



## **Ascend HR Solutions Pvt. Ltd.**

Level-8, Regus, RDB Boulevard, Plot-K1, Sector-V, Block-EP & GP, Salt Lake City, Kolkata-700091

[www.ascendhr.in](http://www.ascendhr.in)

## ***HR Updates: April - Sept 2018*** ***Employment Law, Important Court Judgments & HR News***

Dear friends,

Hope you have perused the brief of two recent major Employment Law Amendment published by us in All India HR Journals, on Labour Code on Industrial Relations Bill and Maternity Benefit Act. Since there was no major changes since then, we have preferred not to publish the issue in the last two quarters. Rather, we have published the present issue as an elaborate half-yearly one.

Major upheavals in Employment Laws took place on 18.03.18 with the amendment which allows fixed term contract employment in all sectors.

Digitization of social security schemes along with the payment of wages through Banks is sure to have a far-reaching effect towards the journey to an era of paperless transactions, even in labour front. Most of the registers may wither away. The register regime is on the wane.

HR Updates has also noted that Indian Companies are stretching the benefits by introducing 'Paternity Leave' and 'Bereavement Leave'.

Introduction of national minimum wages is on the cards. No state will be allowed to fix the minimum wages below the minimum wages fixed by the central government for that area.

Hope you will find the information contained in this News Letter useful.

Your feedback is welcome for further improvement in this initiative; you can write to my email address [saroj@ascendhr.in](mailto:saroj@ascendhr.in)

*Best regards,*

*Ascend HR Solutions Pvt. Ltd.*



*Contents Prepared By: Saroj Chaki and edited by A.K.Bhattacharya*

## EMPLOYMENT LAW UPDATE

1. In a major shift, the Fixed term contract employment which was introduced under Industrial Employment (Standing Orders) Act, 1946 in case of Apparel manufacturing Sector in 2016, has now been extended to all sectors by further amendment of the said Act., vide notification no. G. S. R. 235(E) dated. 16.03.2018.

This notification is applicable to Industrial Establishments as defined under the Payment of Wages Act, e.g, Factory, Mines, Plantations, Workshops, Constructions, etc.

The Government has extended the facility of hiring employees on Fixed Term Employment to all Sectors. This amendment has certain shortcomings, e.g.,

- No post of the permanent employees as existing on the date of notification shall be converted into a Fixed Term one.
- The terms and conditions of employment of Fixed Term Employees will not be less favorable than those of permanent employees.
- The statutory benefits shall be extended even when the minimum qualifying period is not completed. This implies that even if he completes less than 5 years, a Fixed Term employee will be entitled to proportionate gratuity.
- However respective State Govt. has to amend the State Rules according to this Amendment.

With this amendment the employer will have the liberty to engage the employees on Fixed Term basis which will enable them to assess the performance of the employees before inducting them as permanent employees.

The Government should take a holistic approach to remove the shortcomings and amend the employment laws accordingly, so that the industry grows in a hassle-free environment.

- 2) Upper limit of gratuity has been revised from Rs. 10 Lakh to Rs. 20 Lakh for private sector employees at par with the govt. employees. vide notification no..S.O.1420(E),dated, 29.03.2018.
- 3) With effect from 1st June,2018 the rate of administrative charges payable by employer under EPF scheme reduced to 0.5% (point five per cent) vide MoL&E/EPF Notification no. S.O.2011 (E) dt.21 May,2018.
- 4) Payment of Wages (Amendment) Act,2017 enables payment of wages to employees by cash or cheque or crediting it to their bank account.
- 5) Retirement fund manager EPFO has issued direction to its field offices to settle pension benefits to employees on the day of retirement itself.
- 6) The proposed Code on Wages Bill 2017, introduced in Lok Sabha by Labour and Employment Minister, provides for National Minimum Wage for different geographical areas so as to ensure that no State Government fixes the minimum wage below the national minimum wage, notified for the area by the Central Government.
- 7) Ease of Compliance to maintain Registers under Various Labour Laws & Rules,2017<sup>1</sup> has replaced 56 registers/forms



under 9 Central Labour Laws and Rules made thereunder into 5 common registers/forms.

