

Monthly Labour Law Update



August 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

Knowledge
Corner

Know Your
Codes

Did you Know

Case Law

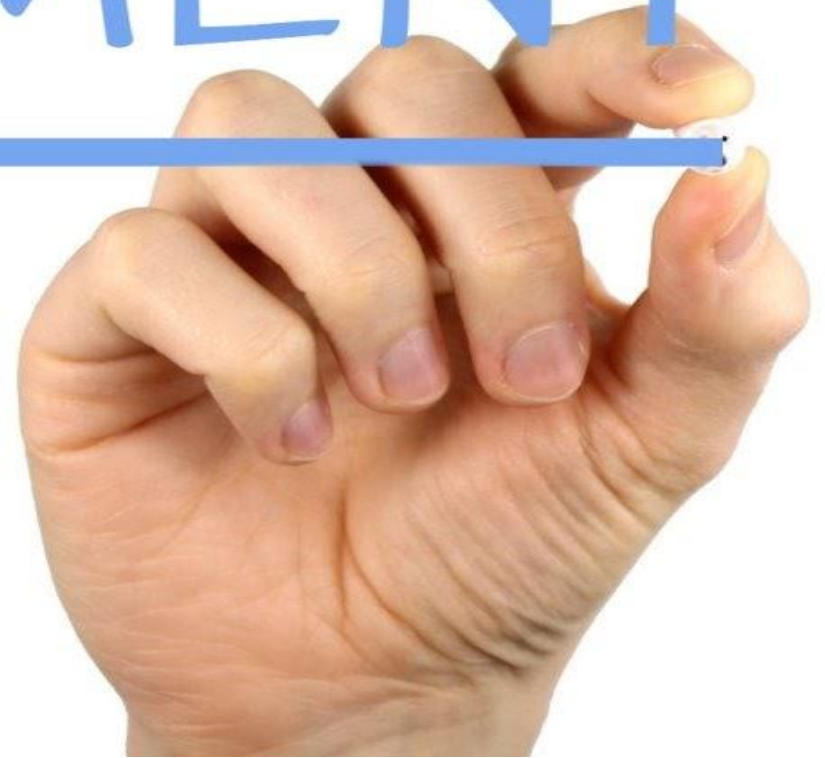
Compliance



AMENDMENT



ORDINANCE



Manipur Shops and Establishments (Regulation of Employment and Conditions of Service) Ordinance, 2021.

Dated: 4.08.2021

Manipur Shops and Establishments (Regulation of Employment and Conditions of Service) Ordinance, 2021.

- The Government of Manipur through gazette notification dated August 4 2021, has published the Manipur Shops and Establishments (Regulation of Employment and Conditions of Service) Ordinance, 2021.
- The ordinance seeks to protect basic rights of employees of Shops and Establishments at Manipur. Special protection is extended to women at workplace. The ordinance also lays down provisions to govern maximum working hours, holidays, working days overtime wages, compensatory holidays etc.



The Madhya Pradesh Child Labour (Prohibition And Regulation) Rules,1993

Dated : 2.08.2021

The Madhya Pradesh Child Labour (Prohibition And Regulation) Rules, 1993

- The Amendment of the MP Child Labour (P&R) Rules, 1993 has brought in the following changes:
 - awareness on prohibition of employment of child and adolescents in contravention to Act
 - child to help his family without affecting education,
 - child working as an artist,
 - hours of work for an adolescent person,
 - payment of amount to child or adolescents for labour rehabilitation fund,
 - New provision also include liability of producer for involving a child in audio-visual production or any commercial event and producer shall take approval from District Magistrate.
 - Mandates that employer shall produce a certificate of age received from the appropriate medical authority to the Inspector on demand,
 - The appropriate medical authority while examining an adolescents shall consider details such as Aadhar card, the date of birth certificate, birth certificate of adolescents given by a corporations or a Municipal Authority or a Panchayat.



Circular & Notification





BRUHAT BENGALORE MAHANAGARA PALIKE

Circular dated : 26.08.2021

BRUHAT BENGALORE MAHANAGARA PALIKE

- The Commissioner, BBMP has issued a circular dated 26.08.2021 mandating vaccination for all staffs of Commercial Establishments/ Industries/ hotels and restaurants/ officers.
- Casts a duty on the employers to test their employees regularly
- Employers must ensure 100% vaccination
- At least 1 dose shall be administered to all employees before 31.08.2021
- All employees must maintain proof/status of vaccination at workplace
- BBMP health officials are authorized to enter premises and check for compliance from 01.09.2021
- Violations of the said circular will attract penalty under Section 188 IPC, 1860.



