

LABOUR LAW MONTHLY UPDATE

DECEMBER 2024

DISCLAIMER

- This Presentation is meant for informational purpose only and do not purport to be advice or opinion, legal or otherwise, whatsoever.
- This is not intended to advertise services or solicit work through this monthly update.

Let's
take
a
tour

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AMENDMENTS AND ORDINANCE

MINISTRY OF LABOUR AND EMPLOYMENT

Notification dated 19.11.2024

Employees' Provident Funds and Miscellaneous Provisions Act, 1952

- In the exercise of the powers granted under Section 6C, read with subsection (1) of Section 7 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government amended the Employees' Deposit-Linked Insurance Scheme, 1976. The Scheme shall be called the Employees' Deposit-Linked Insurance (Second Amendment) Scheme, 2024.
- The Scheme has been given a retrospective effect from April 28, 2024.

Employees' Provident Funds and Miscellaneous Provisions Act, 1952

- As per the Amendment, assurance benefit to the nominee/s of the deceased member who was in employment for a continuous period of twelve months preceding the date of death shall be an amount equal to the average monthly wages drawn (subject to Rs.15,000/-), during the 12 months preceding the month in which he died, multiplied by thirty-five plus 50% of the average balance in the provident fund account of the deceased.
- Provided that the assurance benefit shall not be less than Rs.2,50,000/- and shall not exceed Rs. 7,00,000/-

LABOUR & SKILL DEPARTMENT, GOVERNMENT OF KERALA

Notification dated 23.11.2024

Kerala Factories (Amendment) Rules, 2024

Rules:

- These rules shall be called the Kerala Factories (Amendment) Rules, 2024.

Amendment to the Rules:

- The validity of factory licenses as per sub-rule (5) of Rule 7 in Kerala has been extended from five years to ten years.



Circulars and Notifications

EMPLOYEES STATE INSURANCE CORPORATION

Circular dated:05.11.2024

Online Submission of Cash Benefit Claims by the Insured Person through IP Portal

- The Employees State Insurance Corporation has notified that online submission of maternity benefit claims ,sickness benefit and the other benefit claims have been made available.
- The Branch Officers have been directed to ensure insured persons submit online claims and eliminating offline/physical claim submissions.

EMPLOYEES PROVIDENT FUND ORGANISATION

Notification dated:22.11.2024

UAN Activation and Seeding of Bank Account with Aadhaar

- The Employees Provident Fund Organisation has made the UAN activation and Aadhaar seeding in Bank accounts mandatory for all the eligible employees to access the benefits of the Employment Linked Incentive Scheme announced in the Union Budget 2024-2025.
- The activation process is straight forward and can be completed using an Aadhaar based OTP.

THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

Notification dated: 04.11.2024

Submission of Annual Report under the POSH Act, 2013

- The District Office in Gurugram, under the POSH Act has mandated every Government and Non-Government organisation to submit their annual report on workplace harassment by 28th February of each year.
- In the event of non-compliance by the employer, strict action will be taken against the organization in accordance with the POSH Act, 2013 and a penalty of Rs.50,000/- will be imposed.

QUIZ!

Can an employer enter into an agreement with an employee or legal heirs of the deceased employee under the Employee's Compensation Act, 1923 to pay compensation?

1. Yes
2. No



ACROSS THE GLOBE

California adopts intersectionality into Anti-Discrimination Laws

- California's Fair Employment and Housing Act (FEHA) prohibits discrimination and harassment across the employment lifecycle, from the hiring process to the working relationship (compensation, promotions, transfers), and even to the end of the working relationship (terminations, reductions in force).
- FEHA currently prohibits employers with 5 or more employees from discriminating or harassing employees based on several protected characteristics, such as race, gender, age, or physical or mental disability.
- This law now expands to explicitly prohibit actions based on "intersectional identities" which is defined as a combination of any two or more of the already protected characteristics. For example, an African Muslim or Asian female, etc.
- Employers are required to assess and update their anti-harassment policies and training programs in order to avoid the potential pitfalls of intersectional bias.

