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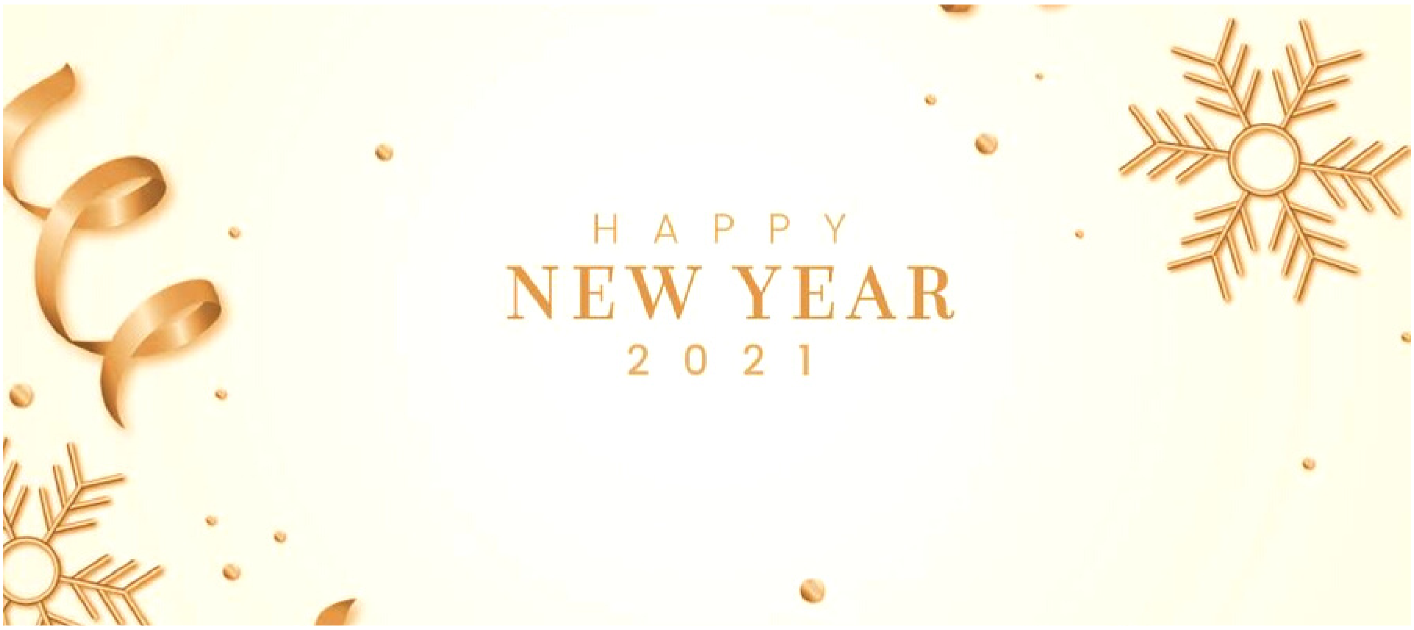

