

# THE COMPLIANCE WATCH

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## In This Issue

- **UCS POV : Ensuring Compliances for Work From Home Employees**
- **Work from home allowed for maximum one year in special economic zone: Commerce ministry**
- **Centre holds more consultations on Labour Codes to build consensus**
- **Tax Rule Change On PF (Provident Fund)**
- **EPF Salary Limit Increased: Salary limit will increase from 15000 to 21000, know details**
- **ESIC run social security scheme adds whopping 14.93 lakh new members in May 2022.**
- **EPFO May Take Decision On Offloading Equity In August; What PF Subscribers Must Know**
- **Delhi HC : S.5 Limitation would apply to Condoning of Delay In Filing Appeal U/S 18 Of POSH Act**
- **Contractual staff can't be permanent employees, says Karnataka health minister amid protests**
- **Certified Standing Orders Will Prevail Over Mutual Settlement Regarding Retirement Age: Karnataka High Court**

## Ensuring Compliances for Work From Home Employees

The pandemic has ushered the Work From Home (WFH) culture. As per multiple survey reports, the pandemic pushed employers to explore and adopt new strategies to stay in business. These surveys reveal that post Covid-19 relaxations, many IT/ITES companies continue with the WFH policy. In November 2021, a Grant Thornton survey observed that a WFH environment brings challenges related to employee engagement, governance, compliances and the like. This is probably the reason most companies have resumed their operations physically in partial capacity while still many have opted for a hybrid mode.

Considering various provisions given under labour laws and upcoming labour codes, there may be various practical challenges to allowing employees to permanently work from home. Monitoring their working hours, claims for overtime wages, ensuring crèche facility, tracking attendance, leaves and so forth of employees is challenging. In addition to this is the risk of non-compliance under various statutes and security of company data. Apart from the impact on employee cost, the new labour codes, when implemented, will affect HR policies, processes and other relevant compliances while adapting to the possibility for employees to work permanently from home or remotely.

The Central Government issued a draft notification in December 2020 under Model Standing Order and has asked respective state governments to frame the draft for a WFH policy. However, states are yet to frame it. The draft suggests to include the additional cost of electricity, and other expenses, among the benefits to be extended to those employees who are working from home. As per The Occupational Safety, Health and Working Conditions Code, 2020, the employer may have to extend the crèche provisions for eligible employees who work remotely. These requirements lead to additional costs for employers apart from some administrative challenges mentioned above while allowing the employees to work from home.

Many companies frequently ask questions about the requirement of tagging remote working employees to an office location. As per labour laws definition of an 'Establishment' or 'Industrial Establishment' includes a building or an office, and the definition of an 'Employee' means a person engaged by the company to work or conduct business related to the 'Establishment', which mandates employee tagging. Furthermore, many statutory compliances are state-specific and such compliances can be followed only on the basis of an office which is situated in a particular state. Listing below a few compliance requirements which vary as per state:

1. Professional Tax (PT) needs to be deducted from employees as per rates prescribed by respective state/corporation/panchayat depending on office location. Therefore, unless employees are tagged to an office location, the PT contribution cannot be determined and remitted.
2. Labour Welfare Fund (LWF) contribution for employees is determined state-wise and employees are required to be tagged to a particular office.
3. The applicability of minimum wages, leaves, holidays, appropriate government authorities for employee's grievances and compliances etc. are on the basis of the location of the establishment.



There are many other employee statutory compliances which can only be maintained based on the physical office of the establishment. Hence, employees who are working remotely or working from home must be tagged to one of the establishment's offices. In the absence of a government prescribed policy or provision of laws regarding remote working, WFH or virtual work environment can give rise to challenges related to employee engagement, governance, statutory compliances, addressing employee grievances and much more. Therefore, it is essential for companies to have an internal process or policies to track hours of work, leaves, and management of statutory compliances for employees who WFH or remotely.

## Work From Home Allowed For Maximum One Year In Special Economic Zone: Commerce Ministry

The commerce ministry said work from home (WFH) is allowed for a maximum period of one year in a special economic zone unit and can be extended to 50 per cent of total employees. The Department of Commerce has notified a new rule 43A for WFH in Special Economic Zones Rules, 2006. The ministry said the notification was issued on demand from the industry to make a provision for a countrywide uniform WFH policy across all Special Economic Zones (SEZs).

