



Monthly Labour Law Update

April 2021



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 &
Notifications

News

Know Your
Codes

Did you Know

Case Law

Thought for the
Month

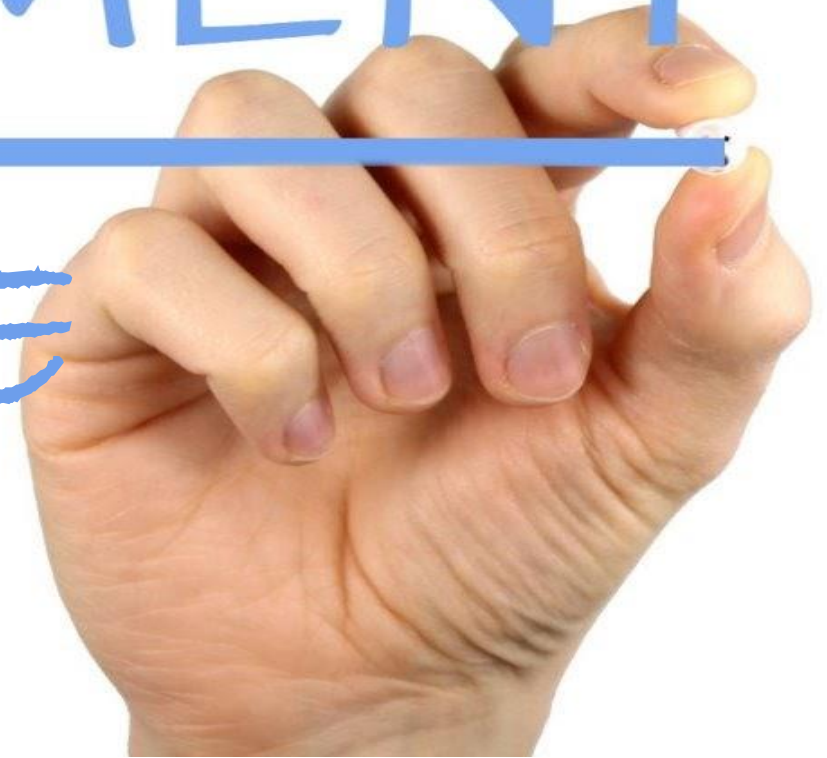
Compliance-
April 2021



AMENDMENT



ORDINANCE





The Code on Wages (Gujarat) Rules, 2021

Notification no. KHR/2021/29/LVD/10/2020/555709/M(2)

DATED 31.03.2021



The Code on Wages (Gujarat) Rules, 2021

- The Ministry of Labour and Employment on March 31, 2021 has issued draft Code on Wages (Gujarat) Rules, The Objective of the rule is to regulate the provisions for minimum wages and to ensure a well-timed payment of minimum wages for all workers. The draft rules are in supersession of following rules:
 - The Payment of Wages (Procedure) Rules, 1937;
 - The Gujarat Payment of Wages Rules 1963;
 - The Gujarat Payment of Wages (unclaimed Amounts) Rules 1963;
 - The Gujarat Payment of Wages Deductions for National Defence Fund & Defence Savings Scheme) Rules, 1964:
 - The Payment of Wages (Manner of recover of excess deductions) Rules, 1967;
 - The Gujarat Minimum of Wages Rules, 1961;
 - The Ease of Compliance to Maintain Registers under various Labour Laws (Gujarat) Rules, 2017
 - **Any objections/ suggestions should be reported within 45 days from date of issue of notice to ds1-led@gujarat.gov.in**



Uttar Pradesh Occupational Safety, Health and Working Condition Code Rules, 2021.

Notification No-9 /2021/ 584 /XXXVI-3-2021-
109(sa)/2020
DATED: 23.03.2021



Uttar Pradesh Occupational Safety, Health and Working Condition Code Rules, 2021

- The State Government of Uttar Pradesh has issued Draft Uttar Pradesh Occupational Safety, Health and Working Condition Code Rules, 2021.
- **The Provisions has been made under the rules are as follows: -**
- The application for registration of establishment shall be made under Form- A and submitted on the official portal of the Government.
- Medical examination of all the employees **above the age of 45.**
- In case of accident or dangerous occurrence, employer or manager to send a notice to Inspector-cum-facilitator and Chief Inspector-cum-facilitator.
- Safety Committee- **consist of 10 members-** constituted by employer.
- The maximum hours of overtime shall not exceed **4 hours in any day or 24 hours in a week.**
- Any objections/suggestions shall be notified within **45 days** from the date of issue of notification.