IN THIS ISSUE

UCS POV

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CHIEF OPERATING OFFICER

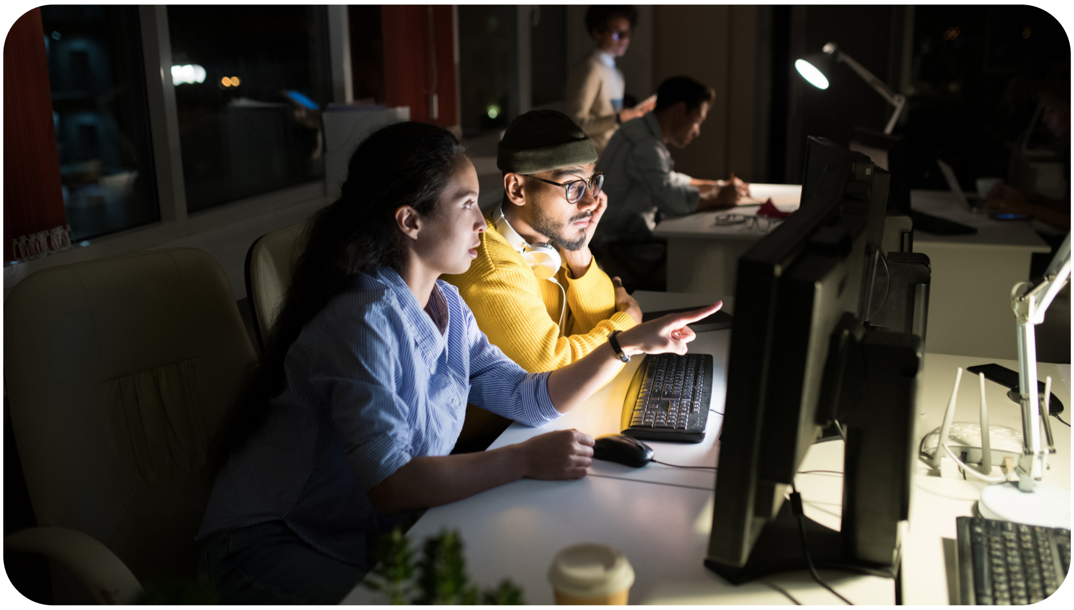
Working hours and Overtime policy

There is an ambiguity concerning the normal working hours for the employees within the industry. The new code proposes daily working of 12 hours and also extending spread over. The daily normal working hours prescribed under the Shops and Establishment Act is 9 hours in a few of the states and 8 hours in many of the states. However, the weekly working hours are limited to 48 hours in all locations. Opinion differs on if the 9 hours of work per day includes interval or it is work excluding interval of rest. Some companies may be following 9 hours of work per day as their weekly hours is limited to 48 hours.

The Code on Wages Rule has clarified the same clause and prescribed the daily working hours as 8 hours and weekly working hours as 48 hours only. The interval timing shall be over and above the normal working hours and one or more interval of rest which is on total shall not exceed one hour. The working day for an employee should be arranged such that, inclusive of intervals of rest it should not spread over more than 12 hours in any day. As both daily and weekly working hours conditions shall be applicable, in case an employee is required to work more than 8 hours in any day (excluding interval) he/she shall be eligible for overtime at the rate of double of the normal wages even if the working hours are limited to 48 hours. Andhra Pradesh and Telangana are the only states that have given a special exemption for IT/ITES companies for a flexi daily working hour and the companies can engage the employee to work beyond normal daily working hours without paying overtime, provided the weekly working hours should be limited to 48 hours.

As per the Code on Occupational Safety, Health and Working Conditions, 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 counted as one hour. Prior consent of workers is required for overtime work. As per the Code on Wages, the definition of 'employee' includes managers and supervisors, hence such managers and supervisors are also eligible for overtime wages in case of any such additional hours of work. Presently many companies are not tracking the daily working hours, especially the IT/ITES companies due to the flexibility in work. Given the said provisions of law, the companies should keep the 'in' and 'out' timings of each employee including the contract employees to ensure overtime wages for all eligible employees and to avoid misuse of the claim of overtime wages. Especially for the office service contract employees who are required to hand and take over duties after their respective shifts may take additional time after completing their duties. Therefore, the company should ensure that such additional time taken should be less than 15 minutes to avoid overtime wages as a fraction of an hour between 15 to 30 minutes shall be counted as 30 minutes of overtime.

Considering the various provisions for working hours and overtime included in the new Labour codes and also with many litigations about overtime work, our advice is that the companies should frame an overtime policy.



Labour Reform Proposals Will Contribute to India's Self-Reliance

Source: Financial Express

Labour and employment minister Santosh Gangwar recently said labour reform proposals will strike a balance between the interest of both the employers and the employees and will contribute to India's self-reliance. While proposals such as universalisation of minimum wages and social security coverage would benefit workers; the reduction of compliance burden by way of simplification of labour codes will ensure the ease of doing business.

