

THE COMPLIANCE WATCH

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UCS POV: SOME KEY FACTORS TO CONSIDER ON STATUTORY BONUS

Shaiju Mathew
Chief Operating Officer

As establishments are working on employees' statutory bonus, we would like to highlight some key takeaways as per the Payment of Bonus Act, 1965. In 2016, there was an amendment under the Payment of Bonus Act 1965 with regard to the eligibility and calculation of bonus. The main objective to give bonus to employees is to share the profit earned by the establishment. The Act prescribes factors to be considered while deciding on the percentage of bonus and for calculating the bonus payable amount. The bonus payable to the employees under the Act is over and above the wages fixed to the employees in terms of their employment, hence the bonus amount cannot be considered or included within the "wage" definition.

The Payment of Bonus Act applies to all factories and establishments employing not less than 20 persons on any day during the accounting year. The establishments covered under the Act shall continue to pay bonus even if the number of employees fall below 20 subsequently. Employees who have completed 30 days of work during the accounting year and whose wages are up to ₹21,000 shall be eligible for a bonus. However, the definition of 'salary or wage', in clause 21 of section 2 of the Act, is not aptly worded particularly pertaining to exclusion of certain allowances. The sub-clause (i) of clause 21 is bound to create confusion by the words **"any other allowance which the employee is, for the time being, entitled to"**.

The expression, "for the time being" cannot be construed that the allowances other than those as expressly excluded in the definition, if being paid or regularly will be included in the definition, since there is no back up judgment or provisions under the Payment of Bonus Act. For the purpose of this Act, the standard term, "wages" include basic salary, dearness allowance and food allowance or value of food if provided in lieu of wages or as part of wages. This will avoid any concerns in the future and also more employees shall be eligible to receive the bonus benefit. However, any other bonus such as performance bonus/incentives, etc. which are part of employment terms cannot be adjusted with bonus payable amount under the Payment of Bonus Act.

The minimum bonus payable amount is defined as 8.33% (Section-10) and the maximum bonus amount as 20% (Section 11). The percentage of bonus to be paid to the employees shall be decided on the basis of the company's allocable surplus for the financial year.

If the allocable surplus for the accounting year exceeds the minimum bonus payable amount, the company shall be bound to pay the maximum bonus (20%) otherwise 8.33% shall be applicable. In view of the said clause, the percentage of bonus prescribed under the act is not in a range between 8.33% to 20% instead it will be either of minimum or maximum percentage considering the allocable surplus for the accounting year.

The company shall be bound to pay the minimum bonus as prescribed even if the company has not made any profit during the accounting year post completion of the infancy period.



As per Section 12 of the Payment of Bonus Act, for the purpose of bonus calculation, the per month wage should be considered as ₹7,000 or the state minimum wages whichever is higher for all the employees who are eligible for bonus under the act i.e., whose wage is up to ₹21,000 per month. Therefore, the basic wage and dearness allowance payable to an eligible employee is not relevant while calculating the bonus amount under the act. The calculation should be uniform for all eligible employees as per formula prescribed which is ₹7000 or the Minimum wages applicable for the said period (whichever is higher) x 12 months x % of Bonus /365 x no. of days worked during the accounting year. All approved leaves, weekly offs and holidays shall be considered as "worked" days. The Bonus disbursement to the employees should be completed within 8 months from the closing of the financial year. Those establishments following April to March fiscal year the due date to pay statutory bonus will be before 30th November, and filing of annual returns is to be completed before 30th December.

LABOUR CODE IMPACT – HOW PREPARED IS INDIA INC

It has been close to two years since the four labour codes were cleared by both Houses of Parliament. While several states have issued draft rules, the codes' implementation date is still unclear. Some of the anticipated changes because of the implementation of these codes could have a significant effect on employer costs and liabilities. Yet, a recent study found that the level of preparedness among companies in India to address the related impact is at varied levels. Majority of the organisations seem to have taken some action to assess the impact of the labour codes. Small to medium-sized companies are generally hesitant and seem to be waiting for more clarity, especially around the implementation timeframe. Moreover, while several companies have assessed the impact, few have implemented any significant changes to their salary structure.