The Code on Wages (Uttarakhand) Rules, 2021

Draft dated 31.3.2021



The Code on Wages (Uttarakhand) Rules, 2021

- The Labour department of Uttarakhand has issued draft Code on Wages (Uttarakhand) Rules, 2021 with an aim to regulate the timely payment of minimum wage.
- The draft rules are in supersession of following rules:
 - The Uttarakhand Payment of Wages Rules 1936
 - Uttarakhand Minimum Wages Rules, 1952
- The term Unskilled Occupation, Semi-skilled Occupation, Skilled & Highly Skilled Occupation has been defined.
- Provision for Equal remuneration has become a wider term.
- Manner of calculating the minimum rate of wages- criteria as declared by Hon'ble Supreme Court in the case of *Workmen vs. Management of Reptakos and Co. Ltd.* **1992 AIR 504**



Payment of Gratuity (Gujarat)(Amendment) Rules, 2021

Notification No. GHR/ 2021/22/LBL/192020/510460/M3

DATED 31.03.2021



Payment of Gratuity (Gujarat)(Amendment) Rules, 2021

- The Labour Department of Gujarat decided to further amend the Payment of Gratuity (Gujarat) Rules, 1973.
- The following amendments have been made:
 - Rule 4, which specifies the display of notice has been deleted.
 - Rule 19, which specifies the display of the abstract of the Act and Rules, has been deleted.



Circular & Notification





Pension Fund Regulatory and Development Authority

Circular No. PFRDA/2021/8/SUP-CRA/7
Dated 9.04.2021



Pension Fund Regulatory and Development Authority

- The Pension Fund and Regulatory Development Authority (PFRDA) on has issued a circular for the National Pension Scheme on-boarding through online PRAN generation module (OPGM).
- The Authority has further extended the timelines for the opening of new accounts by POP's without photo and signature till April 30, 2021.





OSH&WC Code, 2020- Review Committees.

- The Ministry of Labour and Employment has set up 3 committees to review the existing rules and regulations on Safety, Fire and working conditions standards, with regard to factories, docks and construction work.
- Expert Committees comprising of industry and subject experts from both public and private sector across the country
- The Expert Committees for Factories and Dock Works are constituted under Chairmanship of Dr R K Elangovan, DG, DGFASLI (Directorate General, Factory Advice and Labour Institutes), Mumbai,
- The expert panel for the BOCW will be headed by P L N Murthy, VP and Head Domestic Operations, L&T Hydrocarbon, Chennai.
- The Panel on Fire Safety has been constituted under Chairmanship of D K Shami, Fire Advisor to the Government of India.



EPFO launches Electronic facility

- The Employees Provident Fund Organisation has launched a facility that allows principal employers to track EPF compliance of their contractors.
- This will help to keep a track of contractors and staffing firms, who manage outsourcing needs of companies, and check collection and submission of EPF dues by them.
- Principal employers who are not registered yet, can register afresh and check remittances by contractors.



Rajasthan Third Party Building & Other construction Workers Establishment Inspection Scheme

- The Government of Rajasthan has introduced a third party inspection scheme under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (BOCW Act).
- As per the scheme, any employer under the BOCW Act can apply online on the official RajFAB portal to get their establishment inspected by a third party and the employer can re-opt for the third party inspection scheme only if the compliance of the inspection is submitted online.
- The Limitation and Duties of “Third-Party” are as follows: -
 - In case of accidents complaints, establishment shall not be inspected.
 - If prohibited by the chief inspector, establishment shall not be inspected.



