UNITED CONSULTANCY SERVICES
compliance simplified™

THE COMPLIANCE WATCH

QUALITY | WILL TO WIN | BUILDING & LEVERAGING RELATIONSHIPS

UCS Point of View: Need for Companies to Frame Policies on Moonlighting

Shaiju Mathew
Chief Operating Officer

In our POV of April '22 edition of 'The Compliance Watch', we pointed out on Moonlighting and its related concerns for establishments. The recent layoffs in a prominent company due to Moonlighting has again raised concerns for many companies, especially in the IT sector. The issue of Moonlighting got more attention due to the current arrangement provided to employees to work from home and to work remotely.

'Moonlighting' refers to an additional job or part-time job taken by employees along with an actual employment. In Moonlighting, employees take up additional projects or work without informing their employer as it is easy for such employees who work from home or work remotely. As of date, there is **no provision** prescribed under the Indian labour laws barring dual employment or employees taking any such additional work apart from one's primary employment.

IN THIS ISSUE

Therefore, the Indian employment laws provide no specific provisions dealing with the legality of dual employment apart from employees working in factories. As per Section 60 of the Factory Act 1948, "*no worker shall be allowed to work in any factory on the day on which he has already been working in any other factory*". This is specifically directed for workers engaged in factories and not applicable for employees working in commercial establishments. In fact, EPFO v.2.0 allows employees to contribute PF under different establishments at the same time under the respective establishment's PF registrations. Many e-commerce businesses have framed policies which permit platform workers to Moonlight with any other company to earn extra income. Usually, the platform workers are involved in only limited delivery of goods and services which does not impact their productivity of work or have any conflict of interest.

However, Moonlighting may have serious impact on IT/ITES industries considering their business model. There are always risks of data and knowledge leak especially since Moonlighting is often done with competitor companies. There are challenges for companies to monitor WFH and remote working employees' work hours, and if they work concurrently with other companies. In our POV of August '22 edition, we highlighted the need for companies to ensure compliances of WFH and remote working employees foreseeing the challenges that establishments could face.

Especially, monitoring employees' working hours, claims for overtime wages, and tracking attendance and leaves of employees could pose new challenges. Additionally, the high risk of data security breach. 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.

Meanwhile, in the absence of government policies or provision of laws regarding dual employments, remote working, WFH or virtual work environment; can give rise to challenges to the above-mentioned issues and appropriate actions to be taken. Hence, we recommend it is essential for companies to have an internal process or policies to track hours of work, leaves, or even tracking dual employments of those employees who WFH or remotely. Many companies have resumed their work physically at locations and have also given employees the option to work from the office in a hybrid mode.

Given the above, it is advisable for companies to incorporate guidelines regarding the inclusion/prohibition of Moonlighting in the employment agreement and company policy as well. This will help companies tackle situations in case employees are engaged in dual employment if their employment contract explicitly prohibits it. Based on agreed employment terms, action can be taken including termination of employment against those employees who are violating the employment terms on the ground of misconduct.

Currently there is no Centralised database in India, but using UAN Service History of Employees, individual employee wise previous Employment history can be checked. If this additional service is required, please reach out to us for more details.

India's labour reforms will foster gender parity

The Narendra Modi government will aggressively work towards early implementation and notification of the pending labour codes to enhance income levels and livelihoods of workers engaged in the unorganised sector. But more importantly, the thrust on the labour codes is also to promote gender diversity in the workforce. The new set of labour laws essentially aims at providing equal opportunities to women workers as well while ensuring wage parity with their men counterparts. Though the new labour codes are aimed at bringing in uniformity in rules throughout the country, states willing to implement the labour codes may be given a go ahead, since the subject comes under the Concurrent List, implying both state governments and Centre have equal powers to formulate laws.