The new rule provides work from home for a certain category of employees of a unit in SEZ. These include employees of IT/ITeS SEZ units; employees, who are temporarily incapacitated; employees, who are travelling and who are working offsite, it added.

WFH may be extended to a maximum of 50 per cent of total employees, including contractual employees of the unit, it added. It also said that there is flexibility granted to the Development Commissioner (DC) of SEZs to approve a higher number of employees (more than 50 per cent) for any bonafide reason to be recorded in writing.

"Work From Home is now allowed for a maximum period of one year. However, same may further be extended for a period of one year at a time by the DC on the request of units," the ministry said.

In respect of SEZ units whose employees are already working from home, the notification has provided a transition period of 90 days to seek approval, it added.

"SEZ Units will provide equipment and secured connectivity for the purpose of WFH to perform authorised operations of the units and the permission to take out the equipment is co-terminus with the permission granted to an employee," the ministry said.

Source: *Times Of India*

## Centre Holds More Consultations On Labour Codes To Build Consensus

The Ministry of Labour has initiated fresh discussions over the four Labour Codes with trade unions and employers' federations in order to create greater consensus and understanding about the provisions of the new laws. The Ministry is understood to have concerns about possible public opposition to the new Codes that have brought in various provisions on salary and provident fund payouts, as well as hiring and retrenchment. The concerns come in the backdrop of the opposition and protests against the farm laws, which eventually led to their repeal.



### New Codes

"The new Codes are aimed at helping workers as well as the industry, but if people are not happy with them, then there is no point going ahead. Our objective is to ensure that both employees as well as employers understand the nuances of the codes and its benefits," said a senior government official, adding that more discussions are being planned. While trade unions and employers' federations have time and again raised concerns on some of the provisions, the Ministry is also discussing the possibility of making changes in the Acts through notifications. "The Codes cannot be amended at this stage, but whatever is in the power of States and the Centre to be done through notifications will certainly be kept in mind. We are engaging with them on this issue as well," the official said.

A number of State governments have come on board and finalised their draft rules for the Labour Codes. The Ministry of Labour is also keen on rolling out the Codes in the coming months, possibly before the end of the financial year.

### Concerns on proposals

However, consensus building on the Codes is now a key part of the agenda before the Codes are formally rolled out. A number of concerns have been expressed on proposals to cap basic salary at 50 per cent, which would in turn lead to higher payout for provident fund. Similarly, the proposal permitting firms with up to 300 workers to decide on lay-offs, retrenchment and closure without government permission has also raised hackles. To streamline and modernise the plethora of labour laws, the government had codified them to replace 29 labour laws into four codes including the Code on Wages, Code on Social Security, Occupational Safety, Health and Working Conditions Code and the Industrial Relations Code.

Minister of State for Labour and Employment, Rameshwar Teli, informed the Rajya Sabha that as per available information, 31 States and Union Territories have pre-published the draft rules under the Code on Wages, 2019; 26 on the Industrial Relations Code, 2020; 25 on the Code on Social Security, 2020; and 24 States and UTs on the Occupational Safety, Health and Working Conditions Code, 2020.

Source: *The Hindu*

## Tax Rule Change On PF (Provident Fund)

The Employee Provident Fund (EPF) is among millions of employees' most important financial planning and retirement investment choices. With assured returns and tax benefits, EPF is the go-to investment for most. Under the Exempt, Exempt, Exempt scheme (EEE,) tax exemptions were also available on contributions made to the fund and towards withdrawals from accruals. But the government had brought amendments to the tax benefits available to employers and employees for contributions to the EPF. From April 1, 2022, provident fund accounts have been divided into taxable and non-taxable accounts.



*The government has decided to reduce the tax benefits on PF, in a move to target high-income earners who benefit from the scheme.*



Under Budget 2021, the government has decided to reduce the tax benefits to target high-income earners who benefit from the EEE scheme.