"The labour ministry with an intention to simplify the labour codes has decided to eliminate multiple registration requirements. So now, instead of registrations under eight different acts, only one registration would be sufficient. Also, instead of three licenses under various laws, only one license would be enough," the minister said at an ASSOCHAM event. To lighten the burden of the business units, several permissions, licenses and approvals would be provided with the 'deemed approval' facility. In addition, a simple and transparent dispute settlement system has also been established through the Industrial Relations code, he said. "We believe that through these measures, while there would a marked improvement in the ease of living for the workforce, it would also encourage a lot of new businesses to flourish," Gangwar added. Speaking about the fixed-term employment, he said that the government would ensure that they get all the facilities and benefits that a regular employee enjoys.

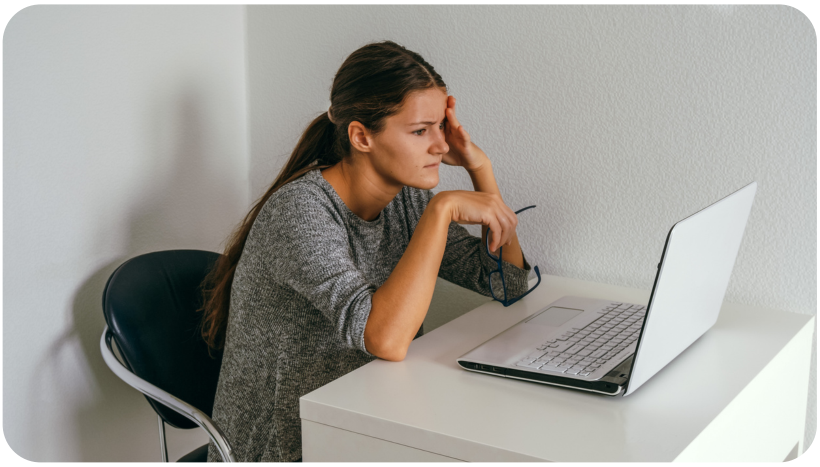
The minister said employees' provident fund organisation (EPFO) has settled more than 52 lakh Covid-19 advance claims and disbursed Rs 13,300 crore to help out the formal sector workers. To ameliorate the hardships faced by formal sector employees, the labour ministry provided the option of non-refundable advances to EPF members not exceeding the basic wages and dearness allowances for three months or up to 75% of the amount in the members' EPF account, whichever is less.

Your Take-Home Salary May Reduce from April Next Year

Source: NDTV

Your take-home salary might come down from the next financial year. This is because companies are set to restructure their employees' salary packages to align them with new wage rules proposed by the government. According to the draft rules, part of the Code on Wages 2019, the allowances component of an employee's gross pay or total cost to company (CTC) cannot exceed 50% of the total compensation. The basic salary has to be 50% of the total pay. Simply put, employers will have to allocate 50% of an employees' gross pay to the basic salary. Currently, most private companies prefer to set the non-allowances part of total compensation as less than 50% of an employee's CTC, keeping a higher portion for allowances. The new rules, which are set to come into force on April 1, 2021, also mention a consequent increase in gratuity as well as provident fund (PF) contributions.

Financial experts, however, say the new measures will help in improving the social security and retirement-related benefits for the salaried. "Though the new wage code will give more social security to the employees at the time of retirement by way of an increased corpus of gratuity and provident fund, it will reduce the monthly net take-home salary because as proposed 50% of total salary to be considered for contributions to retirement funds," Gopal Bohra, a partner in Mumbai-based professional services firm NA Shah Associates, told NDTV. A higher allocation for retirement planning will translate into a proportional reduction in the employee's take-home salary, also known as "in-hand" salary. The Code on Wages aimed at consolidating and simplifying several old labour laws was approved by Parliament last year. The final rules will be notified by the government after considering public comments.