Wage in India is composed of included items, specified exclusions and a condition wherein excluded items that exceed 50% of remuneration get added back to wage. Given that several components in a typical salary structure are not mentioned in the list of exclusions, the industry is deliberating as to whether these should form a part of wage. In fact it appears that most of companies are looking to exclude items such as Variable Pay and Stock Options from the definition of wage. This may make sense in the absence of further clarification, as most companies seem to be taking a practical view and may exclude components which are largely variable, and performance linked.

Even after ignoring variable and incidence-based components of pay, the impact of the new definition of wage on most companies is significant. Balancing items (e.g. special / supplementary allowance) which are paid by most companies are likely to get added to wage. In essence, wage is turning out to be much higher than 50% of total fixed pay, for most organisations.

Compensation restructuring

While it may be prudent to increase basic salary, most companies may not be very keen to do so immediately, as this will have implications on employees' take-home salary. Moreover, increasing Basic salary will have a significant impact on voluntary plans, e.g. Superannuation, NPS or legacy pension plans, where benefits are linked to basic salary. Wherever compensation restructuring is being done, House Rent Allowance and Conveyance Allowance are the two major components that companies are looking to increase.

Interestingly, many organisations may not be looking to change the salary structure. This again, indicates that several companies are still not prepared to minimise the related potential impact.



Impact on Gratuity and leave encashment

The maximum impact will perhaps be on gratuity, where majority of the organisations expect a significant impact on their P&L. Given that the basic structure of the gratuity payment formula remains unaltered at 15 days' last drawn wages, for the number of years of service, it would mean that last "wage" is used to reckon for all the years of service. It seems that the impact will extend to prior service as well, making the impact very significant.

While some companies are considering options to update their gratuity plans to mitigate the impact, this may not be possible if the benefit provided is the minimum stipulated by law.

Impact on Provident Fund

About half the organisations are not considering any immediate change in PF contributions and will maintain status-quo of 12% of basic salary. Most companies feel that the concept of wage ceiling for EPF contributions may continue to exist post labour codes as well, and therefore are not keen to contribute on full wage. This is also another reason why companies are not keen to increase the basic salary of employees, wherever possible. The rationale is similar to the interpretation post the landmark 2019 Supreme Court judgement of inclusion of allowances, wherein, companies continued to contribute on basic salary on the ground that it is higher than the wage ceiling of INR 15,000.

This is however, a very sensitive and significant matter and one which needs to be clarified by the Government; in particular, whether a wage ceiling would continue to apply for the purpose of provident fund.

While further clarity is awaited from the Government, especially around the treatment of various components that will form part of the wage definition, it is clear that there is likely to be a significant financial impact of the new wage definition, especially on the cost of retirement and long-term benefits. While the financial impact cannot be fully eliminated, companies are advised to look at possible options to mitigate the impact. Compensation restructuring and updating benefit policies are two options that may help mitigate the impact.

Source : Times Of India

Infosys Approves Gig Work For Employees Amid Moonlighting Row

Infosys has allowed employees to take up 'gig' jobs on the side with prior consent of managers provided such an engagement does not compete with the company, its clients or pose conflict of interest. The company, in an internal communication to employees, detailed how staff can take up 'gig' work.

Analysts say, the move may help the company to address some attrition challenges, since it allows employees to take up additional source of earnings, and chase their tech passion, albeit with firm riders. It, however, did not define 'gig' work nor did it term it as 'moonlighting'. The latest move comes at a time when debate around moonlighting has grabbed headlines. Put simply, moonlighting refers to employees taking up side gigs to work on more than one job at a time. During the company's Q2 earnings, Infosys had made it clear that the company does not support moonlighting and that it has fired employees who were into dual employment over the last 12 months.

In an email to employees, Infosys said: "Any employee, who wishes to take up gig work, may do so, with the prior consent of their manager and BP-HR, and in their personal time, for establishments that do not compete with Infosys or Infosys' clients." Infosys said it counts on its employees to ensure that this does not impact their ability to work with the company effectively.

"In addition, as per Infosys employment contract, employees may not work in areas when there is an actual or potential conflict of interest or by accepting dual employment," the company wrote in the email seen by PTI. As an organisation, Infosys values the ability to continuously learn new skills and gain experience. Infosys said that it is only natural that the company is supportive of employees taking up additional projects as appropriate in their personal time.