Here are the ten points that you need to know about EPF:

- Any interest on contributions made towards EPF of an employee only remains tax-free for contributions of up to ₹ 2.5 lakh a year.
- Interest on contributions of over ₹ 2.5 lakh is taxed from the employee yearly.
- The contribution threshold is increased to ₹ 5 lakh if an employer is not contributing towards the EPF of an employee.
- Only the excess contribution above the threshold is taxed, not the total contribution itself.
- The excess contributions and interest accrued on it will be maintained in a separate account with the EPFO.
- Employer's contribution to Provident Fund (PF), NPS and superannuation aggregating to a total sum of ₹ 7.5 lakh a year is exempt from taxes.
- Since employers will withhold taxes based on accruals, these details must be filled in Form 16 and Form 12BA.
- Employers must mandatorily provide EPF contributions for employees whose monthly income is up to ₹ 15,000.
- Taxes withheld in such a manner need to be reported by employees as "Income from other sources."
- The EPFO has reduced the interest rate to a four-decade low of 8.1 per cent for FY 2021-22.

Source: *NDTV*

## EPF Salary Limit Increased: Salary Limit Will Increase From 15000 To 21000, Know Details

A high-level committee has proposed to increase the wage ceiling under the Employees' Provident Fund Organization (EPFO) to Rs 21,000 per month from the existing Rs 15,000. However, the committee has said that the government can implement the hike from the back date after considering all the proposals. The proposal, once implemented, will bring an estimated 7.5 lakh additional workers under the purview of the scheme, and will also adjust for the increase in wages as last amended in 2014. A senior government official said, "If this suggestion is accepted by the Central Board of Trustees of EPFO, it will give relief to the employers who are willing to immediately bear any additional financial burden. are reluctant."

The employers in their consultations cited stress on their balance sheets due to the outbreak of the pandemic and sought more time to implement the proposed hike.

This will also be a relief for the exchequer, as the Center currently pays around Rs 6,750 crore every year towards the Employees' Pension Scheme of EPFO. The government contributes 1.16 per cent of the total basic salary of EPFO subscribers for this scheme. Under the existing rules, any company with more than 20 employees must be registered with the EPFO and the EPF scheme is mandatory for all employees with an income of Rs 15,000. By raising the limit to ₹21,000, more employees will be covered under the retirement plan. This will also align the limit with other social security scheme Employees State Insurance Corporation (ESIC) where the limit is ₹ 21,000.

KE Raghunathan, an employer's representative on the EPFO's central board of trustees, said there is a general consensus within the EPFO that the same norms should be followed for providing social security under both EPFO and ESIC. "The difference in norms under both the schemes should not deprive workers of their social security benefits," he said. However, trade unions are apprehensive that the decision may take too long to implement.

Source: *Business League*

## ESIC Run Social Security Scheme Adds Whopping 14.93 Lakh New Members In May 2022

The Employees' State Insurance Corporation (ESIC) run social security scheme reported adding nearly 14.93 lakh new members in its social security scheme in the month of May this year, an official data released recently revealed. As per the latest data, the gross new enrolments with Employees' State Insurance Corporation (ESIC) rose to 1.49 crore in 2021-22, from 1.15 crore in 2020-21, while it was 1.51 crore in 2019-20 and 1.49 crore in 2018-19, news agency PTI report said. Notably, the latest data is part of a report called the Payroll Reporting in India: *An Employment Perspective*, May 2022, which was released by the National Statistical Office (NSO). From September 2017 to March 2018, around 83.35 lakh new subscribers joined the ESIC scheme and the gross new enrolments with ESIC from September 2017 to May 2022 were 6.76 crore, according to the PTI report. The NSO report is based on the payroll data of new subscribers of various social security schemes run by ESIC, the Employees' Provident Fund Organisation (EPFO) and Pension Fund Regulatory and Development Authority (PFRDA), the report further said. Meanwhile, ESIC in June announced its decision that the health insurance scheme by ESI will be implemented throughout the country by the end of 2022.



The ESIC, under the chairmanship of Minister of Labour and Employment Bhupender Yadav, in its 188th meeting held in June said that a significant decision was taken to augment the medical care and service delivery mechanism across the country, a labour ministry statement said. It has been decided that the ESI Scheme will be implemented in the entire country by the end of 2022, it added. The labour ministry statement said by the end of the year, the districts which are partially covered and not covered under the scheme will be fully brought under the ambit of the ESI Scheme.

