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IN THIS ISSUE

UCS POV

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The definition of an 'employee' and employment related regulations in the New Labour Codes has undergone some amendments. After the Central and state governments implement the Codes through gazette notifications, these changes may have some impact for companies' regular and contract employees, including wage structure and social security benefit schemes. The following are some of our views and understandings in respect to the New Labour Codes. However, companies are advised to determine any changes after the respective state governments notify the implementation of the Codes through a separate gazette notification.

(1) The definition of an ‘employee’ includes managers and supervisors, and contract employees under the Code on Wages. As per existing provision of the labour laws, managers and supervisors are exempted from the provisions of overtime wages and compensation for working on declared holidays and the like, however there is ambiguity even in the definition of ‘manager’ for an establishment and there is a difference of opinion about the same. As per the New Labour Code, ‘employee’ definition includes managers and supervisors, whereby all employees in the company’s muster and pay-roll shall be eligible for all the benefits as prescribed.

(2) The definition of an ‘employee’ under the Code on Social Security includes contract employees. As per the existing Payment of Gratuity Act and Payment of Bonus Act, the definition of an employee does not include contract employees. Therefore, companies need to ensure the Payment of Gratuity, Employees Provident Fund, Employee State Insurance, and Payment of Bonus for their contract employees working at their establishment. The contractor, who is the immediate employer needs to extend all such benefits to the respective employees and the principal employer shall be responsible to ensure the same.

(3) The percentage of Social Security Fund Contribution for GIG and Platform workers is to be decided by the Government. As per the Code, all GIG/Platform workers are required to be registered under the Social Security Scheme and each such worker shall be allotted with a unique registration number. Further, the company may have to contribute the prescribed percentage of Social Security Contribution based on invoices raised by such workers or on the payable amount to them. The same may be required to be paid under the respective individual’s social security registration number.

(4) As per existing provisions of the labour laws, there is no demarcation of fixed term employees, hence they are to be considered as an employee of the company only and are eligible for all benefits as extended to any regular employee. However, as per the Code on Social Security, fixed-term employees shall be eligible for Payment of Gratuity in case they have completed one year of service with the same employer and the five years eligibility criteria shall not be applicable for such employees hired for a fixed-term period. The Payment of Gratuity eligibility for the regular employee shall remain as five years and companies need to make provisions for gratuity for the fixed-term employees who have been hired for one year or more.

(5) As per the Code on Safety and Health, the definition of ‘Contract Labour’ *“does not include worker (other than a part-time employee) who is regularly employed by the contractor for any activity of his establishment and his employment is governed by mutually accepted standards of the conditions of employment (including engagement on a permanent basis) and gets periodical increment in the pay, social security coverage and other welfare benefits in accordance with the law for the*

time being in force in such employment”. One of the employment conditions is to issue Appointment letter in prescribed format with mandatory fields to every employee of an establishment. In view of this, a company or a contractor who hires employees to work only in the establishment may have to specify the employment conditions in the employment agreement. The employees who are hired to work in the company or contractor’s establishment cannot be deployed at the client location, as such workers shall not be considered as ‘Contract Labour’. Therefore, while issuing an employment agreement to an employee, the employment terms and conditions should specify whether he/she is required to work in any other locations or company’s client locations. As per our view, the same is a legal requirement in any of the employment agreement.

(6) The Code on Wages has a separate provision for fixation of wages. As per the Code all other monthly allowances together should not exceed 50% of the monthly Gross wages (**i.e. the Basic wages should be at least 50% of Gross wages**). The said provision in the Code on Wages does not provide clarity and the same may impact the existing wage structure and social security contribution. The Central Government is yet to publish floor wages for various industries and all class of employments. There is a possibility that the above-mentioned clause may be limited to the employees who come within the bracket of floor wages. However, if the government extends this clause to all class of employments irrespective of their wages, it may impact many companies concerning Payment of Gratuity. As per the Code on Social Security, the Employees Provident Fund wages ceiling remains the same, hence this clause may not have an impact on the contribution under Employees Provident Scheme.

These views are based on the New Labour Codes and rules published by the Central Government. There may be changes while implementing these codes by the Central and the respective State governments. It is advisable to only make changes in existing company policies after the implementation of Codes by the respective governments through a separate gazette notification.