Spanish Supreme Court rules prior hearing for Disciplinary dismissals

- Previously, under the Workers' Statute, Employers were not required to hold a prior hearing for employees in disciplinary dismissal cases, unless the employee was unionised or is a legal representative of the employees.
- However, with this new ruling w.e.f. November 19, 2024, the Spanish Supreme Court has updated its position where employers are now obliged to give employees the opportunity to respond to all allegations against them before proceeding with a disciplinary dismissal ("prior hearing").
- A failure to comply with this requirement by the employers may lead to disciplinary dismissals being declared unfair by the Courts if challenged by the employee. This could result in the employer being ordered to pay potentially significant compensation to the dismissed employee (i.e. 33 days of salary per year worked with a maximum limit of 24 monthly payments).





Section 11 of Industrial Disputes Act, 1947, empowers a Judge of the Labour Court/Industrial Tribunal to enter the premises of an establishment for the purpose of conducting inquiry connected to an existing or an apprehended Industrial Dispute.



THE TAJ WEST END HOTEL VS SRI K. VENKATESH
WRIT PETITION No.1474/2020
DATED: 28.10.2024

The Taj West End Hotel Vs Sri K. Venkatesh Writ Petition No.1474/2020, Dated: 28.10.2024

- The employee was accused of stealing oil sachet from the hotel premises.
- The hotel conducted a domestic inquiry, which found him guilty of misconduct, leading to his dismissal.
- The employee challenged the dismissal and argued that the alleged theft was trivial, the item's value was negligible and so the punishment was disproportionate.
- The Labour Court reviewed the case and concluded that the dismissal was excessively harsh given the minor nature of the theft. It emphasized that the value of the item should be considered in determining the severity of the punishment. The Labour Court directed reinstatement with full back wages, stating that dismissal for such a minor offense was unreasonable and that a more lenient approach should have been taken.

CONTINUATION...

- The Hon'ble High court ruled that the disciplinary authority conducted a thorough enquiry, relying on legal evidence to conclude that the respondent was guilty of theft and misappropriation. The evidence was carefully examined without any apparent error or perversity. Referring to the Supreme Court's ruling in B.C. Chaturvedi, the High Court reiterated that appellate authorities have the power to re-evaluate evidence and the severity of punishment. The charges, being serious in nature, involved theft of an oil sachet, witnessed by a security guard and corroborated by CCTV footage.
- The Labour Court erred in directing reinstatement and back wages solely on sympathy, as the material on record was sufficient to establish the employee's guilt of the charges, thereby violating Section 11A of the Industrial Disputes Act.
- Hence, the High Court had set aside the Labour Court's award directing the reinstatement, upholding the dismissal of the employee.

The Taj West End Hotel Vs Sri K. Venkatesh
Writ Petition No.1474/2020, Dated: 28.10.2024



Life Insurance Corporation of India & Ors vs Om Prakash
2024:INSC:870
Dated 13.11.2024

Life Insurance Corporation of India & Ors vs Om Prakash **2024:INSC:870, Dated 13.11.2024**

- The Employee served as an Assistant Administrative Officer was terminated invoking Regulation regarding abandonment of services without prior information .
- The Employer argued that the Termination order was Justified as the employee was absent without communication for over 90 days. The Employer had even sent communications which remained unanswered.
- The Employee argued that the Employer did not conduct a formal inquiry or offer him an opportunity to respond before terminating his service.

CONTINUATION...

- The High Court directed reinstatement with full benefits stating that Employer has failed to follow the due process before terminating an Employee from service.
- The Supreme Court held that the High Court had erred by providing relief to the employee without acknowledging the circumstances indicating his abandonment of service and quashed its order. The Court found that the actions of the employer were justified under the regulation, given the employee's non-communication and undisclosed employment with another organization.