The medical care services will be provided through establishing new DCBOs (dispensary cum branch offices), by empanelling mIMP (Modified Insurance Medical Practitioner) and tie-up hospitals of Ayushman Bharat Pradhan Mantri Jan Arogya Yojana (PMJAY). Besides, the ESIC has decided to set up 23 new 100-bedded hospitals across the country.

Source : *LiveMint*

## EPFO May Take Decision On Offloading Equity In August; What PF Subscribers Must Know

The Employees' Provident Fund Organisation (EPFO) is likely to take a decision on offloading equity in August, instead of earlier plan to do so in February. It will help the retirement fund body plan liquidation of its equity investments better, according to a media report. The EPFO as of now takes decision to offload equity in February, which leaves the organisation with less than a month to realise the capital gains on the basis of which, it declared the rate of interest on PF deposits for the concluding year, the ET report said quoting a senior government official.

"However, from this year onwards, we will take a decision sometime in August, so that actual offloading can happen over the next six to seven months depending on the stock market conditions," the report said. EPFO follows the 'first in, first out' principle while offloading equity. In this principle, investments made in equity in the first year are offloaded in the fourth year. It helps the money remains invested for a longer duration and gets better returns. The Employees' Provident Fund Organisation started putting in money into equities in 2015-16. It started with 5 per cent in the first year, 10 per cent in the second year and 15 per cent in the subsequent years. The EPFO has cumulatively invested Rs 1.7 lakh crore, out of which over Rs 22,000 crore have been redeemed till March 31, 2022.

According to reports, the EPFO is currently considering a proposal to raise the equity investment limit to 25 per cent, from the existing 15 per cent. Its Finance Investment and Audit Committee has also met to discuss the matter. According to the reports, if the equity investment limit rises to 25 per cent, the EPFO may pump invest Rs 3,000 crore in the stock market every month. The proposal envisages raising the equity exposure to 25 per cent in two phases – to 20 per cent in first phase and 25 per cent in second, according to the reports. The plan is likely to be discussed in the EPFO Central Board of Trustees' (CBT) meeting in the last week of this month. After the finalisation of the proposal at the EPFO, it will be sent to the finance ministry and labour ministry for their approvals.

Last month, the government approved an 8.1 per cent rate of interest on employees' provident fund (EPF) deposits for 2021-22, an over four-decade low for about five crore subscribers of retirement fund body EPFO. Earlier in March this year, the EPFO had decided to lower the interest on provident fund deposits for 2021-22 to 8.1 per cent from 8.5 per cent provided in 2020-21. The 8.1 per cent EPF rate of interest is the lowest since 1977-78, when it stood at 8 per cent. The 8.5 per cent interest rate on EPF deposits for 2020-21 was decided by the Central Board of Trustees (CBT) in March 2021.

Source : News18

## Delhi HC : S. 5 Limitation Would Apply to Condoning of Delay In Filing Appeal U/S 18 Of POSH Act

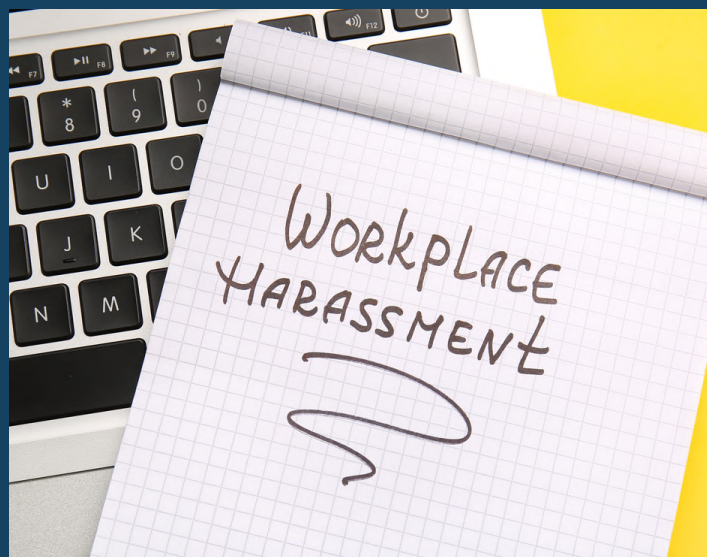
The Delhi High Court has observed that under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act/SHW Act), a victim's delay in filing appeal against the inquiry report can be condoned if such a delay is properly explained.

