



EMPLOYMENT AND LABOUR NEWSLETTER

I. CIRCULAR

1. Ministry of Commerce and Industry on Special Economic Zones (Fifth Amendment) Rules, 2022 –amends Rule 43A guidelines with respect to Work from Home (“WFH”) for SEZ Units further liberalizing the WFH regime

In a significant positive move, the Ministry of Commerce and Industry, has after considering the representations from NASSCOM as well as other units seeking further flexibility in the WFH regime, issued a Notification dated 8 December 2022 (“**Notification**”), being the Special Economic Zones (Fifth Amendment) Rules, 2022 (“**SEZ Rules, 2022**”) which further amends the former notification dated 14 July 2022 that inserted Rule 43A enabling WFH for SEZ units. The Notification significantly liberalizes the WFH regime for employees in the IT/ITeS sector operating in the SEZ Units by replacing the permission-based regime with an intimation-based regime.

[We have summarized the former notification dated 14 July 2022 in our [Employment and Labour Newsletter Issue 2 – August](#)].

The recent Notification now substitutes Rule 43A with key changes as under:

- SEZ Units may permit 100% of their employees (including contractual employees) to WFH or any place outside the SEZ and such permission shall be an intimated to the Development Commissioner (“**DC**”) on or before the date of granting such permission to their employees’.
- The permission granted by the SEZ Units to their employees can be up to 31 December 2023.
- For the SEZ Units that had already permitted its employees to WFH or from any place outside the SEZ, before the commencement of the SEZ Rules, 2022, an intimation shall be sent by email to the DC on or before 31 January 2023.

2. India’s Ministry of Electronics and Information Technology (“MeitY”) released the Digital Personal Data Protection Bill, 2022

MeitY on 18 November 2022 released the much awaited the Digital Personal Data Protection Bill, 2022 (“**Bill**”) and invited feedback from the public on the Bill by 17 December 2022. While previous versions of the proposed general data protection legislation (“**Previous Drafts**”) drew heavily upon European Union’s General Data Protection Regulation and were dense, voluminous documents, the present Bill draws inspiration from Singapore’s Personal Data Protection Act, 2012, and is a condensed, concise document.

The Bill defines Data Principal as an individual to whom the personal data relates, and in context of children (e., 18 years or below), includes their parents and legal guardian. The Bill states that a Data Principal is

IN THIS ISSUE:

- *Circulars / Notifications*
- *Case Laws*
- *Industry Insights and Trends*

deemed to have given consent (“**Deemed Consent**”) to the processing of his / her personal data if such processing is necessary for purposes such as *related to employment: including prevention of corporate espionage, maintenance of confidentiality of trade secrets, intellectual property, classified information, recruitment, termination of employment, provision of any service or benefit sought by a Data Principal who is an employee, verification of attendance and assessment of performance.*

The penalty for violation with Consent or Deemed Consent requirements can be up to INR 500 million (about USD 6.1 million).

3. ESIC notifies that Companies having employees less than threshold limit or 0 number of employees and who have obtained ESI number through MCA portal, are now required to apply for ‘dormant’ status

The Employee's State Insurance Corporation (“**ESIC**”) via notification dated 21 November 2022, has notified that companies who have obtained ESI number through Ministry of Corporate Affairs (“**MCA registered units**”) portal, are now required to apply for ‘dormant’ status, if they are having employees less than threshold limit or zero no. of employees for the coverage under ESIC Scheme as on 31 October 2022. Further, if the MCA registered unit does not reach the threshold of the ESIC coverage within the next 6 months, then it has to login on the ESIC website to further extend the ‘dormant’ status, failing which the registration will automatically be activated and the employers of the unit will have to start compliance under the Employees' State Insurance Act, 1948 (“**ESI Act**”).

Non-compliance by the employers will lead to necessary action under the provisions of the ESI Act against the defaulting units.

4. ESIC Online Maternity Benefit Claim Facility has been launched for beneficiaries under the Maternity Benefit Act

The ESIC Online Maternity Benefit Claim Portal has been launched to make the benefits easily accessible to the beneficiaries at their convenience. The beneficiaries mentioned herein pertain to the insured women whose details such as the Universal Account Number (“**UAN**”), verified Bank account and the Bank passbook / cancelled Cheque are seeded in the system.

The newly implemented service will make it easier for insured women to collect maternity benefits because the process is now done online, allowing beneficiaries to do so whenever it is convenient for them. Prior to the implementation of this new facility, recipients who wanted to claim Maternity Benefits had to physically visit the relevant branch offices.