Life Insurance Corporation of India & Ors vs Om Prakash
2024:INSC:870, Dated 13.11.2024



RIGHTS OF WORKMAN FOR ASSISTANCE IN DOMESTIC ENQUIRIES

CAN RIGHT TO REPRESENTATION BE CLAIMED BY A WORKMAN AS A MATTER OF RIGHT?



**IS IT THE ENQUIRY OFFICER OR THE
EMPLOYEE WHO SHOULD VOLUNTARILY
ASK FOR ASSISTANCE?**



K Kalindi and Others Vs Tata Locomotive Engineering Ltd. (1960) II LLJ 228

- 14 workmen were dismissed from the services of the Management following the findings of the enquiry officer holding that the charges levelled against them stood proved in the domestic enquiry. The case of the workers herein along with other allegations regarding their dismissal was that the enquiry which resulted in dismissal was not based on a proper and valid enquiry as they were not allowed to be represented by one of the Members of the Union in which they belonged to.
- The Management, on the contrary had however permitted the workmen to bring a co-worker of their choice for the enquiry and the same was recorded in the enquiry.

Contd...

- The Apex Court observed that the enquiries conducted are not as in the Courts of law but to ascertain the facts which resulted in the dismissal. It was also observed that the worker concerned would be the most able person to examine and cross examine than anyone else and concluded that the workmen concerned do not have any right to be represented by a member of the Union and can be done so, only with the discretion of the Employer Management. The appeals were dismissed accordingly.

Brooke Bonde India Private Ltd Vs S Subba Raman and others (1961)II LLJ 417

- Two employees were charge sheeted independently and separate enquiries conducted against them by appointing an Enquiry Officer. In the enquiry proceedings, the employees requested to be represented by an advocate and a member of the Union respectively.
- The request was denied by the Enquiry Officer, the employees refused to participate in the enquiry resulting in ex-parte findings being submitted by the Enquiry Officer to the Management.

Contd...

- The Hon'ble Apex Court, relied on the settled principle enunciated in Kalindi Vs Tata Locomotive and Engineering Co Ltd., which held that the employees are not entitled to be represented by a Union member and if done so, can be at the discretion of the employer to uphold that since the request of the employees was to bring in an advocate as well as a member of the Union, the refusal of the Enquiry Officer cannot be held as bad in law.

Chairman and Managing Director, Hindustan Teleprinters Ltd vs M Rajan Isaac (Mar 2, 2005)

- The question which arose for consideration of the Division Bench of Madras High Court was whether an employee should be represented by an advocate of his choice in the event of the representative of the Management being a legally trained person.

Contd...

The Bench, upon a careful perusal of the decisions passed by the Supreme Court, laid down the following principles in the matter of right of a workman to be represented by a lawyer.

- a) No vested or absolute right in the employee to representation either through a counsel or through an agent unless the statutes/ regulations/ rules/ standing orders recognizes such a right.
- b) The right to representation through a counsel or agent can be restricted, controlled or regulated by the statutes/ regulations/ rules/ standing orders as the case may be.
- c) In the absence of any provision in the statutes/ regulations/ rules/ standing orders, refusal to representation either through a counsel or through an agent does not violate the principles of natural justice.
- d) Even in case of only an option is given to an employee to secure the assistance of a lawyer/ agent, by such clause, there is no vested or absolute right on the employee, as it is the discretion of the employer to accept such request depending upon the facts of each case with reference to the complicated issues raised and involved in the enquiry.

Contd...

- In the present case, the Division Bench, went hand in hand with the reasoning of the Supreme Court in similar cases and held that the employer, having been represented by a legally trained person, rejection of the said privilege to the employee for want of rules as violation of principles of natural justice, and thereby dismissed the appeal.

**IS AN HANDICAPPED EMPLOYEE
ENTITLED TO REPRESENTATION ??**

CAN AN EMPLOYEE SEEK THE ASSISTANCE OF A RETIRED EMPLOYEE IN THE DOMESTIC ENQUIRY??