However, it said, care needs to be taken to ensure that such projects "comply with the company's policy for gig working, and do not breach client contracts or otherwise impact the employee's ability to be effective in their full-time job with Infosys." When employees have a discussion with their managers about such projects before taking them up, much of this can be addressed, it said.

In addition, Infosys said it has also created several opportunities for gig working internally through its very own Accelerate platform that enables managers to list gig work jobs for Infosions. "Accelerate allows skill based job matches to recommend the right gigs for employees and incentivise both gig workers and hiring managers. The platform, over the years, has been helping in create richer job variety and more immersive learning for Infosions," it said. Last month, Wipro Chairman Rishad Premji revealed that some 300 employees were fired as the IT services company had no place for any employee who chose to work directly with rivals while being on Wipro payrolls.

During the Q2 earnings' briefing, Infosys CEO Salil Parekh had said the company does not support dual employment.

"We don't support dual employment, if we found in the past, employee doing blatant work in two specific companies where there is a confidentiality issue, we have let go of them in the last 12 months," Parekh had said. Infosys is among the companies which have taken a strong stance on moonlighting. It had earlier shot off a missive to its employees asserting that moonlighting is not permitted, and warned that any violation of contract clauses will trigger disciplinary action "which could even lead to termination of employment". "No two timing - no moonlighting!" the company had said. The issue of moonlighting emerged as a big talking point after Rishad Premji flagged the issue. Premji had taken to Twitter to highlight the issue saying: "There is a lot of chatter about people moonlighting in the tech industry. This is cheating - plain and simple."

HCL Technologies too has weighed into the issue of moonlighting and has said it does not approve of dual employment, although it hastened to add that the issue is not a major one within the company. Infosys' Parekh, during Q2 earnings' conference, had also said where gig opportunities in the external environment is concerned, Infosys supports aspirations of employees to learn beyond their work but after prior approval of manager has been obtained.

"We will support them to work on certain gig projects after the prior approval of the managers. We are also developing more comprehensive policies for that, while ensuring contractual and confidentiality commitments are fully respected. However to be clear, we do not support dual employment," he had said.

Source : OutLook India

EPFO clarifies on EDLI pension scheme, says member on LWP is eligible for death benefit

The Employees' Provident Fund Organisation (EPFO) has made it clear that a Provident Fund (PF) or an Employees' Provident Fund (EPF) account holder is eligible for assured benefit under Employees Deposit Linked Insurance (EDLI) scheme, even when he is on leave without pay and its monthly EPF or PF contribution is not coming to its provident fund account. But the EPFO member has to be on the muster roll of the recruiter on the day of death and satisfies other conditions to claim the assured benefit.

DEATH BENEFITS

The EPFO issued notification in this regard citing, "In case where an employee member was on leave without wages (consequently no contribution was payable by the employer) or absent for any other reason and expired during the period, the Assurance benefit is admissible irrespective of the fact that no contribution was paid by the employer, provided he was on the muster rolls of the establishment on the day of death and satisfied the prescribed conditions."

The EPFO went on to add that references and complaints have been received that even where an employee has died while in service, some offices are rejecting the claims saying that the PF contribution was not received during the previous few days and therefore the EDLI benefits are not payable on account of such NCP days. Directing the establishments to avoid harassing the family members of the deceased PF account holder, the EPFO said, "Due verification shall be done but it should be done within 7 days and the family members should not be harassed. In cases where employer states that the member is on the muster rolls and the EO says otherwise, the reason why the employer version is not acceptable to us should be clearly listed out and examined at office."

The EDLI scheme states that on the death of an employee, who is a member of the fund or of provident fund exempted under Section 17 of the Act, as the case may be, who was in employment for continuous period of twelve months, preceding the month in which he died, the persons entitled to receive the provident fund accumulation of the deceased shall in addition to such accumulations of the deceased shall in addition to such accumulations to be paid on amount equal to:

The average monthly wages drawn (subject to a maximum of ₹15,000) during the twelve months preceding the months in which he died, multiplied by 35 times plus 50% of the average balance in the account of the deceased in the fund of the provident fund exempted under Section 17 of the Act, or under paragraph 27 or 27A of the Employees' Provident Fund Scheme, 1952, as the case may be, during the preceding twelve months or during the period of his membership, whichever is less subject to a ceiling of ₹1.75 lakh, provided that the assurance benefit shall not be less than ₹2.50 lakh or more than ₹7 lakh.