5. Central Government passes the Apprenticeship (Amendment) Rules, 2022

The Central Government, via notification dated 15 November 2022 after consulting with the Central Apprenticeship Council, passed the Apprenticeship (Amendment) Rules, 2022 which came into effect immediately.

The Amendment is made in Schedule V of the Apprenticeship Rules, 1992 which pertains to Obligations of Employer (both in the case of major and minor Trade Apprentices) to ensure that the employer pays stipend to the apprentice at the rate specified from time to time under the Rule 11 of the Apprenticeship Rules, 1992 pertaining to payment of stipend to apprentices per month.

The cost of stipends shall be borne by the Central Government and the employer up to such limits as may be laid down by the Central Government.

6. Dadra and Nagar Haveli and Daman and Diu reiterate applicability of Payment of Bonus Act, 1965 to all employees irrespective of status, drawing a salary / wage not exceeding INR 21,000 per month

The Administration of Dadra & Nagar Haveli and Daman & Diu, U.T. Labour Department, Silvassa via Circular dated 28 October 2022 has directed all factories, industrial establishments including contractors in

Dadra & Nagar Haveli employing 20 or more persons on any day in the accounting year, to ensure that they pay bonus to their eligible workers in accordance with the provisions of the Payment of Bonus Act, 1965 for the economic development of the region.

For new establishments employing 20 or more persons, the employees shall be entitled to bonus from the accounting year in which the employer makes profit or from the 6th accounting year following the accounting year in which production of services starts.

Additionally, contract workers are also entitled to bonus from their employers (contractors), and if contractors fail to pay bonus, their principal employers (the factories / establishments obtaining the services of contract workers through contractors) shall be held liable to pay bonus and recover it from the contractors.

The Circular directs all employers to submit the Annual Return in Form "D" in accordance with the Payment of Bonus Rules of 1975 immediately after making payment of bonus.

7. Andhra Pradesh Government allows all retail enterprises to stay open every day of the year for a period of five years

The Andhra Pradesh Government via notification dated 1 November 2022 allows all retail enterprises to which the Andhra Pradesh Shops and Establishments Act, 1988 ("**AP S&E Act**") is applicable, to stay open every day of the year for a period of five years from the date of issue of this notification, subject to the following conditions:

- Employees are to be given compensatory, compulsory weekly holiday on a preferential basis without any deduction of benefits. monetary and otherwise.
- Working hours shall be a maximum of 8 hours per day and 48 hours a week.
- Record of overtime is to be maintained in wages register separately.
- Employees working on a national, festival, or other holiday shall be given compensatory holiday with wages at twice the ordinary rate of wages for work on a holiday. A compensatory holiday is to be given within 30 days from the date of holiday.
- Retail enterprises shall be allowed to operate between 6 AM to 11 PM and employment of women shall be permitted in all shifts, subject to ensuring safe and secure work environment.
- Retail enterprises are allowed to maintain records in respect of employees in electronic form which shall be easily accessible online to the inspector under the AP S&E Act.

8. Madhya Pradesh Government releases the draft amendment to the Madhya Pradesh Factories Rules, 1962

The Madhya Pradesh Government via notification dated 23 November 2022, has notified a draft amendment to the Madhya Pradesh Factories Rules, 1962, for public consultation and the same will be taken into consideration on the expiry of 45 days from the date of its publication.

The draft amendment proposes several changes, which particularly includes substituting the validity of the shops and establishments registration certificate with 1 to 10 years or more, as chosen by the Occupier from the date of grant of license or date of renewal of license. Previously, the registration certificate would remain in force only up to 31st of December of the year for which the registration was granted / renewed.

II. CASE LAWS

1. Neither the Authority under the ESI Act nor the Employees' State Insurance Court ("ESI Court") can reduce the period of interest: Supreme Court

Case: Regional Director / Recovery Officer and Another v Nitinbhai Vallabhai Panchsara, Special Leave Petition (Civil) Number 16380 of 2022

The Supreme Court has held that ESI Court or the Authority under the ESI Act has no authority to restrict the period during which the interest is payable under Section 39(5)(a) of ESI Act. Section 39(5)(a) states that if any contribution payable under the ESI Act is not paid by the principal employer on the date it becomes due, he shall be liable to pay simple interest at the rate of 12% per annum or at such higher rate as may be specified in the regulations till the date of its actual payment.

In this case, ESI Court, restricted the levy of interest leviable under Section 39(5)(a) for two years only. The Employees State Insurance Corporation filed an appeal against the ESI Court for restricting the levy of interest under Section 39(5)(a) for a period of two years only.