CAN AN EMPLOYEE SEEK REPRESENTATION ON THE CHARGE OF UNAUTHORISED ABSENCE ??



LexPOSH

ZF Rane Automotive India Pvt.Ltd vs Mr.Ayyappan and Another

WP No 35042 and 35044 of 2023 27.08.2024



- An Internal Committee, after inquiring into a complaint of sexual harassment filed by women employees, recommended the dismissal of the employee from service. Acting on the recommendations, the employer dismissed the employee. The workman challenged the termination under Section 2A(2) of the Industrial Disputes Act, 1947, before the Labour Court.
- Subsequently, the Management filed a counter, stating that the workman has a right to appeal under Section 18 of the POSH Act, 2013, against the Internal Committee's recommendation. The workman then filed an appeal under Section 18 of the POSH Act while continuing to pursue the industrial dispute.
- The Management filed an interlocutory application before the Labour Court, arguing that since the workman had filed an appeal under Section 18 of the POSH Act, he cannot simultaneously pursue the industrial dispute and, in any event, cannot pursue both remedies.



LexPOSH

ZF Rane Automotive India Pvt.Ltd vs Mr.Ayyappan and Another

WP No 35042 and 35044 of 2023 27.08.2024

- The Labour Court dismissed the application, holding that the workman could pursue both remedies simultaneously as there was no statutory bar.
- The Management challenged this order of the Labour Court before the Hon'ble High Court.
- The Hon'ble High Court set aside the Labour Court's order and held that if the workman chooses to maintain the industrial dispute, he must forgo the remedy of appeal under Section 18 of the POSH Act. Therefore, he cannot pursue both remedies simultaneously.

QUIZ!

Can an employer enter into an agreement with an employee or legal heirs of the deceased employee under the Employee's Compensation Act, 1923 to pay compensation?

1. **Yes** (Section 28 of the EC Act)
2. No



REPORTING PERIOD – DECEMBER 2024			
Act	State	Due Date	Activity
Employees Provident Fund & Miscellaneous Provisions Act	Pan India	15-Dec	PF Remittance
Employees Provident Fund & Miscellaneous Provisions Act	Pan India	15-Dec	IW Returns
Employees Provident Fund & Miscellaneous Provisions Act	Pan India	25-Dec	Monthly Returns-For Exempted Employer Under EDLI Scheme (FORM 7(IF)
Employees State Insurance Corporation Act	Pan India	15-Dec	ESIC Remittance
Professional Tax Act	Andhra Pradesh	10-Dec	Professional Tax Remittance cum Return
	Telangana	10-Dec	Professional Tax Remittance cum Return
	Madhya Pradesh	10-Dec	Professional Tax Remittance
	Gujarat	15-Dec	Professional Tax Remittance
	Karnataka	20-Dec	Professional Tax Remittance cum Return
	West Bengal	21-Dec	Professional Tax Remittance
	Maharashtra	31-Dec	Professional Tax Remittance cum Return
	Odisha	31-Dec	Professional Tax Remittance cum Return
	Assam	31-Dec	Professional Tax Remittance cum Return
	Nagaland	31-Dec	Professional Tax Remittance
	Meghalaya	31-Dec	Professional Tax Remittance
	Mizoram	31-Dec	Professional Tax Remittance
	Sikkim	31-Dec	Professional Tax Remittance
	Manipur	31-Dec	Professional Tax Remittance
	Tripura	31-Dec	Professional Tax Remittance
Kerala Shops & Commercialized Establishments Workers Welfare Fund Act	Kerala	05-Dec	WWF Remittance
Kerala Shops & Commercialized Establishments Workers Welfare Fund Act	Kerala	15-Dec	WWF Return

**Let's connect again
At
5PM on 06th January, 2025**

*Thank
you*



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