KNOW YOUR CODES



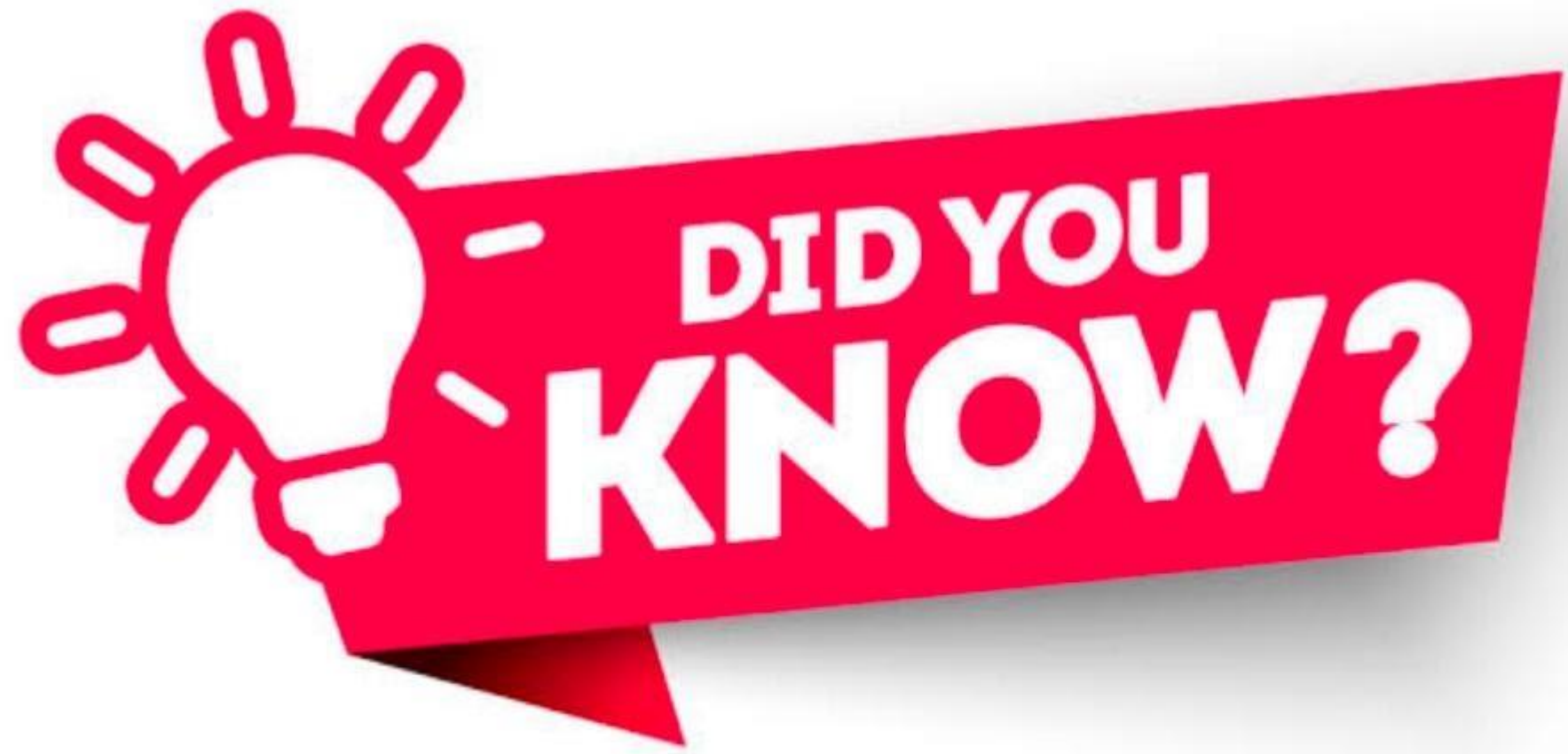
**KNOW YOUR
CODES**

- **The Occupational Safety, Health and Working Conditions Code, 2020 provides for 'Third Party Audit and Certification. The appropriate government may formulate a scheme empaneling experts with requisite qualification and experience to conduct third party audit and certification in a randomized manner. The experts shall also perform other duties as specified in the scheme and submit their reports to the concerned employer and Inspector-cum-Facilitator.**



KNOW YOUR CODES

- Under the Code on Social Security, 2020, the concept of "career centres" has been introduced. These centres will replace employment exchanges. These centres would provide career services.
- Under the Code, any establishment including private sector must compulsorily report any vacancy to such Centre. However, it is not mandatory for the employer to recruit any job-seeker through the same.