The four labour codes that encompass wages, industrial relations, social security, and occupational safety, health and working Conditions will replace and consolidate 29 central laws. Essentially, the Labour Codes? Four of them? Introduced in 2019 aim to consolidate the multiple laws currently existing. States will now have to frame their own rules pertaining to the four codes. The government is keen to implement all four labour codes in one go for a seamless transit to the new legal framework in the country, earlier PTI in a report said.

"That would be ideal but why should states which are ready and willing to go ahead with the labour codes suffer due to others?" a person familiar with the development said.

India, striving to touch the $5trillion economy mark in the next few years, must have a set of modern, well-structured and transparent labour laws.At present, multiplicity of rules governing states is a problem for companies both Indian as well as multinational. Gopal Krishna Agarwal, national spokesperson of the BJP said that new labour laws are critical to push the manufacturing sector. "The new set of rules will boost income levels and provide job and social security to a large number of people in the country. Investments will also be boosted once the new rules are in place," Agarwal said, adding that the Modi government's focus is now on economic revival.

Several states including Uttar Pradesh, Maharashtra, Madhya Pradesh and Gujarat among others came forth in relaxing labour laws just after the Covid pandemic lockdown in 2020 which dealt a blow to economic activities. However, they were temporary in nature.

Source : Economic Times

What to do if the employer doesn't deposit money in your Provident Fund account?

Under the Employees Provident Fund (EPF) rules, 12% of the salary (basic + dearness allowance) of the employee has to be contributed to the provident fund account. The employer also has to make a matching contribution, of which 8.33% goes towards the Employees Pension Scheme (EPS) and the remaining amount to the PF account. It is mandatory for the employer to contribute his and the employee's shares to the latter's PF account every month. An employee can check whether their employer is making the mandatory monthly provident fund contributions to his account by logging into their PF account on the EPFO portal. The EPFO also sends an SMS alert whenever a contribution is made by the employer. While it is mandatory for the employer to make monthly contributions to an employee's PF account, what can an employee do if the former fails to do so?

Legal experts say that the employee may file a complaint with the EPFO regarding the non-deposit of PF contribution. "Employees may file a complaint before the EPFO regarding non-deposit of PF contribution which may potentially lead to an inspection out by the authority.

Thereafter, the statutory enquiry may commence wherein employers, in addition to their contribution, may be required to pay employees contribution as well," says Suyash Srivastava, Partner at DSK Legal. "In the event, the contribution is deducted but not deposited, such non-compliances are viewed very strictly and May warrant criminal action," he adds. Experts say that the EPFO can invoke penal provisions of the EPF Act and also file a police complaint under section 406/409 of the Indian Penal Code (IPC) for action against such employers. "In case of default by the employer, the Employees Provident Fund Organization (EPFO) can invoke penal provisions of The Employees' Provident Funds And Miscellaneous Provisions Act, 1952 ("Act") to recover the dues from the employer. Complaint can be lodged with Police under section-406/409 of IPC by the EPFO for action against such employers," says Anushkaa Arora, Principal and Founder of ABA Law Office. "Section 14-B of the said Act provides powers to recover damages.

If an employer makes default in the payment of any contribution to the Fund by giving an opportunity to the employer shall be given a reasonable opportunity of being heard," Arora adds. The experts said that employers are required to make EPF contribution within 15 days of the month end for which salary has been paid. For example, if the employer has paid the salary for the month of August on 1 September 2022 then he must deposit the employee and employer contributions to the PF account by 15 September.

The Union Budget 2021 amended the income tax rules to ensure that employers make timely contributions. According to experts, employers cannot claim the deduction if they fail to make EPF contributions on time.

Source : Financial Express

PF Update: Unorganised Workers Might Also Be Able To Invest In EPFO Pension Scheme Soon, Says Report

The EPFO's pension scheme is likely to be open for unorganised workers also irrespective of their monthly income, according to a Financial Express report. As of now, the employees' provident fund (EPF) contribution is mandatory for those organised workers earning above Rs 15,000 per month. The new scheme, likely to be named Universal Pension Scheme (UPS), is proposed to be based on individual contribution and ensure that each worker gets a minimum pension of Rs 3,000 a month after attaining the age of 60 years, according to the report. Superannuation pension, children pension, widow pension and disability pension will also be provided under the proposed scheme. However, the minimum qualifying period of service for pension benefit will be increased from 10 years now to 15 years. It will have a provision to provide the pension to the family in case the EPFO member dies before the age of 60.