Referring to Section 39(5), the Supreme Court observed that reduction of period to two years is not supported by any statutory provision and held that "The interest leviable/payable is a statutory liability to pay the interest. Neither the Authority nor the Court have any authority to either waive the interest and/or reduce the interest and/or the period during which the interest is payable."

2. Copy of the findings recorded during inquiry by the ICC shall be made available to the respondent-employee to enable him to make representations against false/frivolous complaints: Rajasthan High Court

Case: Vijay Dhaker v. Nuclear Power Corporation of India Ltd. and Ors, Writ No. 705 / 2022.

The Rajasthan High Court has quashed the charge sheet issued by the Internal Complaints Committee of the respondent-company ("ICC"), as the initiation of disciplinary proceedings against the employee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("PoSH Act") suffered from apparent violation of Sections 11 and 13 of the PoSH Act since the employee was neither supplied with the copy of the findings recorded during inquiry by the ICC to enable him to make representations against the same, nor was he supplied with the inquiry report prior to issuance of the charge sheet.

The Court reiterated that, "Section 11 of the Act of 2013 ensures that an employee does not suffer undue hardship on account of false/frivolous complaints made against him and at the same time, it also ensures that unwelcoming acts/behavior do not go unpunished because of faulty analysis or gathering of information during investigation/inquiry conducted by the ICC."

The Court remanded the matter back to the disciplinary authority to initiate proceedings from the stage of calling for the representation against the findings arrived at by the ICC.

3. Forfeiture of gratuity for recovery for loss caused for non-vacation of quarters cannot be sustained in absence of fulfilling the pre-condition of notice, quantification of loss and providing an opportunity to be heard: Delhi High Court

Case: Mother Dairy Fruit and Vegetable Pvt. Ltd. v. Satpal Singh, W.P. (C) 13086/2021 and CM Appl. 41287/2021

The Delhi High Court held the decision of the petitioner-company to forfeit the gratuity payable to the workman as a recovery for the loss caused to the petitioner-company for non-vacation of quarters belonging to the employer, as unsustainable, since the same decision was taken without satisfying the due procedure, that is to fulfil the pre-condition of serving notice, properly quantifying the loss caused to the employer, and providing an opportunity to be heard before taking the decision of forfeiture of gratuity.

In this case, the petitioner-company served a charge sheet upon the workman which culminated in an enquiry report vide which all charges against the employee were held to be proved. This led to the termination of the workman and the order of dismissal is still pending before the Central Government Industrial Tribunal. The Delhi High Court has not made any comments on the termination order, however, only held the decision of the petitioner-company to forfeit gratuity for non-vacation of the quarters as unsustainable and against the principles of natural justice.

III. INDUSTRY INSIGHTS AND TRENDS

Quiet Quitting – a growing trend in India

A [survey](#) by Valuvox on behalf of Indeed was conducted among 1281 employers and 1533 jobseekers and employees in the months of August and September, 2022.

The survey indicates that a majority (60%) of the employees believe that the trend of “Quiet Quitting” is growing in India due to reasons of burn-out or being overwhelmed with work, or due to a lack of support by managers / bosses.

Quiet quitting is not an employee's resignation from their job but refers to the practice of opting out of tasks beyond one's duties and doing the bare minimum of one's job requirements. Post-pandemic, an increasing number of workers have started implementing this practice in their work-life after feeling that the organization they work for does not recognize their efforts and are not offered suitable compensation for extra hours put in.

These effects include a decline in employee morale as well as a decline in production, especially given that disengaged workers may generate lower-quality work.

Employee expectations should be clearly defined by employers by outlining the same in the employment agreements' if employees are not going above and beyond what is necessary in their job description. It is also suggested that employers provide a work environment that incentivizes employees to go above and beyond that will prevent worker burnout.

Disclaimer

This newsletter has been written for the general interest of our clients and professional colleagues and is subject to change. This newsletter is not to be construed as any form of solicitation. It is not intended to be exhaustive or a substitute for legal advice. We cannot assume legal liability for any errors or omissions. Specific advice must be sought before taking any action pursuant to this newsletter. For further clarification and details on the above, you may write to labourteam@almtlegal.com.

Contact Information

Mumbai

ALMT Legal, Advocates & Solicitors
1104A Raheja Chambers
Free Press Journal Marg Nariman Point
Mumbai 400021
Tel: + 91 9152510000 / + 91 40510000
Email: labourteam@almtlegal.com