National & Festival Holidays Circular 2021

Various states have released their holiday list for the year 2021. Click on the below link for more updates:

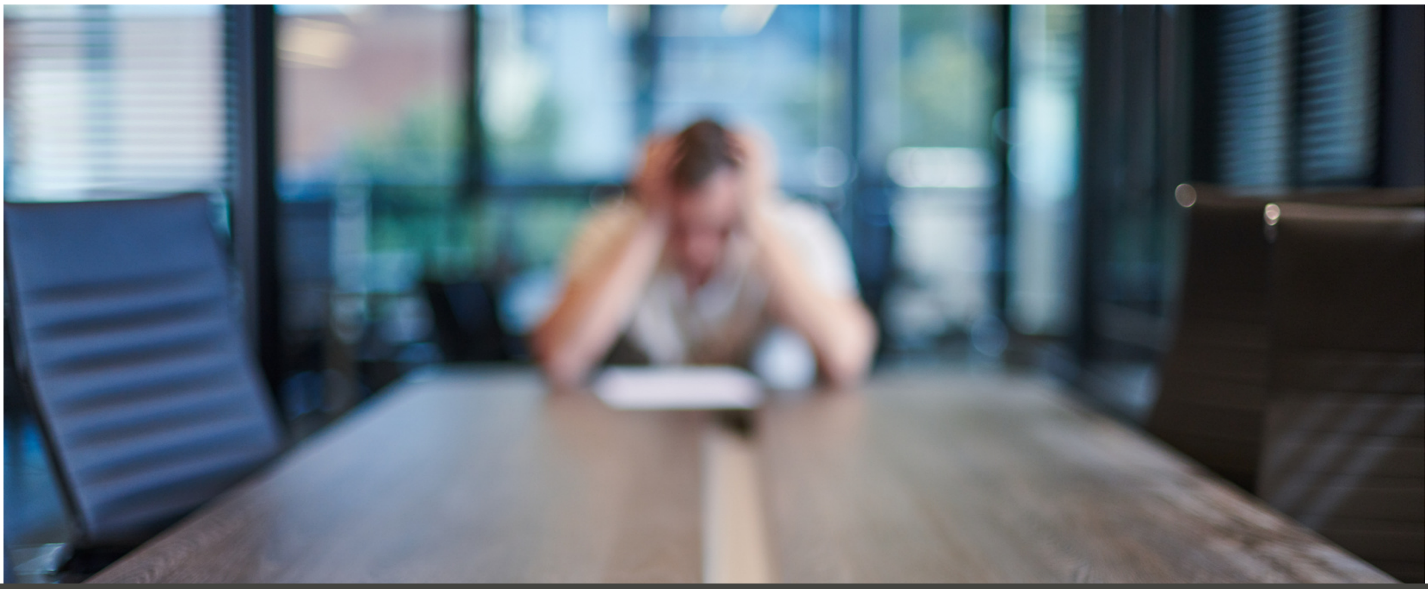
https://unitedconsultancy.com/national-festival-holidays-list-state-wise-2021/

Labour Ministry Readies Draft Notification Allowing 12 Working Hours A Day

Source: Business Today

The labour ministry, in a draft notification, has notified rules allowing 12 working hours a day, higher than nine allowed earlier, including one hour of rest. The employment draft rules notified for the Code on Occupational Safety, Health and Working Conditions (OSH & WC), says daily working hours can extend up to 12 hours. The OSH & WC rules will supersede 13 existing central labour law rules. However, like earlier, these draft rules say no worker should be required or allowed to work in an establishment for more than 48 hours in any week. "The period of work of a worker shall be so arranged that inclusive of his intervals for rest, shall not spread over for more than twelve hours in a day," the draft rules state.

The ministry has now sought views from stakeholders on these draft rules in 45 days. Along with OSH & WC, the ministry has also put forward draft rules for all four labour codes. The Centre aims to pass them by January. The draft rules of OSH & WC also says those working overtime in a week must be given double the wage. "In pursuance of Section 27 of Code, wherein an establishment a worker works for more than eight hours in any day or for more than forty-eight hours in any week, as the case may be, he shall in respect of such overtime work be entitled to wages at the rate of twice his ordinary rate of wages and shall be paid at the end of each wage period," the draft notification says. In calculating overtime on any day, a fraction of an hour between 15 to 30 minutes shall be counted as 30 minutes, and in case of more than 30 minutes, it shall be rounded and shall be counted as an hour on an actual basis, it adds. For calculating wages for workers paid by the month, the daily wages shall be 1/26th of his monthly wages, it adds. Recently, several states, including Uttar Pradesh and Madhya Pradesh, introduced laws to enhance work hours to 12 to recover the losses incurred during the coronavirus-infused lockdowns. The measure was necessitated to boost output amid limited workforce.