8) Following changes have been made under ESI Act :

- a) IP can avail Super Specialty Benefits by serving 6 months (Contribution of minimum 78 days as against 02 years earlier).
- b) Dependents of IP can avail super specialty benefits with insurable employment of 1 (one) year, with minimum Contribution of 156 days.
- c) Increase in Funeral Expenses from existing Rs. 10,000/- to Rs. 15,000/- being paid to dependents on death of Insured Person.

## IMPORTANT COURT JUDGEMENTS

- 1) Courts not to interfere with punishment when employer has lost confidence in workman. (United India Insurance Co. Ltd. & 2 Ors. Vs Tarani Kanta Kakati ----Gau. H. C. 2017 LLR 691).
- 2) In every case of illegal termination, reinstatement is not automatic or as a straight jacket formula. Instead of reinstatement, a lump sum is granted keeping in view the length of service the workman had put with the management (U.P. State Sugar Corpn. Ltd. Vs. Kaushal Kumar Sinha---S. C. 2017 LLR 673)
- 3) There has to be a substantial difference between the nature of work to justify the difference in wages of permanent employee and contractor's employee (Chemical Mazdur Panchayat Vs. IOC Ltd. & Ors---S. C. 2017 LLR 785).
- 4) Termination of service of a workman after appointment as regular employee is not retrenchment, if the contract of employment is having stipulation that he is appointed for a specific period.(M. P. H. C.2017 LLR 808)
- 5) In the cases of grave and serious misconducts of riotous and disorderly behaviour, punishment of dismissal is justified.- -- Mad.H.C.2017LLR 917
- 6) Punishment of dismissal for the proved misconduct of theft is justified since such a misconduct is grave and serious compelling the management to have lost confidence upon the workman--- Gau. H.C.2017 LLR 1032
- 7) Non-payment of earned wages and other legal dues to the employees attracts criminal proceedings against the erring employers. Government authorities concerned are liable to ensure that the due earned wages and other benefits to the workmen are paid intact by the employers failing which they are also liable to face the criminal proceedings... S. C.2017 LLR 947
- 8) Principal employer is not liable to pay EPF dues in respect of employees of registered contractors. However,





the liability of unregistered contractors will fall on the Principal employer in view of clause 30 of the EPF Scheme 1952. (Coral Health Care Pvt. Ltd. Vs. RPFC & Anr. ATA No. 824(17) 2012).

- 9) A purchaser who has purchased a part of an establishment in public auction, which had gone into liquidation is not liable to pay arrears of EPF contributions to the EPF Authority since it is not transfer of establishment as envisaged under section 17B of the EPF &MP ACT,1952 and section 11 of the Act would not be applicable (Shivam Smelters (P) Ltd. Vs. Recovery Officer, EPFO...Hyd. H. C. 2017 LLR 744)
- 10) The EPF Authority is not empowered to direct an employer to make compliance of any other Act including Bonus Act, Apprentices Act, Minimum Wages Act, etc. (Central Board of Trustees, EPFO, Indore Vs. M/s. Force Motors Limited Pithampur---- M. P. H. C. 2017 LLR 879).
- 11) Attaching of bank account by the EPF Authority is not proper if it makes the employer unable to make the payment of EPF contributions and payment to employees (Tesati Tea Limited & Anr. Vs. RPFC, Jalpaiguri & Anr.----- Cal. H. C. 2017 LLR 1106).
- 12) When the employee appointed on contractual basis is having knowledge about his contractual job, the demand of regularization by such employee is not justified (New Gujrat Mazdur Manch Vs. Sardar Saravor Narmada Nigam Ltd. Others-- Guj. H. C. 2017 LLR 996).
- 13) Accidental physical contact would not amount to sexual harassment, only a physical contact or advances which are in the nature of an "unwelcome sexually determined behavior" would amount to sexual harassment (Shanta Kumar Vs. CSIR & Ors.-----Del. H.C. WPC 849/2010).

## NEWS TO NOTE

### 1. Comments on Maternity Benefits – compiled from article published in Economic Times)

The new amendments, increasing maternity leave to 26 weeks might cause some pangs in the short term unless the financial blow on compliances is softened. India has a generous Maternity Leave Policy – it is 12 weeks in USA, 17 weeks in Canada, 16 weeks in France, 14 weeks in China, 16 weeks in Singapore and 17 weeks in Brazil. India is probably only country where financial burden is supposed to be borne by employer fully. In most countries, cost of maternity leave is shared by the Government, employer, insurance agency and other social security organizations. In Singapore, for example, the employer bears the cost for 8 weeks and public fund 8 weeks. In Australia and Canada, public funds bear the full cost. In France Social Insurance Scheme bears the cost. In Brazil, it is shared by employer, employee and the Government.