- EPFO highlights the addition of **12.37 lakh net subscribers** during the month of February, 2021
- Of the 12.37 lakh net subscribers added during the month of February 2021, around 7.56 lakh new members have come into the social security ambit of EPFO for the first time. Around 4.81 lakh net subscribers exited and then rejoined EPFO by switching their jobs within the establishments covered by EPFO.
- Gender-wise analysis reveals that an addition of around 2.60 lakh net female subscribers in the month of February, 2021 which is 21% of total net addition during the month.



- An automotive major in India has announced **24 weeks paid parental leave for male workers.**
- It has announced a gender neutral policy, 'Family Bond', that allows the male employees in India to avail up to 24 weeks (120 working days) of parental leave at 80 per cent of total salary.
- Women employees will continue to avail 26 weeks of fully paid maternity leave as per the Maternity Benefit (Amendment) Act, 2017.
- The policy applies to all regular salaried (on-roll, full-time) employees in India, including all mothers and fathers, same sex parents, parents to adopted and foster children or through surrogacy, the statement said.
- There are no limitations on age or marital status.





Treasa Josfine vs State Of Kerala

WP(C) No. 25092 of 2020

Dated 9th April, 2021



Treasa Josfine vs State Of Kerala

- The Kerala Minerals and Metals Ltd., is a public sector undertaking under the State of Kerala.
- The Petitioner was working as Graduate Engineer Trainee (Safety) and was qualified for the post of Safety Officer.
- The Company has issued notification inviting applications for permanent post of Safety Officer available in the company. However, it is stated in the notification that only male candidates could apply for the post.
- The Petitioner has approached the High Court challenging the said provision in the notification on the ground that it is discriminatory and that the right of the petitioner for being considered for appointment as Safety Officer is violated due to the said provision.

HELD: Section 66(1)(b) of Factories Act can be exercised as protection measure and cannot be an excuse for denying employment to women. Replying on judgment of Supreme Court in Hindustan Latex Ltd., wherein it was made clear that a woman who is fully qualified cannot be denied of her right to be considered for employment only on the basis of her gender, the Court held that Only male candidates can apply is violative of Article 14, 15 and 16 of the Constitution and the Petitioner has a right to be considered for the vacant post.



Deputy General Manager (Appellate Authority) and Others Vs. Ajai Kumar Srivatsava

Judgment dated: 5.01.2021



Deputy General Manager (Appellate Authority) and Others Vs. Ajai Kumar Srivatsava

- The Respondent joined as cashier-clerk in the Appellant bank. The Respondent was dismissed on the ground of misconduct. He was dismissed from service after having conducted enquiry.
- The Respondent's appeal before the authority is dismissed. The Respondent has approached High court by way of Writ Petition wherein it was allowed.
- The Appellant's preferred appeal against the said order which was also dismissed. Hence the Appellant's approached the Hon'ble Supreme Court by way of Special Leave Petition.

(2021) 2 LLJ 87 (SC)



Deputy General Manager (Appellate Authority) and Others Vs. Ajai Kumar Srivatsava

- The Court has held that the order of dismissal has been for proved charges 2-7 and not for Charge No.1. Had the order been on the sole ground for Charge No.1, the Court could have interfered in the punishment and declared as illegal.
- The order by disciplinary authority which was confirmed by the Appellate Authority was not liable to be interfered.
- The High court should not have exercised its Power of Judicial Review when the charges have been proved and punishment has been justified.

(2021) 2 LLJ 87 (SC)



Industrial Estate's General Workers Union (CITU) Vs. Government of Tamilnadu

Judgment dated: 23.3.2020



Industrial Estate's General Workers Union (CITU) Vs. Government of Tamilnadu

- The Petitioner Union was registered under the Trade Union Act, 1926. The Anna Centenary Library was started in the year 2010 and it has directly selected the Members of the Petitioner Union for Housekeeping. They were not made permanent.
- The Union, submitted a Charter of Demands for minimum wages, increment, dearness allowance, house rent allowance, travelling allowance, leave facilities etc. Since the Management has not responded to their demands, a dispute under Section 2(k) of the Industrial Disputes Act, 1947, was raised before the Additional Commissioner of Labour, Chennai.
- The third respondent failed to appear for the conciliation proceedings, therefore Union raised a dispute with regard to charter of demands before the Assistant Commissioner of Labour.
- However, during the pendency of the proceedings, an outsourcing agency issued appointment orders to the Members of the petitioner - Union in August 2017. The Petitioner - Union raised a demand for 20% bonus in the year 2017-2018 and also for difference in bonus for the previous years.



