

LABOUR LAW MONTHLY UPDATE

SEPTEMBER 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

Amendments & Ordinance

Circulars and Notifications

Across the Globe

Did you know

Case Law

Compliance

Knowledge Corner



AMENDMENTS AND ORDINANCE



Circulars and Notifications

EMPLOYEE'S PROVIDENT FUND ORGANISATION

Notification Dated:02.08.2024

Standard Operating Procedure Version 2.0 for Transaction-Less and Inoperative Accounts

- An SOP has been published by the EPFO to ensure the efficient management of **transaction-less and inoperative accounts**.
- The SOP focuses on the mechanism to be followed from filing to verification, Time limits, Inoperative accounts for a period of 3 years, Follow-ups after verification etc.
- The Field officers have been instructed to exercise rigorous due diligence to prevent incidents of impersonation, identity theft, and similar issues.

EMPLOYEE'S STATE INSURANCE CORPORATION

Notification Dated: 09.08.2024

Instructions for the Recovery Machinery and for Ensuring the Proper Monitoring.

The Employees State Insurance Corporation has set guidelines to be followed in order to meet the recovery targets for the period 2024-2025:

- Attachment and sale of movable and immovable property of the factory or establishment in the case of Principal employer.
- Arrest or detention of the employer to effect recovery of dues.
- Appointing a receiver for the management of the movable or immovable properties of the factory or establishment
- Recovery officer should focus only on recovery of the pending dues from the defaulting employer.
- RDs/SRO should personally monitor high value cases and ensure effective action.

Contd

- All the field offices should concentrate on cases where the employer has generated the Challans but failed to deposit contribution.
- Update the status of the employer to different available options available such as closed/temporarily closed/de-covered/registration cancelled / liquidation etc
- Intimation of proper closure may not be available hence such units may be marked as temporary closed so that it may not reflect in defaulter's list.
- The field officer should check for the status of Unit from various GST department, EPFO etc and progress report of cases Rs.25Lakh or above to be furnished.

**THE DEPARTMENT OF LABOUR AND
GOVERNMENT OF RAJASTHAN
CIRCULAR DATED 14.08.2024**

Circular issued by the Department of Labour and Government of Rajasthan

- The Department of Labour and the Government of Rajasthan, as part of its ease of doing business has issued its office orders mandating creation of an online dashboard to give the following particulars:
 - Date on number of applications received and granted, time taken and fee incurred for grant of approvals/certificate.
 - The last updated date and time of the dashboard to mentioned.
- The dashboard shall cover the following acts:
 - The Contracts Labour (Regulation and Abolition) Act, 1970 relating to License for contractors and establishments of principal employers.
 - Shops and Establishment Act, 1947.
 - Building and Other Construction Workers Act, 1996.
 - Establishment under the Inter State Migrant Workmen (RE&CS) Act, 1979.

GOVERNMENT OF MADHYA PRADESH

Notification dated : 07.08.2024

The Madhya Pradesh Private Security Agencies Regulation Rules, 2024

- The Government of Madhya Pradesh, vide Notification vide No.F1-172-2021-Two-C-X has published on 07.08.2024 "The Madhya Pradesh Private Security Agencies Regulation Rules, 2024".
- These Rules supersede the Rules framed in the year 2012.



ACROSS THE GLOBE

United Kingdom introduces Unfair Dismissal as a Day One Right

- The new Employment Rights Bill heralds a significant shift in the employment law wherein the right of the employees not to be unfairly dismissed arises from their first day of the employment.
- This marks a departure from the previous requirement which mandated **upto two years of continuous service** for employees to qualify for protection against unfair dismissal.
- Since employees benefit from immediate protection against unfair dismissal, this likely means employers must have a fair and transparent reason for terminating employment **even within the probationary period.**

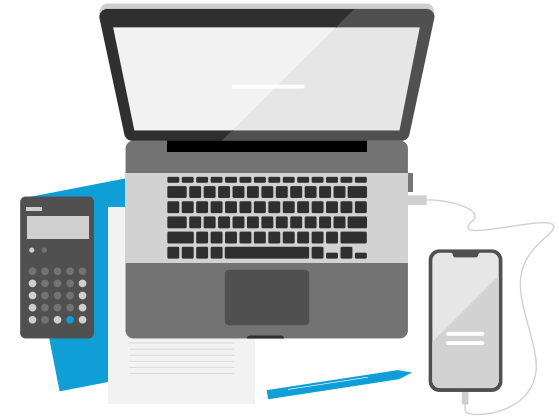
Singapore extends mandatory 4-weeks Paternity Leave

- The Singapore Government has issued 4-weeks mandatory Paternity Leave for all the eligible working fathers of Singaporean children.
- The new shared parental leave scheme will also be introduced allowing parents to share an additional 10 weeks of paid leave. This extra leave can be divided between both parents, without reducing the maternity leave entitlements. It will be rolled out in two phases:
 - **Phase 1:** From April 1, 2025 – parents will be entitled to 6 weeks of shared parental leave.
 - **Phase 2:** From April 1, 2026 – this will increase to 10 weeks of shared parental leave.
- The total parental leave available to families will increase to 30 weeks from existing 20 weeks.