Source : Live Mint

Meetings on labour codes fail to evolve consensus

Majority of the trade unions urge Bhupender Yadav to withdraw the four codes; outfits including the BMS demand that the Centre immediately convene the Indian Labour Conference.



In an apparent indication that the implementation of the four labour codes will be delayed further, majority of the Central Trade Unions, during their recent discussions with Union Labour Minister Bhupender Yadav, have urged the Centre to withdraw the four codes. Though Rashtriya Swayamsevak Sangh-affiliated trade union Bharatiya Mazdoor Sangh (BMS) supported the Code on Social Security and the Code on Wages, it opposed the Industrial Relations Code and the Occupational Safety, Health and Working Conditions Code in the meeting with Mr. Yadav. The BMS, along with the Opposition's trade unions, also sent a letter to Prime Minister Narendra Modi opposing the the Occupational Safety, Health and Working Conditions Code.

Mr. Yadav completed his separate discussions with all the Central Trade Unions (CTUs) by the end of September. He had also met various organisations representing employers. A source in the Ministry said the Minister will meet a few more associations of the employers in the coming days. Leaders of 10 CTUs reviewed the developments at a meeting and decided to maintain their positions. All India Trade Union Congress general secretary Amarjeet Kaur told The Hindu that all the 10 CTUs opposed the labour codes in their meetings with the Minister.

"We have demanded the Centre to stop separate discussions on the labour codes. They did not consult anyone at the time of drafting these codes or passing them in Parliament. Even the objections raised by the Parliament Standing Committee on Labour was ignored. Now, whatever discussions are to be held, it should be held together with all CTUs," Ms. Kaur said. The trade unions, including the BMS, have also demanded that the Centre immediately convene the Indian Labour Conference (ILC). "The ILC, as an effective tripartite mechanism, is not functioning under this government. We have been demanding that the ILC must be called immediately to discuss the issues of the workers," she added.

Trade unions said Mr. Yadav did not reply to their objections to the codes. “We have given clause-by-clause objections to the four labour codes. The Minister said he will get back. But as of now, we have not received any replies on our objections. We reiterated our demand that the codes should not be implemented. We have opposed the way rules are being brought for these codes in a piecemeal manner,” said Hind Mazdoor Sabha general secretary Harbhajan Singh Sidhu.

The BMS had joined the Opposition camp in opposing the Occupational Safety, Health and Working Conditions Code. The CTUs sent a resolution passed by them in a joint meeting facilitated by the International Labour Organisation (ILO) to Mr. Modi. They said the code was against the ILO conventions in which India is also a signatory. “We also strongly urge the government of India to revisit, re-examine and completely revise the Occupational Safety, Health and Working Conditions Code, 2020 in line with the core OSH conventions, namely C155 and C187. The said code should be inclusive, universal in coverage, prevention-focused, progressive and human centric. The tripartite advisory system must be replaced by a statutory tripartite mechanism strictly adhering to C144, which is already ratified by India. The government of India must duly consult the social partners, using social dialogue mechanism on a top priority. Here it is pertinent to urge the government of India to strengthen the bipartite and tripartite dialogues, ensuring effective and proper participation of the trade unions,” the resolution, also signed by the BMS, said.

Source : The Hindu

Delhi: Businesses can now remain open 24×7, over 300 applications cleared by L-G

From restaurants to transport services and BPOs to online delivery services, all those who apply for exemptions will be allowed to operate 24×7 in Delhi, with Lieutenant Governor V K Saxena approving the proposal to exempt 314 such places to operate all day long, some of them pending since 2016, officials said.



“The L-G has directed that notification to this effect be issued within seven days. The decision of providing exemption under Sections 14, 15 & 16 of the Delhi Shops & Establishment Act, 1954, is expected to boost employment generation and promote a positive and favourable business environment that are a prerequisite for economic growth. The decision will also provide a fillip to the much desired ‘night life’ in the city,” said an official.