Industrial Estate's General Workers Union (CITU) Vs. Government of Tamilnadu

- **HELD:**

- Though the Petitioners claim that they were directly engaged by the Anna centenary Library, they have admitted that they were paid by the Independent Contractor and have raised claim after 7 years.
- Contract Labour engaged through an independent contract cannot claim permanency, bonus and other benefits against the Principal Employer.
- Any claim can only be against the contractor.
- No appointment order produced before this court. The terms of contract clearly states EPF, ESI will be paid by the Contractor. Hence they are employees of the contractor.
- There is no employer-employee relationship between Union and Anna Centenary Library.



**REPORTING PERIOD - MAY-2021**

Act	State	Due Date	Activity
Employees Provident Fund & Miscellaneous Provisions Act	Pan India	15-Jun	PF Remittance
Employees Provident Fund & Miscellaneous Provisions Act	Pan India	15-Jun	IW Returns
Employees Provident Fund & Miscellaneous Provisions Act	Pan India	25-Jun	Monthly Returns-For Exempted Employer Under EDLI Scheme (FORM 7(IF))
Employees State Insurance Corporation Act	Pan India	15-Jun	ESIC Remittance
Professional Tax Act	Andhra Pradesh	10-Jun	Professional Tax Remittance cum Return
	Telangana	10-Jun	Professional Tax Remittance cum Return
	Madhya Pradesh	10-Jun	Professional Tax Remittance
	Gujarat	15-Jun	Professional Tax Remittance
	Karnataka	20-Jun	Professional Tax Remittance cum Return
	West Bengal	21-Jun	Professional Tax Remittance



	Maharashtra	30-Jun	Professional Tax Remittance cum Return
	Odisha	30-Jun	Professional Tax Remittance cum Return
	Assam	30-Jun	Professional Tax Remittance cum Return
	Nagaland	30-Jun	Professional Tax Remittance
	Meghalaya	30-Jun	Professional Tax Remittance
	Mizoram	30-Jun	Professional Tax Remittance
	Sikkim	30-Jun	Professional Tax Remittance
	Manipur	30-Jun	Professional Tax Remittance
	Tripura	30-Jun	Professional Tax Remittance
Kerala Shops & Commercialized Establishments Workers Welfare Fund Act	Kerala	05-Jun	WWF Remittance
Kerala Shops & Commercialized Establishments Workers Welfare Fund Act	Kerala	15-Jun	WWF Return



Thought for the Month



**DO EMPLOYERS NEED TO
RESTRUCTURE SALARY EVEN
THOUGH NOTIFICATION ON CODE
ON WAGES IS DELAYED???**



**WHY SHOULD
BUSINESSES
NOT WAIT
FOR CODES
TO BE
NOTIFIED?**





**A wise captain does
not wait for the
storm to strike.
He takes in sail or
makes for port,
before the storm
breaks.**



The Code on Wages and other labour codes were expected to get notified on 01.04.2021. But it has delayed. But the codes are very likely to be notified soon. Like a wise captain businesses would need to set sail and reduce impact on business.



- **The impact can be reduced if compliance is ensured while carrying out yearly appraisal.**
- **In this manner the impact owing to the definition of wages in the codes can be minimized.**
- **If businesses were to wait for notification and not restructure along with appraisals, it would certainly have a larger monetary impact.**
- **If the codes were to be notified in June or October or any time during year would your business be able to bear the additional burden.**



The definition of wages is going to impact every business in one manner or the other.

It is best for business to hence be prepared for the change.

WAGES



T.S.GOPALAN & CO

ADVOCATES & NOTARIES



Let's Connect again at 4PM on 29.05.2021



*Thank
you*

T.S.GOPALAN & CO

ADVOCATES & NOTARIES



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