ESIC Relaxes Norms for Availing Health Services in Private Hospitals in Emergency Cases

Source: www.livemint.com

The Employees' State Insurance Corporation (ESIC) allowed its beneficiaries to avail health services directly in any nearby private hospital in case of emergency. As per the existing practice, the insured persons and beneficiaries (family members) are required to go to an ESIC dispensary or hospital to obtain a referral for hospitalisation in empanelled as well as non empanelled private hospitals. "The pre-condition of getting a referral for hospitalisation from the ESIC dispensary or hospital has been done away in emergency cases in the board meeting held recently," S P Tiwari, general secretary, Trade Union Coordination Committee (TUCC), told PTI. Tiwari, who is also on the board of ESIC, said the decision was taken as emergencies like a heart attack or cardiac arrest require immediate hospitalisation. ESIC subscribers would be able to visit empanelled as well as non-empanelled private hospitals for emergency treatment. The only difference is that treatment will be cash-less in the empanelled private hospitals. There would be reimbursement as per Central Government Health Services (CGHS) rates in non-empanelled private hospitals.

Subscribers are allowed to get health services in non-empanelled private hospitals in case there is no ESIC or empanelled private hospital within 10 km range. Tiwari added it was also decided that ESIC would run its upcoming hospitals itself to maintain the quality of health services for its subscribers and beneficiaries and it would not hand over the facilities to states to run them. ESIC has around 26 under-construction hospitals and 16 at the conceptual stage. The states run 110 hospitals for which the ESIC pays service charges. They would continue services as per the existing arrangement. Tiwari further said the board also approved a proposal to extend till June 30, 2021, the timeline for availing unemployment benefit under the Atal Bimit Vyakti Kalyan Yojana run by ESIC. The existing deadline was December 31, 2020. Earlier in August this year, the board had relaxed norms to double payment of unemployment benefit under the scheme to 50% of average wages of three months to help those who lost their jobs from March 24 onwards because of the COVID-19 pandemic. Now, all those ESIC subscribers who lost jobs during the pandemic would be able to avail the benefit till June 30, 2021.

EPFO Likely to Credit 8.5% Interest on EPF for 2019-20 By December In One Go

Source: Business Standard

Retirement fund body EPFO is likely to credit 8.5% rate of interest for 2019-20 in the employees' provident fund (EPF) accounts of around six crore subscribers in one go by the end of December. Earlier in September this year, the Employees Provident Fund Organisation had decided to split 8.5% interest into two instalments of 8.15% and 0.35% in its trustees meet headed by Labour Minister Santosh Gangwar. A highly placed source told PTI that the Labour Ministry has sent a proposal to the Finance Ministry to give concurrence to credit 8.5% rate of interest on EPF for 2019-20 earlier this month. "The Ministry of Finance ratification is likely in a few days. Thus, the interest is likely to be credited by this month only." The source further said that earlier the Ministry of Finance had sought some clarifications on the rate of interest for the last fiscal, which were duly addressed.

In March this year, the EPFO's apex decision making body Central Board of Trustees headed by Labour Minister Santosh Gangwar had approved 8.5% interest rate on EPF for 2019-20. In a virtual CBT meeting in September, the EPFO had decided to honour its commitment to provide 8.5% rate of interest for the last fiscal. But the CBT had also decided to split the rate of interest into two instalments of 8.15% and 0.35% in view of the pandemic. The labour ministry had then explained that "in view of exceptional circumstances arising out of COVID-19, the agenda regarding interest rate was reviewed by the CBT and it recommended the same rate of 8.50% to the Central Government.

"It (8.5% interest) would comprise of 8.15% from debt income and balance 0.35% (capital gain) from the sale of ETFs (exchange-traded funds) subject to their redemption by 31st December 2020," it had said. The CBT had recommended accounting such capital gains (from the sale of ETFs) in the income of the financial year 2019-20 as being an exceptional case. As planned earlier, the EPFO had to provide 8.15% interest on EPF soon after seeking Ministry of Finance nod. It has planned to credit the remaining 0.35% rate by December 31, after proposed liquidation of ETFs. The EPFO had earlier planned to liquidate some of its investment in ETFs to provide 8.5% interest for the last fiscal. However, it could not do so because of the choppy market conditions amid the lockdown, induced by COVID-19. The source also told that since the market conditions are more than favourable as benchmark indices are at a record high, there should not be an issue to credit the entire 8.5% in one go.

Punjab To Amend Contract Labour Rules to Avail Addl 2% Borrowing

Source: Times of India

To improve ease of doing business in the state and fulfil one of the conditions imposed by the Centre for obtaining additional borrowing of 2% of GSDP, the state cabinet approved an amendment to Punjab Contract Labour (Regulation & Abolition) Rules,1973.