Rework Budget To Allow Social Security For All

Source: Financial Express

The government has done well to try and create social security nets for workers in the unorganised sector or gig and platform workers the draft rules were released a few days ago considering the bulk of the country working-class has little or no old age security. Not enough details are available as to how this is to be funded, though various management boards will be set up for each category. Right now, according to some newspaper reports, the money is to be provided by employers, and amounts of 1-2% of turnover or 5% of the salary bill are being talked of for platforms like Ola and Uber. It is not clear whether the amount is enough or excessive but any scheme that is dependent only upon the employers is not going to work.

Indeed, Gautam Bhardwaj and Sanjay Jain (bit.ly/3dX7IWn) had argued in this newspaper that a well-executed pension scheme for the unorganised sector workers would have stopped the migrant exodus that took place from cities during the early days of the Covid-lockdowns. A toolkit (toolkit.pinboxsolutions.com/login) Bhardwaj has, helps understand how this works. Assume a worker saves even Rs 20 per day from the age of 18, and his contribution rises by 5% a year to adjust for a 5% inflation; assume the government makes a Rs 5,000 per year contribution for five years. This will give the worker a corpus of over Rs 20 lakh at the age of 60; and that, in turn, gives a monthly pension of Rs 14,760 in the first year, rising to Rs 29,222 at the age of 75, assuming a 5% annual pension indexation as well. Increase the daily saving to Rs 30, and the retirement corpus goes up to Rs 30 lakh. The social security scheme can be modified to include insurance payout for both job loss as well as health emergencies. Ideally, the scheme should be flexible in the way contributions are collected since a large number of these workers don’t have permanent jobs and so cannot possibly make regular contributions as they may not have a job throughout the year. Also, the good news is that the government itself has various schemes that can easily be dovetailed into this social security scheme. As part of the third Atmanirbhar package announced some days ago, for instance, the government said that it would pay 25% of the salary for two years as the provident fund contribution for newly recruited including re-recruited after losing their jobs workers who earned less than Rs 15,000 per month. Surely such a scheme needs to be extended to the unorganised sector, though with a lower contribution; how much the contribution can be, has to be carefully worked out, but there is a case for reworking budget priorities why give a 90% food subsidy to 66% of the population to make such contributions possible. There are various insurance schemes the government runs anyway, 20.11 crore are enrolled under Pradhan Mantri Suraksha Bima Yojana and 7.57 crore under Pradhan Mantri Jeevan Jyoti Bima Yojana and they need to be folded into the social security net as well.

Indeed, if social security nets are going to be extended, the government needs to deliver on its earlier promise of liberating workers from the clutches of the EPFO and ESIC. Both are very expensive schemes; while the NPS is a lot less costly than the EPFO, the ESIC overcharges so much and delivers too little it has a surplus of over Rs 90,000 crore; ideally, a way should be found to channelise this towards partly funding the social security nets for the unorganised sector.

Jeevan Praman Patra: EPFO Offers Pensioners Multiple Options to Submit Digital Life Certificate During Pandemic

Source: india.com

During this coronavirus pandemic, the Employees' Provident Fund Organization (EPFO) has initiated multiple options for pensioners to submit their digital life certificate. The initiative of the EPFO is likely to benefit approximately 67 lakh EPS pensioners out of which about 21 lakh are widow/widower, children, and orphans. The EPFO had earlier said that the pensioners of Employees' Pension Scheme 1995 (EPS'95) are required to submit Jeevan Pramaan Patra (JPP) / Digital Life Certificate (DLC) each year to continue drawing their pension. Jeevan Praman Patra submitted through these modes/agencies are equally valid.

In addition to 135 regional offices and 117 district offices of EPFO, EPS pensioners can now submit DLC at pension disbursing bank branch and nearest post offices. They also can submit the DLC at the nation-wide network of over 3.65 lakh Common Services Centers. Apart from this, EPS pensioners can also submit DLC using the UMANG app. To facilitate the process, India Post Payments Bank has recently launched the doorstep Digital Life Certificate service for pensioners. They can submit an online request for availing doorstep DLC service on payment of a nominal fee. Soon after a request is made, a postman from the nearest Post Office will visit a pensioner and will complete the process of generating DLC at the home of the pensioner only. Moreover, the EPS pensioners can now submit DLC at any time during the year, as per their convenience. The life certificate will remain valid for one year from the date of submission of DLC. The pensioners who have been issued Pension Payment Order in 2020 need not upload JPP till completion of one year. It is a chargeable service and will be available to all the central government pensioners across the country. The facility to submit life certificates online through Jeevan Pramaan portal was launched by Prime Minister Narendra Modi in November 2014.