These establishments can apply online to get these exemptions. Section 14 of the original Act said that women or young cannot be asked to work between 9 pm and 7 am in Delhi. According to Section 15, the government had the right to fix opening and closing times for establishments. In a 1979 notification, this was set at 9 am to 7 pm. Section 16 mandates establishments to remain closed one day per week. In 2004, changes were made to the Act and the opening time was extended to 11 pm. This, however, was not mandatory. The mandate for shops to remain closed one day per week was also relaxed.

“Exemptions under Sections 14, 15 & 16 of the said Act enables commercial establishments to operate on a 24X7 basis, subject to certain conditions that entail welfare of labour and security etc,” said the official. Both the Delhi government as well as the DDA Masterplan have advocated for a “24×7 Delhi” over the past 5 years.

According to L-G office officials, establishments have been sending applications for exemptions to be made but the Labour Department had not been dealing with them fairly.

“Approving the proposal, the Lt. Governor took a very serious view of and flagged issues of inordinate delay, adhocism, randomness and unjustified discretion on part of the Labour Department in disposing the applications made by establishments for these exemptions. It may be noted that out of the total 346 pending applications, 18 applications of 2016, 26 applications of 2017, 83 applications of 2018, 25 applications of 2019, 04 applications of 2020 and 74 applications of 2021 had not been processed by the Labour Department on time,” added the official. “These applications were kept pending for no reason even as just 2 applications, one of 2017 and another of 2021 were processed and sent for approval, in a display of unexplained discretion on part of the Labour Department, which strongly indicated the prevalence of corrupt practices. This shows a complete unprofessional attitude and lack of due diligence on the part of the Labour Department and amounted to the Department having adopted a ‘pick and choose policy’ in processing such applications. Further, inordinate delayed processing of such routine applications also negatively affects the confidence/sentiments of the business community at large.” Officials added it was only after the L-G office prodded it that the Labour Department put in place a digital mechanism for receipt of applications. The L-G has strictly advised that such applications are disposed of within a prescribed timeline so that a conducive investor-friendly business environment and positive confidence could be instilled in the entrepreneurs and business community of Delhi at large.

He has also directed the Labour Department to ensure that such delays do not occur in future, a mechanism is developed for transparent and effective monitoring, reasons for pendency be ascertained, responsibility is fixed and suitable action is taken against the erring officials.

Source : The Indian Express

Soon, warehouses in Delhi to operate 24/7

Warehouses in the country's capital will shortly be able to work around the clock, thanks to the Delhi government issuing a draught notice in this regard and inviting suggestions and objections from stakeholders within 15 days of the notice's publication.



The announcement comes after Delhi Lieutenant Governor VK Saxena the other week accepted application forms for more than 300 establishments to continue operating around the clock, including online shopping and delivery shops, hotels, restaurants, transportation facilities, and warehouses. He had also taken a "very serious view" of the labour department's "inordinate delay, adhocism, randomness, and unjustified discretion" in deciding on the firms' applications for these exemptions. The Delhi Labour Department posted a draught notification exempting warehouses from sections 15 and 16 of the Delhi Shops and Establishment Act 1954, paving the way for such places to operate around the clock.

Sections 15 and 16 of the Delhi Shops and Establishment Act 1954 address the duration of the closing and opening of shops and other commercial establishments in the city. According to officials, the move will benefit traders and boost the nationwide capital's economy. According to the draught notification issued by the labour department, no employee shall be employed or permitted to work for more than nine hours on any given day and for no more than 48 hours in any given week. If shift work is required, it must be structured so that no employee is forced to work only the night shift. The draught notification stated that the employer must make appropriate arrangements for the safety, security, and transportation of all employees who have been asked to work overtime or in a shift outside of normal working hours. Brijesh Goyal, Chairman of the Chamber of Trade and Industry (CTI), welcomed the move and stated that many such applications in which traders requested 24*7 operation of their establishment had been currently on hold since 2016. "Opening of shops, restaurants and cinemas in Delhi will increase 20 per cent business at night. There will be tremendous benefit in the hospitality and retail sector too," Goyal said.

