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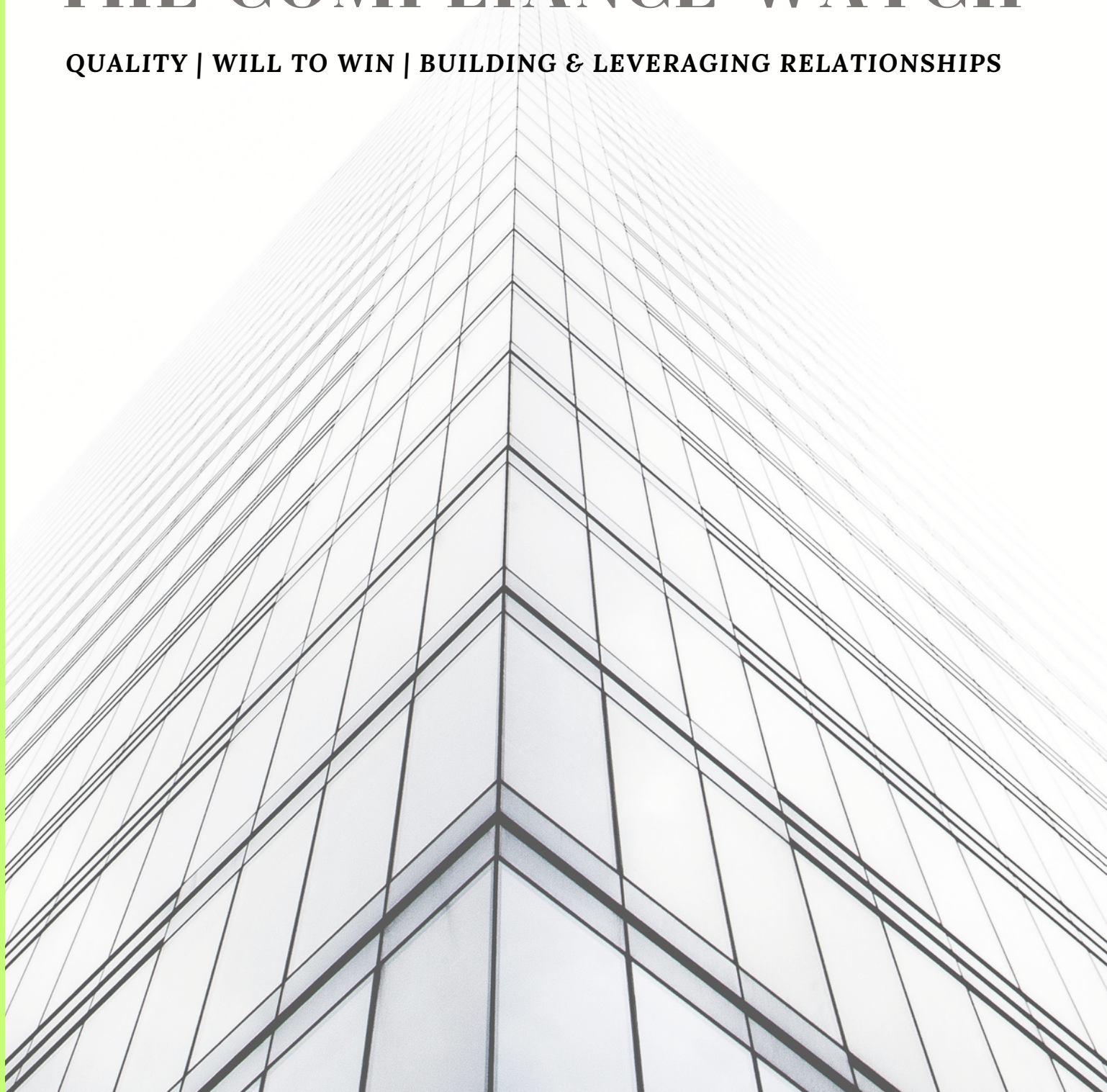
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# THE COMPLIANCE WATCH

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### 'Moonlighting'

The pandemic ushered in a 'new-normal', the 'Work from Home' culture. This was adopted on a large scale to ensure work continued with minimal disruption. However, as the pandemic seems to be settling down, it has come to the notice of many IT companies that some employees have been 'Moonlighting'. Moonlighting means an employee has a second job, in addition to one's regular employment. During the pandemic, many tech professionals with full-time jobs have taken on side employments which has posed challenges for their primary employers.

A few such concerns are:

- It is a breach of employment terms and conditions where employees may be specifically prohibited from taking up side jobs.
- Negative impact on the employee's productivity, which was also observed by the courts in the country.
- There is no centralised database for an employer to verify such cases of dual or multiple employment.