The Tamil Nadu Business Facilitation Act, 2018

G.O.(Ms) No.196
Dated: 13.08.2021

The Tamil Nadu Business Facilitation Act, 2018

Time Bound Registrations and Renewals

- Registration under section 4 of the Tamil Nadu Catering Establishment Act, 1958, within 7 days.
- Renewal under Section 3-A of the Tamil Nadu Catering Establishment Act, 1958, within 3 days.
- Amendment under Section of The Tamil Nadu Catering Establishment Act, 1958, within 3 days.
- Closure under Section 6 of the Tamil Nadu Catering Establishment Act, 1958, within 30 days.
- Dealer License Amendment under Rule 11 of the Tamil Nadu Legal Metrology (Enforcement) Rules, 2011, within 7 days
- Registration under Rule 5 of the Tamil Nadu Motor Transport Workers' Rule, 1965, within 15 days.

The Tamil Nadu Business Facilitation Act, 2018

Automatic and Instant Online Renewal

- Renewal of License under Rule 29 of the CLRA, Rules 1975 instantly upon payment of renewal fee.
- Renewal of Factories Licence under 7 of the Tamil Nadu Factories Rules, 1950 by the Directorate of Safety and Health.
- Renewal of trade License under Chennai City Municipal Corporations Act, 1919 under sections 287, 288, 299(1), 304, and 309 of the Chennai City Corporation to be automatically after the prescribed renewal fee is paid.
- Renewal of Trade licence under section 249 of the Tamil Nadu District Municipalities Act, 1920 by urban local body.
- Renewal of Trade licence under section 220 (1) of the Tamil Nadu Village Panchayats Act, 1994 by Village Panchayat.



Employees State Insurance- Covid19 Relief

Dated: 11.08.2021

Employees State Insurance-Covid19 Relief

- ESIC has announced COVID-19 relief scheme, in case of death of Insured Persons(IP) considered to be an "Employee" under Sec.2(9) of The Employees State Insurance Act,1948.
- The scheme provides eligibility conditions as mentioned,
 - i. The deceased IP must have been registered on the ESIC online portal 3 months prior to the death
 - ii. The deceased IP must be in employment on the date of diagnosis of COVID-19.
 - iii. Contribution for at least 70 days should have been paid or payable in respect of him or her during the period of maximum one year immediately preceding the diagnosis of COVID-19 resulting in death.

Employees State Insurance-Covid19 Relief

- Relatives who are eligible to get periodical payments under the scheme:
 - i. Spouse, Legitimate/adopted son who has not attained the age of 25 and an unmarried legitimate/adopted daughter
 - ii. Widowed mother
 - iii. If wholly dependent on the earnings of the deceased IP, legitimate/adopted son/daughter above the age of 25 years and is infirm.
 - iv. any of the following relatives, if wholly or partially dependent of the earnings of the IP, in a case wherein the deceased IP is not survived by the relatives mentioned above:
 - a) Parent other than the widowed mother,
 - b) Minor illegitimate son/unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and a minor or if widowed and a minor,
 - c) A minor brother or unmarried sister or a widowed sister, if minor,
 - d) A widowed daughter-in-law
 - e) Minor child of a pre-deceased son,
 - f) A minor child of a pre-deceased daughter where no parent of the child is alive, or
 - g) A paternal grand-parent if no parent of the IP is alive.

Employees State Insurance-Covid19 Relief

- 90% of Average daily wage- called as full rate of relief, will be paid to the dependents in the following manner:
 - i. **Spouse**- an amount equal to $3/5^{\text{th}}$ of the full rate and in case of two or more spouses- amount equally divided among them for lifetime.
 - ii. to each legitimate or adopted son an amount equal to $2/5^{\text{th}}$ of the full rate until he attains 25 years of age. In case of legitimate/adopted son being infirm and is wholly dependent, the amount shall be payable till the infirmity lasts.
 - iii. to each legitimate or adopted unmarried daughter an amount equal to $2/5^{\text{th}}$ of the full rate. In case of legitimate/adopted daughter being infirm and is wholly dependent, the amount shall be payable till the infirmity lasts.
 - iv. Widowed mother- amount equal to $2/5^{\text{th}}$ of the full rate during life.

Employees State Insurance-Covid19 Relief

In case the deceased person does not leave spouse or legitimate or adopted child or widowed mother the relief shall be payable to other dependents as follows: -

- a) To a parent other than the widowed mother or grand-parent, for life, at an amount equivalent to three-tenths of the full rate and if there are two or more parents (other than widowed mother) or grand-parents the amount payable to the parents (other than widowed mother) or grand-parents as aforesaid shall be equally divided between them.
- b) to any other —
 - i. male dependent, until he attains the age of eighteen years,
 - ii. female dependent, until she attains the age of eighteen years or until marriage, whichever is earlier or if widowed, until she attains eighteen years of age or remarriage, whichever is earlier at an amount equivalent to two-tenths of the full rate and
 - iii. if there be more than one dependent under (b) the amount payable shall be distributed equally.
 - iv. **Minimum amount under the scheme is Rs.1800/- p.m. This scheme shall effective for a period of 2 Years w.e.f 24.3.2020**