The U.S. Department of Labor has updated overtime pay rules: Starting July 1, 2024, salaried employees earning less than \$844 per week will be eligible for overtime pay, up from the previous \$684 threshold. They have also confirmed that the threshold will increase to \$1,128 (earnings per week) from January 1, 2025.





**S Mahajan Carpet VS
Assistant Provident Fund Commissioner, Varanasi
WRIT - C No. - 13264 of 2024**

S Mahajan Carpet Vs. Assistant Provident Fund Commissioner Varanasi and others WRIT - C No. - 13264 of 2024 (ALLAHABAD HIGH COURT)

- On December 26, 2023, an order was passed under Section 7-A, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. The Petitioner filed a review petition under Section 7B against the said order on February 22, 2024.
- An order was passed rejecting the review without any hearing and was undated. The authority who had authored the order had been transferred effective March 9, 2024.
- The Petitioner challenged an undated order dismissing their review petition under Section 7-B .

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- The order was challenged on the grounds of :
 - Not providing a hearing.
 - Lack of jurisdiction of the authority post his transfer and
- The Provident Fund Organization contended that the review order was valid as respondent No. 3 was still within their jurisdictional period when the decision was made and that no hearing was required for review under Section 7-B.
- The Hon'ble High Court of Allahabad held that , the undated nature of the order and the lack of an opportunity for the petitioner to be heard violated statutory and procedural requirements.
- Consequently, the court quashed the review order, directing that the review petition be reconsidered with proper procedural adherence and a hearing, to be completed within three months from the receipt of the court's order.



**M/S. Bharti Airtel Limited vs A.S. Raghavendra
(2024) 6 SCC 418**

M/S. Bharti Airtel Limited vs A.S. Raghavendra (2024) 6 SCC 418

- The Employee (Respondent) was working as Senior manager and headed a team of 4 other managers.
- The Employee resigned aggrieved over his performance rating and mention the resignation was "not out of his free will".
- The labour court held him to be not a workman and dismissed the dispute.
- The High Court held that as he did not have the power to appoint, dismiss or initiate disciplinary action against other employees, he was a workman as defined under Section 2(s) and remanded the case to the labour court to consider on merits.

Contd..

- The Hon'ble Supreme Court held the test to determine whether a person is a "workman" was not only as to whether he can appoint and dismiss. concluded that the Respondent did not fall within the definition of a "workman" under the ID Act. based on the nature of his duties and the circumstances surrounding his resignation. on the ground oRespondent qualifies as a "workman" under Section 2(s) of the Industrial Disputes Act, 1947 (ID Act). The Appellant challenged the dismissal of their appeal by the High Court, which had previously overturned a decision from the Labour Court that had found in favor of the Respondent. The dispute centred on whether the Respondent's resignation constituted a forced action due to the Company's alleged coercion or mismanagement, impacting his eligibility under the ID Act. The Court examined the High Court's role in re-appraising factual findings and determined that such re-evaluation is permissible only if there is significant error or infirmity in the Tribunal's order.

Contd..

- Therefore, the High Court's decision was overturned, the judgment of the Labour Court was reinstated, and it was declared that the Labour Court had no jurisdiction to entertain the Respondent's reference against the Appellant. The appeal was thus allowed, effectively restoring the Labour Court's original ruling that the Respondent's claim was not maintainable under the ID Act.

M/S. Bharti Airtel Limited vs A.S. Raghavendra

(2024) 6 SCC 418



LEGAL NUANCES OF A CHARGE

SHEET

WHAT IS A CHARGE SHEET AND WHAT SHOULD IT CONTAIN??

CHARGE SHEET

- Accusation made against an employee in respect of an offence alleged to have been committed by him.
- Neither a record of evidence nor mere passing of information to the Employee.

CONTENTS

- Name of the Employee, Employee ID as provided by the Establishment.
- Date, time and place of commission of alleged misconduct.
- Allegations/ complaints received against the concerned Employee.
- Relevant clause of the misconduct as provided under the standing orders applicable to the establishment.
- Explanation to the charge sheet from the concerned Employee.
- Provision for suspension in case of grave or serious offence committed by the Employee.
- Signature of the Authority.