Some suggestions to address this issue are:

- Companies could verify the UAN Service History of employees on a regular basis in the Employer PF login to mitigate this risk. When the UAN mapping is completed, the service history of the new joiners or existing employees will be visible in the Employer Login (provided the employee was part of PF membership in the prior establishment). However, there is no bulk download option available. Individual employee-wise previous employment history can be downloaded and verified with the employee's resume. Since the report is instantly available, it may be more effective than the conventional Back Ground Verification report on this parameter.
- Based on the nature of business, companies can create a policy adopting or refraining employees from taking up multiple jobs.
- The Government is also working towards implementing a law on Work from Home and other service conditions.
- Some companies have resorted to have their employees resume working from office locations.

## Revision of Minimum Wages

Section 3(1) (b) of the Minimum Wages Act, 1948 mandates the Central Government and the State Governments to review the minimum rates of wages so fixed in the Scheduled employments in their respective jurisdiction at intervals not exceeding five years and revise the minimum rates, if necessary. The minimum rates of wages in the Scheduled employments in the Central sphere were revised in 2017. Further, to take care of the rising prices, the Central Government revises the Variable Dearness Allowance (V.D.A) on basic rates of minimum wages every six months effective from 1st April and 1st October every year based on the Consumer Price Index for Industrial Workers. V.D.A. was last revised w.e.f. 01.10.2021. A statement showing an increase in the rates of wages since revision in 2017 on account of increasing V.D.A payable to the employees engaged in the scheduled employments in the Central Sphere is available in the given link <https://bit.ly/3wxL9nv>.

The Government is not only committed to periodic review and revision of the minimum rates of wages but also to extending its coverage across employments and providing for floor wage. Accordingly, the provisions of the Minimum Wages Act, 1948, have been rationalized and amalgamated in the Code on Wages Act, 2019, as passed by the Parliament and notified on 08.08.2019. The Code on Wages, 2019, provides for universal minimum wage and floor wage across employments in organized and unorganized sector and the existing provision,



under the Minimum Wages Act, 1948 to restrict the applicability of minimum wages to Scheduled employments, has been dispensed with under the Code. The Code mandates the Central Government to fix floor wage applicable across the Central and the State sphere. The Code stipulates that the minimum rates of wages fixed by the appropriate Government shall not be less than the floor wage. The said provisions of the Code on Wages, 2019, have not come into force. This information was given by Shri Rameswar Teli, Minister of State, Ministry of Labour & Employment in Rajya Sabha.

*Source: Press Information Bureau*

## Employers Having 10 Or More Employees Must Have Committee to Probe Sexual Harassment Complaints: Labour Minister Informs Lok Sabha

Every employer and organisation, whether in the public or private sector, employing 10 or more people must set up an internal committee for receiving complaints of sexual harassment, the Lok Sabha was informed recently. Union Labour Minister Bhupender Yadav said the government has enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 to provide a safe and secure work environment to women irrespective of their work status.

"The Act casts an obligation upon every employer and organisation whether in private or public sector employing 10 or more persons, to constitute an internal committee for receiving complaints of sexual harassment," he said during the Question Hour. Similarly, Yadav said, the state government is authorised to constitute a local committee in every district which will receive complaints from organisations having less than 10 workers or if the complaint is against the employers.

The minister said the central government has enacted the Factories Act, 1948 which provides for the occupational safety, health and welfare of workers, including women workers, working in factories registered under the said Act. He said the specific provisions have been prescribed for the occupational safety of the workers at the workplace, including garment factories, under Chapter IV of the Factories Act, 1948. The Factories Act, 1948 and rules framed thereunder are enforced by the respective state governments through the Chief Inspector of Factories and Directorate of Industrial Safety and Health, he said.

Source: [www.cnbctv18.com](http://www.cnbctv18.com)

## Provident Fund Rate Cut To 4-Decade Low, Minister Cites Market Situation

Employees' provident fund interest rate for 2021-22 has been slashed from the existing 8.5 % to 8.1 % for 2021-22. This is the lowest rate since 1977-78 when it was 8%, labour ministry sources said. There are around five crore subscribers of employees' provident fund organisations (EPFO). The decision was taken during the meeting of the EPFO's central board of trustees, which was held in Guwahati. Labour minister Bhupender Yadav while elaborating on the board's decision said that the interest rate was finalised after keeping in mind the prevailing international conditions and the market situation.



"We made the recommendation of 8.1 % interest rate after reviewing the prevailing market situation as well as the international scenario. Also, we cannot take high-risk instruments as we have to keep social security and market stability in mind, and therefore the decision was taken," Mr Yadav said after the board's meeting. The board's recommendation will be sent to the finance ministry soon. The interest rate was 8.5 per cent in 2020-21.