The new Rule 78A will allow industrialists to maintain different prescribed registers in electronic or digital formats to reduce their compliance burden, in line with the demand of industries to this effect. It is expected to encourage digitalisation of records, to help ensure transparency and easy access (to records), thereby not only complying with the requirements of Union government but also enabling the state to attract huge investments by ensuring congenial investment climate. Instructions relating to additional borrowing of 2% of GSDP were received from the finance ministry (department of expenditure) on May 17, 2020, in which certain conditions were imposed for obtaining additional 2% borrowing. One of the conditions was to have automatic renewals under the Labour Laws. At present, there is no provision of auto renewal of licence under the Punjab Contract Labour (Regulation & Abolition) Rules, 1973. Hence, there was a need to amend the aforementioned rules to facilitate the industries with the provision of auto-renewal.

Labour Ministry Notifies Provisions Regarding Advisory Board for Wages Code

Source: www.thehindubusinessline.com

The Labour Ministry has notified provisions related to the constitution of an advisory board for the Code on Wages, 2019. The Code on Wages is one of the four labour Acts that are likely to come into effect on April 1 next year. These four codes will subsume all Central laws and are intended to boost ease of doing business in India.

The latest notification covers five subsections of Section 42, two of Section 67 and Section 69. Section 42 prescribes the mechanism for an advisory board. It says the Central government will constitute the Central Advisory Board. It will consist of persons to be nominated by the Central government representing employers and employees, independent persons, and five representatives of such State governments as may be nominated by the Central government. Here, one-third of the members will be women and a member will be appointed by the Central government as the chairperson of the board.

Board's duties: The Central Advisory Board will, from time to time, advise the Centre on issues relating to the fixation or revision of minimum wages and other related matters. Also, it will suggest ways to increase employment opportunities for women and the extent to which women may be employed in such establishments or employments as the Central Government may, by notification, specify. The law says the Central Advisory Board will regulate its procedures including those of the committees and sub-committees. Sub-sections of Section 67 deal with rules and regulations and terms of the members of the board. Section 69 of the Code says the Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Payment of Bonus Act, 1965 and the Equal Remuneration Act, 1976 are being repealed. In July, the Centre released the draft of rules for the Code. One of the key provisions talks about the fixing of minimum wages. According to the draft, for calculating the minimum rate of wages on a day basis, six criteria can be used: a standard family of four (self, spouse and two children), net intake of 2,700 calories per day per consumption unit, 66 metres cloth per year per standard working-class family, housing rent expenditure to constitute 10% of food and clothing expenditure, fuel, electricity and other miscellaneous items of expenditure to constitute 20% of the minimum wage, and expenditure for children's education, medical requirement, recreation and expenditure on contingencies to constitute 25% of the minimum wage.

Draft rule proposals: The draft proposed to divide geographical areas into three categories: metropolitan, non-metropolitan and rural. There is a proposal to form a technical committee to suggest, modify, add or delete particular occupations in the tentative list of four categories: unskilled, semi-skilled, skilled and highly skilled. The draft included 123 occupations under unskilled category comprising loader/unloader, wood-cutter, office-boy, cleaner, gateman, sweeper, attendants, beldar etc. The semi-skilled category has 127 types of occupation which include butler/cook, khalasi, masalchi, dhobi and jamadar. The skilled category has 320 types of occupations including munshi, typist, bookkeeper, librarian, Hindi translator and data entry operator. The highly skilled category has 111 types of occupations, including armed security guards, head mechanics, compounder and blacksmith.

Gratuity Can Be Withheld for Recovery of Dues: SC

Source: Hindustan Times

The gratuity money of an employee can be withheld and forfeited for recovery of dues such as overstaying in official accommodation, the Supreme Court has ruled. A bench headed by Justice Sanjay K Kaul held that there is no prohibition against recovering dues including penal rent - the rent with a penalty for overstaying in official accommodation from an employee's gratuity.