When can the charges said to be vague??

- "(1) You do not keep clean the loom on which you are working.*
- (2) Despite the jobber telling you, you do not put the oil in the loom without caring for the fact that the bearing get hot.*
- (3) Before going to the bath-room you do not give indication to the jobber or your department helper or co-worker and nor do you request them to take care of your loom, you have not cared for the suggestion made by the jobber time to time.*
- (4) Your conduct and behaviour with the Departmental jobber, the other weavers and the superior officer is indisciplined, careless and unbecoming.*
- (5) Your overall behaviour in the factory is one of irresponsibility and with the discipline of the factory."*



**MIRAJ TALUKA GIRNI KAMGAR SANGH VS.
THE MANAGER, SHREE GAJANAN WEAVING
MILLS & ORS.,
1992 LLR 236 (BOM HC)**

Can a plea regarding the charges being vague be raised for the first time before the judicial forum without the same being raised in the enquiry proceedings?

The following charge sheet was issued to the Employee;

"You are charged for intentional serious dereliction of duty, misappropriation of funds, not proving your integrity during period of probation etc. and other charges which are enclosed as evidence and being sent to you by post. An action against you is proposed according to resolution No. 2 passed on 8.1.1989 by the Committee of Management under Rule 32-37 of Chapter 3 of service conditions (See 16-Ch.) of U.P. Intermediate Education Act, 1921.

You are called upon to submit your reply within three weeks of the receipt of charge sheet and also indicate as to whether you want to personally appear before the enquiry Committee so that you can be informed about the date and time of the enquiry proceedings".

**OM PRAKASH MANN VS. DIRECTOR OF
EDUCATION(BASIC) & OTHERS.,
(2006) 7 SCC 558**

Whether the domestic enquiry stands vitiated because a wrong provision of the standing order is mentioned in the charge sheet???

**V.V.F LIMITED VS. SARVA SHRAMIK
SANGH & ORS.,
1998 LLR 585 (BOM HC)**

**Whether the list of witness and the documents
to be given along with the Charge Sheet??**

PEERLESS GENERAL FINANCE & INVESTMENT CO. LTD., & ORS VS HARIKRISHNA ALTHAL (MAJOR).,2008 I LLJ 935

Whether the domestic enquiry is to be vitiated if the Charge Sheet is in English? Can an employee demand for translation?

**THE WORKMAN OF NAHARHABI TEA
ESTATE & ORS VS. MANAGEMENT OF
NAHARHABI TEA ESTATE, P.O & ANR.,
(2014) 140 FLR 659**

Is there a time limit to issue a charge sheet ??

**G. ANANDAM VS TAMIL NADU
ELECTRICITY BOARD AND ANR.,
1996(2) LLN 1180 MAD HC**



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**SAMUEL TENNYSON VS THE
PRINCIPAL & SECRETARY,
MADRAS CHRISTIAN
COLLEGE & OTHERS
W.P. NO. 15145 OF 2019**

Samuel Tennyson Vs .The Principal & Secretary, College & others

WP 15145 of 2019 Dated 30.04.2024



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- The Petitioner was an Assistant Professor in the Zoology Department of a College. A group of students were taken on a study tour and they were accompanied by faculty members including the petitioner. A complaint was received that the Petitioner and a colleague sexually harassed girl students on the trip.
- An enquiry was made by the IC which concluded in its report that the petitioner stood guilty. The Petitioner stated that the complaint made by the students was against his colleague and his name was added as a supportive behavior. The Petitioner claimed that at the time of inquiry, he was asked to sit outside and after recording their evidence, he was called inside.
- The Petitioner questioned the legitimacy of the report and stated a violation of 'Principles of Natural Justice' as grounds for quashing the findings.

**Samuel Tennyson Vs .The Principal & Secretary,
College & others
WP 15145 of 2019 Dated 30.04.2024**



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FINDINGS

- The Court stated that the Petitioner was charged for the supportive behavior extended by him to his colleague, though his act cannot be said to be so serious as that of his colleague, it was evident that the Petitioner was also involved in certain acts.
- With regard to the contention of the Petitioner, he was not permitted to stay in the hall during enquiry of the students, it was held that as there are high chances of panic out of fear, the students will not come out to give the entire facts and hence the contention was negated. The court concluded that there was no violation of the principles of natural justice by the ICC in the conduct of the inquiry and found no infirmity with the report of the ICC.



**Let's Connect again at
At
5PM on 3rd October, 2024**



*Thank
you*



**E-mail: community@truscomp.com
Contact: 87540 48634**

**E-mail: support@agamlegal.com
Mob : 9940132401**