Once the finance ministry ratifies the board's decision, EPFO will direct its field offices to credit the interest income calculated at the new rate of 8.1 % for 2021-22 in the subscribers' accounts. In March 2020, EPFO had lowered the interest rate on provident fund deposits to a seven-year low of 8.5 % for 2019-20, from 8.65 % provided for 2018-19. The EPF interest rate provided for 2019-20 was the lowest since 2012-13 when it was brought down to 8.5%.

Source: [NDTV](http://NDTV)

## Minimum Pension Under EPS Must Be Enhanced: Standing Committee on Labour

The standing committee on labour has suggested that the labour ministry persuade the finance ministry for enhancing the minimum pension to Rs 2000 per month as against Rs 1000 under the Employees' Pension Scheme, 1995 as the current minimum pension appears grossly inadequate. The committee has also suggested that the Employees Provident Fund Organisation (EPFO) take up an actuarial assessment of all its pension schemes so that the monthly member pension is enhanced to a reasonable extent.

"In view of the fact that Rs 1000 per month pension which was fixed eight years back appears to be grossly inadequate now, it becomes imperative on the part of the ministry of labour & employment to pursue the matter with the ministry of finance for obtaining adequate budgetary support as recommended by the high-empowered monitoring committee," Bhatruhari Mahtab, chairperson of the standing committee on labour, said in its report tabled in Parliament.



The centre contributes Rs 750 crore to Rs 1000 crore every year to EPFO towards the monthly minimum pension of Rs 1000. It is estimated that 3.2 million pensioners benefit from the minimum pension scheme. “Besides, EPFO needs to make an actuarial assessment of all its pension schemes so that the monthly member pension is enhanced to a reasonable extent,” it added. The labour ministry had in 2018 constituted a high-empowered monitoring committee for complete evaluation and review of the Employees’ Pension Scheme, 1995. The committee in its report had recommended that the minimum monthly pension payable to the pensioner may be raised to at least Rs 2000 per month provided annual budgetary provision for the same is made. However, the ministry of finance has not agreed to any such enhancement in minimum pension beyond Rs 1000 per month, it said.

*Source: Economic Times*

## Gujarat HC: Service Rendered Prior To Regularization Shall Be Considered While Conferring Pensionary Benefits

The Gujarat High Court with respect to Section 25B of Industrial Disputes Act, 1947 stated that while Awarding Pensionary Benefits, the entire Service rendered even before the Benefit of Regular Pay-Scale Awarded shall be considered. A Special Civil Application under Article 226 of the Constitution was heard by Justice Biren Vaishnav.

The Petitioner sought to direct the Respondent Authorities to consider him as Permanent Workman and clear Arrears of Monthly Wages, Revision of Pay-Scale Benefits of 6th and 7th Pay Commission along with Simple Interest of 12% per annum.

In December 1979, the Petitioner was employed as Daily Wager. The Industrial Tribunal Order passed in November 2021 directed that the Petitioner along with 20 Workmen be treated as Permanent and be paid all Benefits. However, this was challenged before the High Court. The Petitioner contended that though he Rendered 40 years of Service, he was not paid Pensionary Benefits. He was also not included in Benefits for General Provident Fund where his Co-Worker was a Beneficiary. He brought to the Notice of Court the statements of 21 Workers who were granted Benefits vide an Order of August 2013.

The Respondent argued that the Petitioner was granted Benefit of 6th and 7th Pay Commission. He was also granted Benefits like Medical Allowance, House Rent Allowance, etc. The Petitioner had completed 5 years’ Service in 2005 and 10 years in 2010 based on Rendering Service for 240 days in a year. However, there was evidence that the Petitioner failed to work for 240 days a year in the years preceding 2001. Thus, his Service fell short of the minimum number of years required. He was duly Paid the Gratuity of Rs 2,44,608 for 9 Years.



The Bench relied on *Tribhovanbhai Jerambhai Vs. Dy Executive Engineer, Sub-Division, R&B Deptt & Anr (1998)* and other Cases.

Justice Vaishnav quoted, “It may be the Benefits of regular Services such as Regular PayScale, Leave, Gratuity and Pensionary Benefits may be available only after regularization of an Employee. However, this does not mean that his past continuous Service would be wiped out for the purpose of Pensionary Benefits.”

The Court opined that the Petitioner’s Case deserved consideration. It allowed the Petition and directed that the Petitioner be paid Pension, Gratuity and other Monetary Benefits from December 14, 1979 (Date of Employment).

Source: [www.lawinsider.in](http://www.lawinsider.in)

## Labour Ministry Launches ‘Donate A Pension’ Scheme

The Union Labour and Employment Ministry launched the “donate a pension” scheme allowing any citizen to pay the premium amount on behalf of an unorganised worker under the Pradhan Mantri Shram Yogi Maandhan Scheme. The pension scheme, which was launched in 2019, allows unorganised sector workers between 18 and 40 years who earn up to ₹15,000 a month to enroll by paying a premium amount between ₹55 and ₹200, depending on the age, that would be matched by the government. On reaching the age of 60, the beneficiaries would get a ₹3,000 monthly pension. As of March 3, the scheme had 46.34 lakh enrollments, according to the Labour Ministry’s portal.