While large companies with deep pockets may be able to afford the 26-week paid leave policy, most Indian Organizations, micro, small, medium enterprises and start-ups, cannot afford this, given their growth challenges, resource constrains and margin pressures. According to study, post maternity retention could cost 80%– 90% of annual salary in case of white collar employees. Additional requirements like Creche facilities require more

capital and operating expenditure. It would not come as a surprise that some companies in India might shy away from hiring young women. When they do, women might face a reduction in compensation as firms to compensate for higher lifetime costs.

Some remedial options : The Government could share the maternity leave with employers, say pays for 13 weeks and the Government pays for 13 weeks. The Government may amplify tax rebates for maternity wages or set up an insurance scheme, sharing the premium with employer. Another option may be breaking up 26 weeks into 13 weeks maternity leave and 13 weeks paternity leave, to negate possibility of gender bias.

As per report, women Labour Force Participation in India has fallen and is among the lowest in the world. It is slightly above Saudi Arabia and Pakistan.

Report reveals that post maternity attrition is expected to fall from 56% to 33%, but according to study women may lose jobs 11-18 lakhs in financial year 2018-19 across 10 sectors surveyed.

2) NDIA to ratify conventions to combat child labour :--

This year, the government of India has approved ratification of two fundamental conventions of the ILO to address concerns related to child labour.

3) Haryana govt. to challenge acquittal of 117 in Maruti case:

The trial court in Gurugram had convicted 31 employees of Maruti Suzuki India Limited (MSIL), including 13 on charges of murder of senior HR Executive, A K Dev, for the violence, in which more than 100 other employees had suffered. The court had acquitted 117 MSIL employees.

The Haryana government has decided to challenge the acquittal and, also sought enhancement of sentence of the convicted employees.

3) Creation of 2 million jobs:--

The Government expects its major new policy of phased manufacturing programme to create 2 million jobs and half a billion dollars worth of mobile manufacturing programme in the country.

4) Increase of number of ESI beneficiaries: The number of ESI beneficiaries has gone up from 7.89 to 12.02 crores.

5) Rampant gender pay gap: Report reveals that In manufacturing sector male employees earn Rs.257 on an average, while female employees earn Rs. 180, constituting 30% gender pay gap.

6) Life term for CEO murder: The district and sessions court in Surajpur on 17th August, 2017 sentenced life imprisonment to four sacked workers for the violence at the India unit of Italian MNC's Graziano Transmission's plant in Greater Noida in 2008, in which the company's MD and CEO was murdered by a 200 strong armed mob of dismissed employees.

7) Low-skilled IT workers to lose their job:

According to a report by US-based research firm HFS Research, about 7 lakhs low-skilled workers in IT and BPO industry in India are likely to lose their jobs due to automation and artificial intelligence by 2022.

8) Bereavement leave by Indian Companies:

Indian companies such as TCS, Infosys, Cipla and Hilton India have started offering bereavement leave anything from a day to five days of paid grief leave whereas earlier, staff had to take privilege leave.

9) Indian firms can save by using HR Technology:

Industry veterans agree that HR technologies can help companies cut people management expenses in the coming years. IT industry veteran T. V. Mohandas Pai pegged the annual cost reduction of people management at 25-30%. According to the survey data shared exclusively with Mint, a national Business daily, People Strong estimates that Indian companies can save at least \$600 mn annually by 2021 using HR Technology.

10) 22% job generation in private security sector: Low police-people ratio in India leads to the rapid growth of the private security industry, at 18-20 per cent annually.

11) Mumbai Tech major allows 3 months' paternity leave:

Companies in India have started to allow paternity leave. Sales force, the Bay area tech giant, is the latest to set a new benchmark by offering three months of secondary caregiver leave.

12) Kolkata tops the table: Among cities, Kolkata topped with the highest growth in online recruitment up 40% followed by Baroda( up 36%) and Mumbai (up 15%).

13) GST to boost hiring:

Kris Gopalakrishnan, Infosys Co-Founder has estimated that India may see 1 lakh jobs being created in the next six months due to GST implementation.

14) The US Layoff by Amazon has taken toll of their employees in their India Unit also. Amazon India lays off 60 employees.

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