Justice C Hari Shankar added that sec. 5 of the Limitation Act (which provides for extension of prescribed period in certain cases) would apply in respect of appeals which may be sought to be preferred under sec. 18 of the Sexual Harassment at Workplace Act.

*"It would be completely antithetical and inimical to the very scope and purpose of the SHW Act, if a Court were to refuse to condone a delay of as little as 36 days in an alleged victim of sexual harassment preferring an appeal under Section 18 against the report of the inquiry committee. Such a delay if properly explained should, clearly, not stand in the way of the appeal of the alleged victim of sexual harassment being decided on merits, by the authority competent to do so,"* the Court observed.

The submission of the petitioner company was that since no provision for condonation of delay is to be found in Section 18 of the Act, and as Section 18(2) uses the word "shall", the Tribunal could not have condoned the delay in filing of appeal.

*"Unlike the Central Excise Act, which specifically contemplated and provided for condonation of delay under other provisions, but did not so provide in Section 35-H, there is no provision at all in the SHW Act, providing for condonation of delay. In such circumstances, Hongo India cannot be treated as an authority which proscribes recourse to Section 5 of the Limitation Act, where there is delay in preferring in appeal under Section 18 of the SHW Act,"* the Court observed.



The Court thus agreed with the observations made by the Industrial Tribunal that a victim of sexual harassment remains in a state of trauma and it cannot be expected that she would immediately rush to a Court seeking appellate remedies.

However, the Court added *"Having said that, it is clarified that these observations are only intended to justify the power of condonation of delay, which the learned IT has exercised. They do not, in any manner, amount to an expression of opinion, one way or the other, on the allegations of sexual harassment forming subject matter of proceedings in the present case. They should not, therefore, influence the learned IT in taking a dispassionate view on the appeal filed by the respondent."*

Upholding the impugned order, the Court accordingly dismissed the plea.

Source: *Law Insider*

## Contractual Staff Can't Be Permanent Employees, Says Karnataka Health Minister Amid Protests

Karnataka Health Minister K Sudhakar , said the state government cannot consider *"contractual staff as permanent employees"* amid protests by health workers in Bengaluru. Over 5,000 contractual health workers employed under the National Health Mission (NHM), staged a protest in Bengaluru's Freedom Park, demanding job security, equal pay, extension of the health insurance scheme, paid leave, among others. *"We want the government to implement the Srinivasachari committee report. If at least 70 per cent of our demands including job permanency, transfer among others is implemented, our workers will benefit,"* Shrikanth Swamy, General Secretary of the Karnataka State Health and Medical Education Department Contractual and Outsource Employees' Association (KSHCOEA), said. *"Where should those who have worked for 10-15 years go after their contract expires? We had protested in 2019 as well, for three days. Since then, no one has paid heed to our demands. There are only empty promises,"* he added.

Mahadevi Mistri, who has been a nursing officer for 16 years, said there has been no hike in her salary since she started working as a contractual health worker. *"There has been no hike in my salary. We also have access to no basic amenities. We're working leaving our elderly parents at home. But the government is not showing no interest in addressing our issues."* Terming the demands of the health workers for permanent jobs as *"unreasonable,"* Sudhakar said, *"We cannot consider a contractual staff as a permanent employee. No law will allow us to do it."*



*"This is one of the primary reasons why the government goes for contract staff. NHM is for a stipulated time. That is the only reason why the NHM has been implementing programmes across the country,"* he said. However, the Karnataka health minister said the government will soon revise the compensation of the contract and outsourced workers and assured that it is committed to fulfilling the demands to the extent feasible.

Source : *India Today*

## Certified Standing Orders Will Prevail Over Mutual Settlement Regarding Retirement Age: Karnataka High Court

Karnataka High Court in *Management of M/S Grasim Industries Limited VS The General Secretary Harihar Polyfibers, Employees Union & Ors. W.A No.100250/2021*, while rejecting the, contention of the employer to keep the retirement age of 58 years which was agreed vide mutual settlement between the employer and the union, held that the employer is required to adhere to the retirement age of 60 years fixed for the workmen category of employees as set out in the certified standing orders which was notified subsequent to the amendment made in the Karnataka Industrial Employment (Standing Orders) Rules 1961.

Source : *Business Manager*



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