"The minimum accumulation of about Rs 5.4 lakh is required for a minimum of Rs 3,000 pension per month. Members can choose to contribute more voluntarily and accumulate significantly larger amount for a higher pension," according to the FE report quoting an ad-hoc committee, set up by the Central Board of Trustees (CBT), the EPFO's highest decision-making body. The current interest rate on EPF scheme is 8.1 per cent. The government ratified a four-decade-low interest rate of 8.1 per cent on employee provident fund deposits for 2021-22. The decision impacts about five crore subscribers of the Employees' Provident Fund Organisation (EPFO).In March, the EPFO had decided to pay an interest rate of 8.1 per cent on EPF amount for 2021-22, compared with 8.5 per cent earlier. The 8.1 per cent EPF interest rate is the lowest since 1977-78, when it stood at 8 per cent. The EPF interest rate provided for 2019-20 was the lowest since 2012-13, when it was brought down to 8.5 per cent. EPFO had provided an 8.65 per cent interest rate to its subscribers in 2016-17 and 8.55 per cent in 2017-18. The rate of interest was slightly higher at 8.8 per cent in 2015-16. It had given 8.75 per cent rate of interest in 2013-14 as well as 2014-15, higher than the 8.5 per cent for 2012-13. The rate of interest was 8.25 per cent in 2011-12. EPF is a mandatory savings scheme under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The scheme, which is managed under the aegis of the EPFO, covers every establishment in which 20 or more persons are employed.

The EPFO invests 85 per cent of its corpus in debt instruments and 15 per cent in ETFs, as per the investment pattern notified by the government. The investment in exchange-traded funds is made based on Nifty, Sensex, central public sector enterprises (CPSEs) and Bharat-22 indices. In the current financial year up to June, a total of Rs 12,199.26 crore has been invested in ETFs, out of the total investment (debt and equity combined) of Rs 84,477.67 crore. In 2021-22, Rs 43,568.02 crore was investment in ETFs, out of the total investment of Rs 2,89,930.79 crore.

Source : News18

EPFO@Amrit Kal – Behtar Kal' first of its kind in the history of EPFO Outcomes for expansion and improvement in service delivery mechanism of EPFO discussed

Union Minister for Labour & Employment, Environment, Forest & Climate Change, Shri Bhupender Yadav chaired a 'Chintan Shivir' organized by EPFO at Surajkund, Haryana recently. Chintan Shivir of EPFO themed 'EPFO@Amrit Kal – Behtar Kal', first of its kind in the history of EPFO concludes with landmark discussions and far reaching recommendations for expansion and improvement in Services & Service Delivery Mechanism to it's subscribers. It was attended by domain experts, officers of Ministry of Labour & Employment and EPFO.

Following Five themes of the Chintan Shivir were discussed by Additional CPFC's to provide better reach and transparent service delivery to the subscribers of EPFO were:-

- Mission 10 crore – Growing EPFO scope
- Ease of Compliance – Service Expansion
- EPFO Karmayogi – Capable Organization
- Satisfied Members – Seamless Services
- Preparing for future – Pensioners Our Priority

Union Minister of Labour & Employment, Environment, Forest & Climate Change, Shri Bhupender Yadav, in his concluding address at EPFO 'Chintan Shivir' held at Surajkund, Haryana informed landmark outcomes for expansion and improvement in service delivery mechanism of EPFO. The Union Minister stated that the outcomes of EPFO 'Chintan Shivir' will help in fulfilling Hon'ble PM's vision by bridging the gap between Policy and execution. It will further prove a game changer and benefit all the stakeholders in a big way.