National Pension Scheme for Traders, Shopkeepers and Self- Employed Persons, 2019

Dated: 11.08.2021

National Pension Scheme for Traders, Shopkeepers and Self- Employed Persons, 2019

- The Ministry of Labour and Employment has notified *National Pension Scheme* for Traders, Shopkeepers and Self- Employed Persons, 2019 which aims at providing pension to the **small traders**, **shopkeepers**, and **self-employed** persons to ensure their old age protection;
- The scheme would be rolled out through the **Life Insurance Corporation of India**.
- Minimum monthly assured pension of Rs.3000/- to beneficiaries upon attaining 60 years of age.
- Scheme involves recurring expenditure incurred from the Consolidated Fund of India to 'Pension Fund', with equal contribution from Central Government as the benefactor.
- **Proof of possession of AADHAR and authentication- must in order to claim benefits**
- This Scheme is still yet to come into force.



Employees Provident Fund Organisation

Dated: 23.08.2021

Death claims settlement

- The Additional Central Provident Fund Commissioner on 23.08.2021 has issued a notice to all Zonal CPFs and Regional PF Commissioners to settle pension cases related to death within 3 working days.
- Pension Payment Orders (PPOs) to be dispatched within 7 days of receipt of the claim.



Rights of Persons with Disabilities Act, 2016.

Dated: 07.07.2021

Rights of Persons with Disabilities Act, 2016

- The Government of Tamil Nadu vide G.O (Ms.) No. 02 has issued Equal opportunity Policy under section 21 under Section of the Rights of Persons with Disabilities Act, 2016.
- Welfare of Differently Abled Persons Department vide G.O. Ms. No. 02 Dated 07.07.2021 ordered all the Establishments such as Central or State Authorities, Department and private entities to notify the Equal Opportunity Policy mandated under section 21 of The Rights of Persons with Disabilities Act, 2016.
- Employers are required to draft and publish a policy.
- The policy should be registered with the State commissioner
- All employers are requirement to maintain records in terms of Section 9 of the Rules.



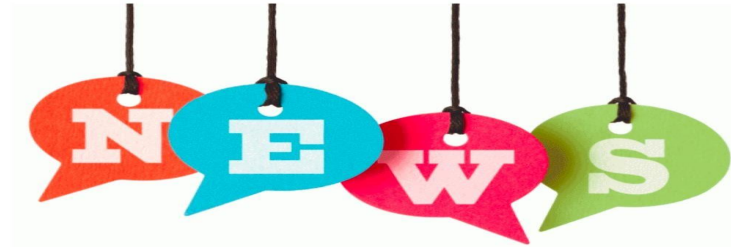
QUIZ!



Which of the following are the duties of the employer under the OSHC 2020?

- a) Carrying out tests and examination of an article in the establishment
- b) Issuing a letter of appointment
- c) Both 1 & 2
- d) None of the above





- The Madhya Pradesh government is considering a scheme to save money by offering state employees in non-essential departments up to five year's leave with payment of half salary, an official said. The state hopes it will save it at least ₹6,000 crore annually.
- The scheme, popularly known as furlough scheme, has been introduced by some countries such as the United Kingdom and United States, where employees can avail three years' leave along with up to 70% of their monthly salary within a limit.
- During the paid leave, the employees are free to work anywhere or start a business and opt for voluntary retirement after the break.



- Labour Ministry launches the National Database for Unorganized Workers (NDUW) or e-Shram on 26th August, 2021. Construction workers, migrant workers, gig and platform workers, street vendors, domestic workers, agriculture workers, migrant workers and similar other sub-groups of unorganised workers can enroll themselves in the portal by linking their AADHAR and phone numbers.
- Will remain one stop-shop to obtain details for employees in the Unorganised sector..
- The platform aims to register 38 crore workers in the unorganised sector



KNOWLEDGE CORNER



NOMINATION FOR TERMINAL DUES

- Who is a Nominee?

- A person who receives the benefit in the event of death of the person entitled to an amount.

- Who can be a Nominee?

- Nominee is usually the spouse, children or parents. However, anyone or even more than one person can be a nominee.

