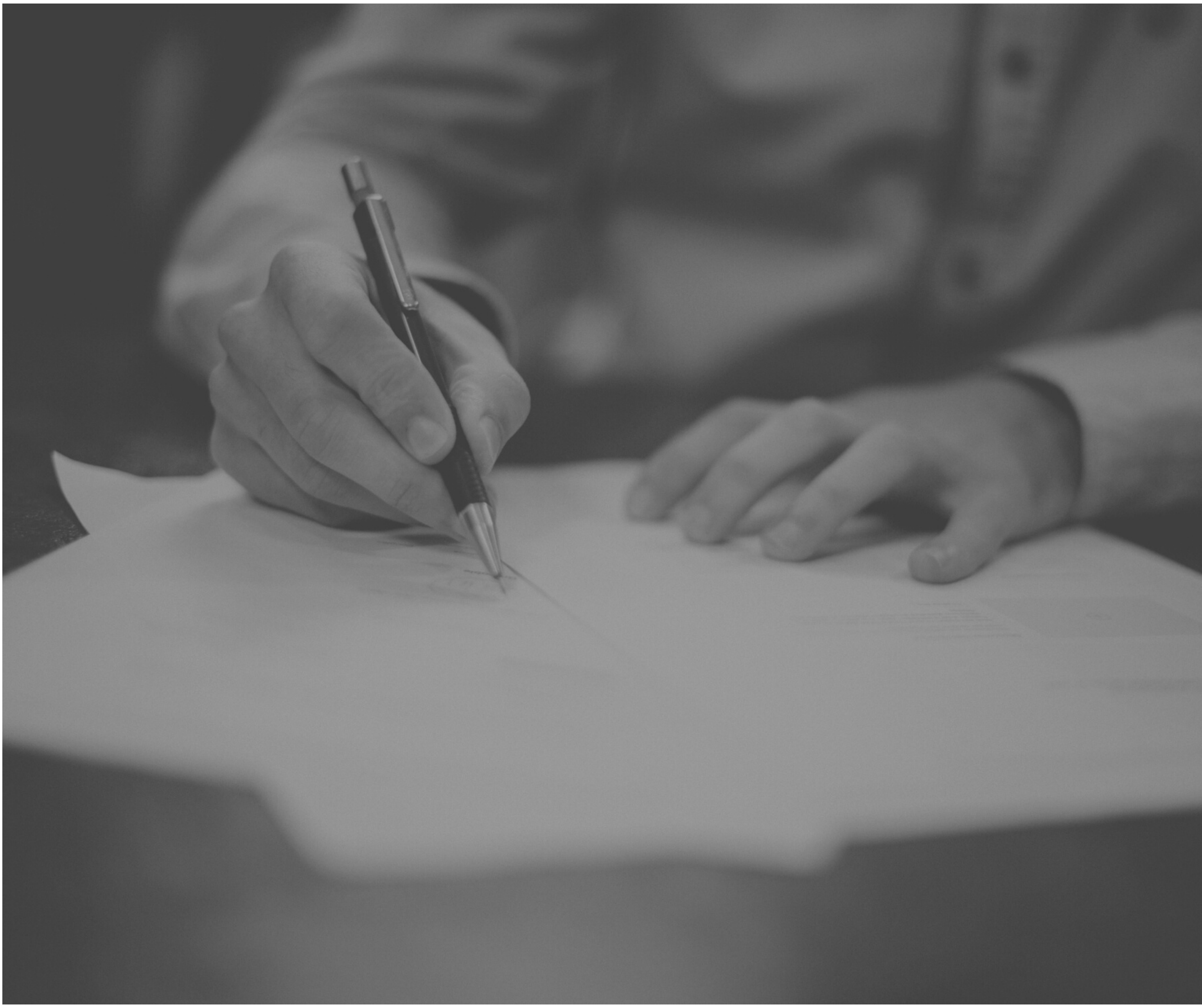
Introduction of Auto-Renewal System in The State of Haryana

Source: Gov. Notification

In compliance of Business Action Plans 2020 the Government of Haryana vide an Order dated 21st October 2020 has introduced the auto-renewal of the licenses under rule 29 of The Haryana Contract Labour (Regulation & Abolition) Rules, 1975 read with section 13 (31 of The Contract Labour (Regulation & Abolition) Act, 1970 and under rule 14 of The Haryana Inter-State Migrant Workmen Rules, 1981 read with section 9 (3), 35 (2) (d) of The inter-State Migrant Workmen (Regulation of Employment and Conditions of Service)

Act, 1979. As per the notification, the auto-renewal has been approved under the ibid Acts subject to the following conditions: -

- The duration of renewal of licenses procured via auto-renewal online system would remain the same as being provided at present as per the Act, which is one year.
- The provision of auto-renewal will be applicable only in cases where there is no change in the desired fields i.e. name of occupier, name, and address of the factory or establishment, maximum no. of workers except the year/years, etc. from the previous licenses. Whenever there is a change in any condition or requirement in the previous license then in such case the process of online application for renewal will be followed.
- The fees for auto-renewal have to be deposited by e-GRAS through the website of the Labour Department i.e. https://hrylabour.gov.in/. If the requisite fees are not deposited via e-GRAS and any other method like treasury challan or e-challan is adopted then the usual method of online renewal will be followed.



UCS CompliTool

Streamline Compliance & Risk

UCSCompliTool is a technology to ease the complexities of navigating through the changing Labour laws. With our past experiences and feedbacks, we have developed an in-house Software solution and have created this robust mechanism which represents our motto – Compliance simplified. It provides a real time and 360-degree view of compliance status for the Principal employer **(Complitool-Compliance)** and with risk matrix to monitor the contractors **(Complitool -Audit)**. We have developed a Role Based Access Control model and being a cloud-based system, we are offering an absolute security and protection of data.

Following are some of the Major benefits of the Tool:

* Real Time Statistical Data
* Informative Tool
* Transparency
* Ease of Documentation
* Ease of Monitoring
* Highlighting of Critical Points
* Security and Data Confidentiality
* Centralization of Data
* Readily Available Documents
* Data Integrity
* Extensive Reporting
* User friendly Dash Boards
* Overall compliance review from front end manoeuvre

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United Consultancy Services is one of the leading consulting firms in India providing compliance, advisory and audit services in the field of Labour Laws, Human Resource Development and Legal matters pertaining to Industrial Relations. We provide meaningful, forward looking and compliance oriented solutions to help organizations grow while being compliant under labour laws. Proactive teams led by domain experts, use insight, experience and best practices to understand complex issues of publicly listed and privately owned clients and simplify compliance.

With over 25 years of existence and with more than 200 professionals the firm provides robust compliance services and solutions on complex requirements under Labour law. The information shared in the newsletter is on the basis of Government notifications and newspaper articles. This is for general information purposes only and does not constitute legal advice. Please reach out to your UCS contact or the Company legal counsel before taking any action.

We simplify compliance for you.

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