Immediate support staff: Launching the scheme, Labour Minister Bhupender Yadav said he had paid the premium of the gardener who worked at his home. The scheme allows a citizen to “donate the premium contribution of their immediate support staff such as domestic workers, drivers, helpers, caregivers, nurses in their household or establishment,” the Ministry said in a statement. The donor can contribute a minimum of one year, with the amount ranging from ₹660 to ₹2,400 a year depending on the age of the beneficiary, by paying through [maandhan.in](http://maandhan.in) or visiting a Common Service Centre.

Source: [The Hindu](http://TheHindu)

## Employee Can be Granted WFH After Maternity Leave Only if Nature of Work Allows: Karnataka HC

The Karnataka High Court recently held that work from home benefit can be granted to a woman employee after exhausting maternity leave only if the nature of the work assigned to the employee makes it possible to do her official job from home. The court held the same while denying relief of childcare leave to a woman employee at the Semiconductor Technology and Applied Research Centre (STARC), a unit under the Defence Research and Development Organisation (DRDO). The court was hearing a case where the petitioner had been working in the said position as a Senior Executive Engineer at the said centre for eight years, reported Bar and Bench.

In August 2020, the petitioner delivered a baby girl and availed of maternity leave until February after which she used personal leave until April 2021. She contended that during the second wave of the Covid pandemic, she along with other employees were given the benefit to work from home. She then approached the court, seeking sanction for childcare leave, regularisation of her salary and release of her withheld salary.

"Though reference is made to Section 5(5) of the (Maternity Benefits Act), Act, 1961, it is evident from the said provision that maternity benefits such as work from home after availing the maternity benefit could be given only in the case where the nature of work assigned to the women is such that it is possible for her to work from home. The employees working with the fourth respondent organisation are involved in research work which is both sensitive as well as complicated. Sensitive, like the work done, in the sense that the research is for the benefit of the Government of India which uses the facility in the defence fields and the research work will not be divulged to the public. This itself would prove that the nature of the work assigned to the petitioner cannot be carried on from home," the report quoted the court as saying.

The court, however, noted that creche facilities would be made available for the employee in the adjacent premises, adding that the respondent organisation should consider her representation for regularisation with sympathy. The organisation said that when the petitioner did not join duty after her sanctioned leave was exhausted, a communication was sent to her which stated that she was staying away from work without leave, and the same would be treated as an unauthorised absence. The organisation said it was also mentioned that she would not be entitled to a salary for that period and was informed that disciplinary action would be initiated. The petitioner responded by highlighting the benefits required to be provided under the Maternity Benefits Act, and two official memoranda issued by the Ministry of Personnel, which provides for the grant of childcare leave to women employees with children below the age of 18. The petitioner then approached the Central Administrative Tribunal in Bengaluru seeking similar relief. STARC sent her another communication noting that her application had been withdrawn, and asked her to join her duties immediately and regularise the absence from May 2021, the report said.

Source: News18

## Govt. Eases Apprenticeship Rules for India Inc

The government has simplified half-a-dozen procedures for India Inc to incentivise them to take on apprenticeship training in a big way, a move aimed at doubling the number of apprentices in India from nearly 0.5 million now to 1.0 million by the end of 2022. Some of the big-ticket changes include doing away with a stipend payment proof from the industry if the payment is made to the candidate through a payment gateway, a senior government official told ET. Besides, the clause for holding back the stipend paid to the industry in the last quarter until a candidate appears for assessment has also been removed, enabling a seamless flow of funds to the industry to undertake apprenticeship training.

Further, establishments with businesses in four or more states will no longer have to register at multiple locations and stipend support will be given to the industry during the basic training period too. The government reimburses up to Rs 7,500 per apprentice to industry and a 25% or a maximum of Rs 1,500 as a stipend for each candidate per month under the National Apprenticeship Promotion Scheme. India's current apprenticeship scheme allows 2.5-15% of the organizations' total workforce to be apprentices and firms with 30 or more employees need to mandatorily hire apprentices. The renewed focus on apprenticeship has come after the government fell short of its target of training five million apprentices in the country under the National Apprenticeship Promotion Scheme launched in 2016. The target was set for a period of five years. Even at 0.47 million, the number of apprentices in India is minuscule compared to 3 million in Germany, 10 million in Japan and 20 million in China.

The government is of the view that the executive orders issued over the years have resulted in creating roadblocks for various processes namely stipend reimbursement, conducting exams, etc and has become a hindrance in the career progression of apprentices while hampering the growth of apprenticeship training in the country.

Source: Economic Times



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