Hon'ble Minister identified major areas which EPFO should focus its efforts by creating the task force:

- Enhancement of Information Technology capability by creating best system and methods which can provide service in all Districts of the country.

Creation of best and enabling infrastructure

- Mission Karmayogi" to be implemented through training and motivation.
- Special drive is to be launched for recruitment of staff and officers in next six months.
- Easy and uninterrupted pension payment delivery system.
- Compliance mechanism to be strengthened more as an enabler rather than enforcer.
- Litigation to be reduced.

Hon'ble Minister further emphasized that EPFO has more than18 Lakhs crores assets under management which is an enormous responsibility and should be borne with trust. Hon'ble Minister further exhorted that officials of EPFO to provide unbiased, transparent and simplified governance to the stakeholders.

Shri Rameswar Teli, Hon'ble Minister of State for Labour & Employment, Govt. of India expressed happiness with the outcome of EPFO 'Chintan Shivir' and stated that the vision@2047 document of EPFO universalize social security in the country. Hon'ble Minister of State praised EPFO for providing more than 31 thousand PPOs through "PRAYAAS" initiative. He further praised EPFO for providing relief to employers and employees under ABRY scheme.

The initiative of "Chintan Shivir" is a step to further the objective laid in the vision@2047 document and new ideas which come in this "Chintan Shivir" will bring a smile to EPFO members.

Shri Sunil Barthwal, Secretary, Labour & Employment, Govt. of India said that services of field offices are to be standardized across all the offices of EPFO.

Social security outreach for the citizens to be enhanced through integration of eShram, Udyam, ASEEM and NCS portals. He further praised the efforts of EPFO for speedy settlement of claims.

Source : Press Information Bureau

Special maternity leave in case of infant death

The Centre has decided to grant a 60-day special maternity leave for women Central government employees in case of stillbirth or death of an infant within a few days of birth, an order by the Department of Personnel and Training (DoPT) recently said. The DOPT said it had received several queries seeking clarification on grant of leave in case of death of a child soon after birth. "The matter has been considered in consultation with the Ministry of Health and Family Welfare. Keeping in view the potential emotional trauma caused due to stillbirth or death of a child soon after birth, which has a far-reaching impact on the mother's life, it has now been decided to grant a special maternity leave of 60 days to a female Central government servant," the order said.

The order said that in case an employee has already availed maternity leave till the death of the child, it may be converted into any other kind of leave available in her leave account without insisting on a medical certificate and a special maternity leave of 60 days may be granted. "The condition for death of a child soon after birth may be defined as up to 28 days after birth. A baby born with no signs of life at or after 28 weeks of gestation may be defined as stillbirth," the order said. The benefit of special maternity leave shall be admissible only to a woman Central government servant with less than two surviving children and for a child born only in an authorised hospital, which is defined as government hospital or private hospital empanelled under the Central Government Health Scheme (CGHS). "In case of emergency delivery in non-empanelled private hospital, production of emergency certificate is mandatory," the order said.

The order is applicable to government employees appointed to the civil services and posts in connection with the affairs of the Union of India.

Source : The Hindu

House panel looks to expand health, gratuity coverage for workers

The current law states that any factory or company with more than 10 employees who earn a salary of up to ₹21,000 must register with the Employees' State Insurance Corporation and provide health benefits to those employees. A parliamentary panel is considering proposals to widen the health care and gratuity coverage for workers, a move that may potentially benefit millions of contract workers and other employees.

The parliamentary standing committee on finance, led by Biju Janata Dal MP Bhartruhari Mahtab, is considering a few options to push a wider Employees' State Insurance (ESI) network for India's workforce. The current law states that any factory or company with more than 10 employees who earn a salary of up to ₹21,000 must register with the Employees' State Insurance Corporation and provide health benefits to those employees.

"We are considering options including raising the monthly wage ceiling from ₹21,000 to ₹32,000 to allow more employees avail the health care benefits," Mahtab said. "The other proposal is to make it optional for workers who are earning higher wages."