Stimulus Package 3.0: Special EPF Scheme For Those Who Hire New Employees Amid COVID-19

Source: livemint.com

To create more jobs, the finance minister Nirmala Sitharaman announced a special subsidy scheme Aatma Nirbhar Bharat Rozgar Yojana. Under the scheme, those establishments that make new hiring will get a special EPF subsidy from the central government. The EPF statutory subsidy will be given for a period of two years from the date of their employment during the above period. Any new employee joining employment in EPFO registered establishments on a monthly wage of less than Rs. 15,000 will be eligible to get the benefit. Employees contribution (12%) and employer's contribution (12%) totalling 24% of wages will be given to establishments, the finance minister said.

Employees contribution (12% of wages) and employer's contribution (12% on wages) totalling 24% of wages will be given to establishments for two years. Every Employees' Provident Fund Organisation (EPFO) registered establishment taking new employees will be eligible to get the benefit of this subsidy. However, there are some pre-conditions that the employers must fulfill to avail the benefits announced under Aatma Nirbhar Bharat Rozgar Yojana. The scheme will also cover EPF members drawing monthly wages of less than ₹15,000, who made an exit from employment during COVID-19 pandemic from 1 March 2020 and is employed on or after 1 October 2020.

The Aatma Nirbhar Bharat Rozgar Yojana will cover establishments registered with EPFO if they add new employees compared to the reference base of employees as in September 2020. The condition will be adding a minimum of two new employees for establishments with up to 50 employees. Those establishments with more than 50 employees, will have to give a minimum of five new jobs. The scheme would be applicable till 30 June 2021. Atma Nirbhar Bharat 3.0 has been announced in the backdrop of improving economic activity. This move would go a long way in reducing the cost of production viewed in toto with the PLI scheme and other announcements," said Divakar Vijayasarathy, Founder & Managing Partner, DVS Advisors LLP. "We welcome government's positive step towards helping people get their jobs back, it is a very appropriate time for people to get such support as the country gets back to business," said Dushyantt Kohli, COO, Khabri.

Indian Govt Relaxes IT Sector Guidelines To Facilitate 'Work From Home'

Source: www.msn.com

The government recently announced simplified guidelines for Business Process Outsourcing (BPO) and IT-Enabled Services (ITES) players to reduce their compliance burden for the industry and facilitate "work from home" and "work from anywhere". The new rules for "Other Service Providers" (OSPs) would create a friendly-regime for "work from home" and "work from anywhere" while removing several reporting and other obligations for such companies. OSPs are entities providing applications services, IT-enabled services or any kind of outsourcing services using telecom resources. The term refers to BPOs, KPOs (Knowledge Process Outsourcing), IT-ES, call centres, amongst others. The new rules are aimed at providing a strong impetus to the industry and positioning India as one of the most competitive IT jurisdictions in the world, an official release said.

The new regulations would boost flexibility for these companies to adopt "work from home" and "work from anywhere" policies, a development especially relevant at a time when COVID-19 has forced IT/BPO firms to enable employees to work from home. The new rules also do away with registration requirement for OSPs, while the BPO industry engaged in data-related work has been taken out of the ambit of the said regulations. "India's IT sector is our pride. The prowess of this sector is recognised globally. We are committed to doing everything possible to ensure a conducive environment for growth and innovation in India. This decision will especially encourage young talent in the sector!," Prime Minister Narendra Modi tweeted. An official release said that under the revamped guidelines, the requirements such as deposit of bank guarantees, a requirement for static IPs, frequent reporting of obligations, publication of network diagram, and penal provisions have also been removed. "Similarly, several other requirements, which prevented companies from adopting work from home" and "work from anywhere" policies have also been removed," the release said, adding that additional dispensations to enhance flexibility for the industry have been allowed.