"If an employee occupies a quarter beyond the specified period, the penal rent would be the natural consequence and such penal rent can be adjusted against the dues payable, including gratuity," said the bench, which also included justices Dinesh Maheshwari and Hrishikesh Roy. The order, issued last week, settles a disputed point of law since a two-judge bench of the Supreme Court had previously taken a view to the contrary. A division bench in 2017 ruled unfavourably against confiscating the gratuity of an employee on account of overstaying in official quarters after his retirement. It had ordered the immediate release of his gratuity and held only normal rent, not the penal rent, should be charged for the period he overstayed. However, the three-judge bench, led by justice Kaul, has now held that any reliance on the 2017 order is "misplaced" since it is not even a judgment but just an order on the given facts of that case. It clarified that the 2017 order cannot be treated as a precedent.

In doing so, the larger bench also cited a 2005 judgment of the top court when it upheld recovery of the penal rent from an employee for unauthorised occupation of the accommodation provided to him by the employer. In this judgment, although the court acknowledged that pensionary benefit such as gratuity is not a "bounty", it had held that recoveries of dues can be made from gratuity without the consent of the employee concerned. The latest case had arisen out of an order by the Jharkhand high court, which snubbed an attempt by the Steel Authority of India Ltd (SAIL) to recover penal rent amounting to Rs 1.95 lakh from an employee, who did not clear his dues and overstayed in the official accommodation in Bokaro after his retirement in 2016.

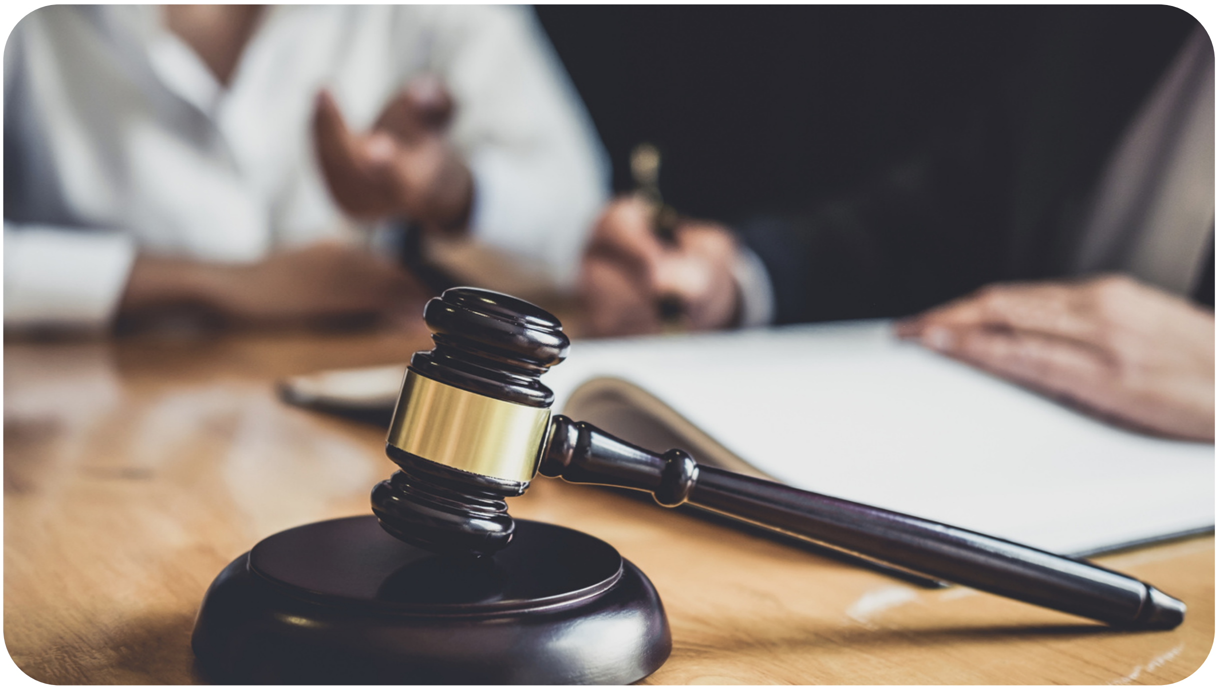
The high court relied upon the 2017 order of the top court and said that the SAIL must release the employee's gratuity immediately. However, it allowed the SAIL to raise demand for normal rent. The Supreme Court has now set aside the part of the high court order that held that the SAIL could not recover the dues from the gratuity amount. However, it did not interfere with the monetary aspect of the order, noting that a small amount is involved and that the SAIL's residential scheme has also undergone a change in recent years.