Contract workers and daily wage earners are focus areas for the central government and it has already implemented a series of measures for their benefits. With unorganized workers constituting 93% India's workforce, the government has launched insurance and pension schemes, an e-shram portal for registration of workers and revamped retrenchment benefits, among other things. To be sure, the parliamentary committee's suggestions are not binding, but the panel is hopeful as a large number of its suggestions so far have been accepted by the government. One of the measures suggested by the panel has brought down the minimum term for gratuity entitlement for contract workers to one year instead of five. "But we are discussing some problems for contractual workers. If they get shifted to a new workplace after working for a few months, their contractors often refuse to count the previous service. Also, if contractors are replaced midway, it leads to similar problems," said Mahtab.

The panel will meet the states and other stakeholders before submitting its report in the winter session of Parliament.

One of the key interventions of the panel in the recent months had been to suggest registration of migrant workers, as the panel observed there are no other identification process for such workforce and a registration would go a long way for targeted delivery of benefits as well. The government rolled out a new registration system based on the panel's suggestion.

Source : Hindustan Times

ECIL ITI Trade Apprentice Recruitment 2022 revised notification released, apply on ecil.co.in from Sept 27

The ECIL released the notice on the official website,ecil.co.in. The application process will begin on September 27, 2022 and the last date to submit the applications is on October 1o, 2022. The candidates have to submit the applications online instead of offline submissions as mentioned in the previous notification which was cancelled. A total of 284 posts is to be filled. As per the notification that was released, candidates have to be at least 18 years of age as on October 31, 2022. The upper age limit is different for various categories. The apprenticeship period is for one year and will commence from November 2022. The selection process is that candidates would be selected based on the ITI marks merit. The recruitment was cancelled and the notice was released. As per the notice, it said "Due to unavoidable circumstances, the advertisement No 17/2022 stands cancelled. Fresh Advertisement will be hosted shortly on our website inviting ONLINE applications for ITI Trade Apprenticeship at ECIL Hyderabad."

Candidates may note that fresh notification has been released with the important dates, vacancy details, qualifications, age limit etc. As per the notice, candidates will have to accordingly fill the form and submit.

ECIL ITI Trade Apprenticeship: How to apply

1. Visit the official webiste - ecil.co.in
2. Then click on Career section and then current job openings
3. Click on Apply Online, register and fill the form
4. Pay the fees accordingly
5. Submit and download

Candidates are advised to take a print out of the forms. The candidates will have to get their documents verified from October 20, 2022 till October 28, 2022 as per the website.

Source : Times Now

UNITED CONSULTANCY SERVICES
compliance simplified™

MORE INFO

CLICK TO KNOW MORE ABOUT THE TOPICS

01 ENFORCEMENT OF PROVISIONS IN TAMIL NADU DISTRICTS

02 INTRODUCTION OF NEW FACILITY FOR ESI MATERNITY BENEFITS

03 GUJARAT BOCW AMENDMENT

04 HOLIDAY LIST 2023 UPDATES

05 MINIMUM WAGE UPDATES

UCS CompliTool®

Streamline Compliance & Risk

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

Following are some of the major benefits of the Tool:

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

Complitool URL: https://ucscomplitool.com/

ABOUT US

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

With over 30 years of existence and with more than 200 professionals the firm provides robust compliance services and solutions on complex requirements under Labour law. The information shared in the newsletter is on the basis of Government notifications and newspaper articles. This is for general information purposes only and does not constitute legal advice. Please reach out to your UCS contact or the Company legal counsel before taking any action.

We Simplify Compliance For You.

Unit No: 852 - 856
8th Floor JMD Megapolis,
Tikri, Sector 48, Gurugram
122001, Haryana

0124 - 2656800

enquiry@ucsdel.com

www.unitedconsultancy.com

PAN India Offices: Ahmedabad | Bengaluru | Chennai | Gurugram | Hyderabad | Kochi | Kolkata | Mumbai | Pune