"With an aim to qualitatively improve the Ease of Doing Business of the IT industry, particularly Business Process Outsourcing and IT-Enabled Services, the government has drastically simplified the Other Service Provider guidelines of the Department of Telecom. The new guidelines tremendously reduce the compliance burden of the BPO industry," the release added. It further said that the new guidelines are aimed at removing "unnecessary bureaucratic restrictions" to allow the industry to focus on innovative new products and solutions. "With this reform, the Government of India sends out a strong signal of its support to the IT industry to encourage increased investment in the sector. "The reform will certainly unleash the potential of our talented youth by making India as a preferred destination for Information and

Knowledge Outsourcing Industry and would further the vision of 'AtmaNirbhar Bharat'," the release added.

Communications and IT Minister Ravi Shankar Prasad tweeted, "@narendramodi Govt. has taken a major reform initiative to liberalize the regulatory regime for "Other Service Provider". This will boost the IT/ ITeS/ BPO industry and create a friendly regime for Work from Home in India." Nasscom termed the move as a bold reform for ITES/BPO players. "These will provide several benefits. India is a global outsourcing hub and the new guidelines will promote outsourcing at scale, bringing in more work to India. With the relaxations in WFH regulations, companies will be able to tap into talent from small towns and remote parts of the country," Nasscom Senior Director and Public Policy Head Ashish Aggarwal said. Overall, the new guidelines offer further clarity and will bring in ease of doing business, he added.

Haryana To Bring 75% Quota For Locals In Private Sector Jobs

Source: NDTV

The Haryana government passed a bill providing 75% reservation for local candidates applying to private-sector jobs in the state that pay less than ₹ 50,000 per month. The bill, tabled by Deputy Chief Minister Dushyant Chautala (also the state's Labour Minister), also contains a clause company can invoke if suitable local candidates cannot be found. In such cases, they may hire from outside so long as they inform the government of such a step. However, since this contravenes Article 14 and 19 of the Constitution (equality before the law and the right to practice any profession anywhere in India), the bill - the Haryana State Employment of Local Candidates Bill - needs the assent of President Ram Nath Kovind before it becomes law.

Pointing to the "large number of migrants competing for low-paid jobs" and the subsequent "impact on local infrastructure and housing and proliferation of slums", the Haryana government said preferences to local candidates will be "socially, economically and environmentally desirable". The bill also appoints a "designated officer" to act as a representative of the government who will rule on companies invoking the exemption clause citing lack of suitable candidates. According to the bill, this officer may overrule the exemption claim by directing the company concerned to "train local candidates to achieve the desired skill, qualification or proficiency". Under the provisions of this bill, companies must register details of all employees getting gross monthly wages of less than ₹ 50,000 per month. This must be done within three months of the bill becoming law or a fine of between ₹ 25,000 and ₹ 1 lakh may be levied. And, once the bill becomes law, 75% of these jobs must be filled by local candidates. Companies may, however, restrict the employment from any one district to 10%. Contravention of this provision will invite fines between ₹ 50,000 and ₹ 2 lakh. The 75% reservation had been promised by Mr Chautala while campaigning for Assembly elections in October last year. Mr Chautala and his JJP finished third - behind the BJP and Congress - but stitched together a last-gasp alliance with the former to form the government.

In July Mr Chautala spoke to NDTV on the ordinance and said it would only be applicable to companies with more than 10 employees. He said: "This will help residents get employment in the state. This kind of law exists in other states and we need to create employment in Haryana". The JJP chief pointed to automobile major Maruti, which has a manufacturing plant in Manesar near Delhi, and said: "Maruti doesn't even have 20% staff from Haryana". "We want to create employment in the state so that GST is also generated in the state," he added. The Deputy Chief Minister also said that domicile certificates would be mandatory for a candidate to claim these benefits under this scheme.

Be Liberal In Granting Leave To Covid-19 Hit Staff: Karnataka Govt. To Employers

Source: Deccanherald

The Karnataka government requested all public and private sector employers to be liberal in granting leave for staffers infected by the coronavirus and are under home quarantine. Additional Chief Secretary-Labour Department Rajkumar Khatri, in an official note, said the period during which workers affected by Covid-19 are under quarantine should not be considered as unauthorised leave. In case any employee was unable to work due to Covid-19 and does not have leave left in his account, then employers can allow for the transfer of leaves remaining with other employees and to use them as per rules.

The request by the government came following a direction from the Karnataka High Court based on public interest litigation. Employers can grant special holiday in case there was no leave remaining or if the employers are unable to approve leave on their own, it said, adding this can be decided through consultation between employers and the workers. Also, employers can allow an employee to avail in advance the leave that may be applied for in the future, in case he or she has used up all their leave. it added.

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