Chennai Labour Court Sets Aside Dismissal of Employee by TCS

Source: Times of India

A City labour court has set aside the dismissal of an experienced IT professional, who was with major IT firm- Tata Consultancy Services (TCS) for more than two decades and directed the company to reinstate the staff and pay 50 % back wages. The employee, a resident of Velachery moved the labour court against the termination stating that she was dismissed despite her stating that she could not report to work due to health reasons. According to her petition, she joined the company in 1995 as an associate consultant and rendered service for more than 22 years. She stated that she fell ill in May 2017 and communicated about her illness to the Human Resources team, first over the phone and then also submitted her medical records. However, she was dismissed from employment through a communication dated June 2, 2017, without accepting her valid explanations on health grounds, the petitioner stated. Her counsel submitted that she was dismissed without following the provisions of the Industrial Disputes Act.

In response, the company submitted that the employee could not be allocated to any project owing to her inability to upgrade subject knowledge and requisite skill sets. She remained unallocated for 727 days from March 7, 2015, until the date of discharge from her services, the company's counsel submitted and argued that the employee availed salary benefits, without having worked for over two years. After perusing the submissions from either side, N Venkatavaradhan, presiding officer, Additional Labour court observed that there is no evidence to the allegations by the company that the petitioner has not improved her standards as required by the management. "Therefore, this court can see that it is a tactic adopted by the management to find reasons for termination," the court said and directed the management to reinstate the petitioner within three months and pay 50 % back wages and other benefits from the date of termination. TCS did not respond to queries if the management will be appealing against the labour court order in a higher court.



ESI Apr to Sep 2020 Contribution Timeline Extended Till 15th Jan 2021

Source: www.esic.in

On 1st Jan 2021 ESI Corporation has issued a one-time relaxation order for Apr 2020 to Sep 2020 ESI half-year period extending the contribution timeline & Return of Contribution till 15th Jan 2021. If the establishments have any ESI contributions pending ONLY for this Apr to Sep 2020 half-year period to make the remittance accordingly.

Labour Ministry Formalises Work from Home for Services Sector

Source: www.business-journal.in

The labour ministry has formalised work from home for the services sector while leaving it for the employers in the IT sector to mutually decide the work hours for its employees. Besides, to safeguard the IT industry, the ministry has prescribed involvement in unauthorized access of any IT system, the computer network of the employer, customer or client as a misconduct under the separate model standing orders for services sector prepared by the government for the first time.

“Pursuant to section 29 of the Industrial Relations Code, 2020, the Central Government has published the draft model standing orders for the manufacturing sector, mining sector and service sector,” the labour ministry said. “Keeping in view the needs of the services sector, a separate model standing orders for the services sector has been prepared for the first time,” it said. According to the draft standing orders, uniformity has been maintained in all the three model standing orders while providing some flexibility considering the sector-specific requirements. The government has put up the standing orders for public comments over the next thirty days. Besides, rail travel facilities have been extended to workers in the mining sector. Presently, it is being availed by the workers in coal mines only. Further, the draft standing orders have defined “habitual” with respect to indiscipline if the worker is found guilty of any misconduct three or more times in the preceding twelve months. “These model standing orders will pave the way for industrial harmony in the country as it aims to formalize the service-related matters in an amicable manner,” the labour ministry said in its standing orders dated January 1, 2021. The Industrial Relations Code is one of the four labour codes for which the labour ministry is finalising the rules. The plan is to implement all the four codes, which amalgamates 29 labour laws, from April 1, 2021. The other three codes are the Code on Social Security, the Wage Code and the Code on Occupational Safety, Health and Working Conditions.

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