Source : The Economic Times

IT companies tighten governance process and legal framework to fight rampant moonlighting

A midsize information technology services company recently approached law firm Cyril Amarchand Mangaldas, seeking to know if it could physically audit the workspace of employees working from home. "Another client is considering putting in place a system of video auditing its employees with 30 minutes' prior notice, to ensure that they are actually at their home workspace and working for the company," said Ankita Ray, a partner at the law firm.



A crackdown is on against moonlighting at India's IT companies. From random sampling of provident fund records, identifying prolonged absenteeism to video and physical audits of remote workspace, these companies are stepping up vigilance, according to experts at recruitment services and law firms.

These companies are also tightening governance processes and legal framework and strengthening background checks on existing and new employees. Employees found to have taken up a second job without approval from the primary employer are often dismissed.

Moonlighting is seen more rampant in the IT sector, which employs millions in India and where addressing talent shortage is a challenge companies are facing.

Estimates suggest at least one in 100 employees in the IT sector have more than one job, ET reported last week, citing experts at recruitment services companies.

Tata Consultancy Services, Infosys, Wipro, Mphasis, Tech Mahindra, Mindtree and Larsen & Toubro Infotech did not respond to ET's queries. Some of these IT companies have already openly warned employees against taking up a side hustle.

At least five to six IT services firms are grappling with employees taking up second jobs, Bishen Jeswant, also a partner at Cyril Amarchand Mangaldas. "They are now contemplating whether to take the route of firing these employees or to adopt less stringent measures." Kamal Karanth, cofounder of staffing firm Xpheno, said absenteeism associated with a drop in productivity and heightened leave consumption are treated as red flags about the employee being involved in a side job, and are taken up by HR for investigation.

"Random sample investigations over PF records for remittances (from another employer) as a practice is seen gaining popularity among employers," he said. HR teams are also scanning popular gig platforms for the presence of their employees. Companies have started running corporate training through company portals against moonlighting.

"Employees go through these and accept. This includes conditions or policies of not working for other gainful employment, a standard practice forever," said Jimit Arora, partner at the Everest Group. Some have started to define policies against moonlighting, particularly the ones which are directly competitive in nature to the employees' primary organisation, said Yeshab Giri, chief commercial officer, staffing & Randstad Technologies at Randstad India.

According to some experts, moonlighting in some shape and form can actually help address talent shortages in the IT industry. Many startup founders have also supported the idea. "But clear guidelines, legal boundaries, and enabling frameworks are needed first. Each IT firm can then take a call about creating its own response and policies toward moonlighting," said Arora of the Everest Group.

Source : The Economic Times

MORE INFO

LINKS

CLICK THE BELOW LINKS FOR UPDATES ON LATEST NOTIFICATIONS ON OUR WEBSITE.

1

**ESIC CIRCULAR FOR EMPLOYERS DATED:
25.10.2022**

2

**EPFO : EDLI ASSURANCE BENEFIT
CLARIFICATION CIRCULAR
DATED - 18.10.2022**

3

**ANDHRA PRADESH - CONDITIONS FOR
EXEMPTIONS FROM RESTRICTIONS ON
EMPLOYING WOMEN WORKERS DURING NIGHT
SHIFT IN FACTORIES.**

4

**TELANGANA - CONDITIONS FOR
EXEMPTIONS FROM RESTRICTIONS ON
EMPLOYING WOMEN WORKERS DURING
NIGHT SHIFT.**

5

**PROVISIONS OF ESI ACT ENFORCED IN THE
SALEM DISTRICT OF TAMIL NADU W.E.F 1ST
NOV 2022**

6

HOLIDAY LIST 2023

7

MINIMUM WAGE UPDATES

8

**HIMACHAL PRADESH - PAID HOLIDAY ON
12.11.2022 ON ACCOUNT OF GENERAL
ELECTIONS OF HP VIDHAN SABHA 2022**

9

**HARYANA - PAID HOLIDAY TO THE REGISTERED VOTERS
ON 09.11.2022 & 12.11.2022 ON ACCOUNT OF GENERAL
ELECTIONS OF ZILA PARSHADS, PANCHAYAT SAMITIS &
GRAM PANCHAYATS.**

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