Nomination under Employees' Provident Fund and Miscellaneous Provisions Act, 1952

FORM-2

- Name of the member
- Father/husband's name
- Date of birth
- Permanent address
- Name of the nominee
- Complete address of the nominee
- Member's relationship with the nominee
- Date of birth of the nominee
- Share of the PF amount to be paid to each nominee
- In case the nominee is a minor, the member has to furnish details of the guardian who will receive the PF amount
- In case the member does not have any dependent parents or family as mentioned under para 2 (g) of Employees Provident Fund Scheme 1952, he or she should strike out the sections which are not applicable
- Signature of the subscriber
- Details of family members who will receive the children/widow pension when the member dies. The member has to mention the name, age and address of the family members. The member should also mention the relationship with the nominees.
- Name and address of the establishment/factory
- Signature of employer/ authorised officer

Nomination under Employees Pension Scheme (EPS), 1995

FORM-11

- Form 11 is a nomination and declaration form under para 24 of Employees Pension Scheme (EPS), 1995 and para 34 and 57 of the Employees Provident Fund Scheme 1952. PF Form 11 requires a member to furnish some details as listed below:
 - a) Name of the member
 - b) Date of birth of the member
 - c) Father/Husband's name
 - d) Mobile Number
 - e) Email ID
- Individual has to mention if he or she was a member of Employees Provident Fund Scheme, 1952 and Employees' Pension scheme 1995. If yes, then the individual has to fill out details regarding his or her previous employment such as listed below:
 - a) UAN or previous provident fund account ID
 - b) Date of exit
 - c) Previous scheme certificate number
 - d) Previous pension payment order

Nomination under Employees Pension Scheme (EPS), 1995

FORM-11

- International workers have to specify the following:
 - Country of origin
 - Passport number
 - Passport validity
 - Educational qualification
 - Marital status
 - Any disabilities (visual, locomotive, hearing)
- KYC details to be included are as follows:
 - Bank account number with IFSC code (mandatory)
 - Aadhar
 - PAN
 - Passport
 - Driving License
 - Voter ID
 - ESIC card
 - Ration Card
- All the aforementioned documents must be self-attested
- Declaration by the present employer
- Signature of the employer along with establishment's seal

Nomination under the Payment of Gratuity Act, 1972

- Under the Payment of Gratuity Act, 1972, nomination is required to be made by an employee within 30 days of the completion of one year of service.
- Nomination shall be filed in **Form F** as prescribed under the Act.



Nominee Vs. Legal Heir

Who is a legal heir?

- The legal heir is a person who has the right to succeed the wealth and property and benefits of the deceased person.
- If there is no will, the dues/shares/property is distributed to the legal heirs as per the Hindu Succession Act, given that the Deceased person is a Hindu by Religion. The dues are distributed as follows:
 - Equal distribution amongst all Class 1 heirs
 - In absence of Class 1 heirs, equal distribution amongst Class 2 heirs
 - In case of no Class 2 heirs, distribution amongst Agnates and then Cognates
 - In case of no one being present, the Government takes the property/ estate of the person deceased

Is Nominee a Legal Heir?

- Nominee is not a legal heir. However, a legal heir can be a nominee.
- The Nominee is entitled to claim all the terminal dues/Death benefits of the deceased.
- The Nominee is then obliged to distribute the amount among the legal heirs as per the Provisions of relevant Law or according to the Will of the Deceased, if any.
- Incases where nominee is not one of the legal heirs of the deceased, the Nominee acts as a mere Trustee.

Position of Nominee under various Statutes

- The legal position of a nominee has always been accepted to be that of an 'agent' or 'trustee' and nomination is not considered to be a method of testamentary succession.
- The Supreme Court in the case of **Sarbati Devi v. Usha Devi [AIR 1984 SC 346]** while interpreting the role of a nominee under the provisions of the Insurance Act has held that mere nomination would not confer any beneficial interest towards the nominee in the amount payable under the insurance policy on the death of the assured.
- Though the provisions in respect of nomination in each statute like insurance, government savings, co-operative societies etc. may be worded differently, in catena of judgments majority of the High Courts and the Hon'ble Supreme Court has held that the legal position of a nominee has been accepted to be that of a trustee and is not considered to be any kind of testamentary succession.

Whether the nominee could be termed as 'legatee' or the 'trustee' in respect of any monetary benefits ?

- The Nominee can be termed as a trustee and not a legatee always.
- The amount in any head can be received by the nominee, but the amount can be claimed by the heirs of the deceased in accordance with law of succession governing them. In other words, nomination does not confer any beneficial interest on the nominee.
- The Hon'ble Supreme Court in the case of **Shipra Sengupta Vs. Mridul Sengupta and others (2009) 10 SCC 680** has held that position of nomination is no longer res integra and the nominee is entitled to receive the benefit, but the amount so received is to be distributed according to the laws of succession among the legal heirs.



KNOW YOUR CODES



**KNOW YOUR
CODES**

Under the Code on Wages, 2019, offences of non-maintenance or improper maintenance of records and registers in the establishment are punishable with a fine up to Rs.10,000.



**KNOW YOUR
CODES**

Under the Code on Social Security, 2020, the offence of non-payment of gratuity shall be punishable with imprisonment for a term which may extend to one year or with fine upto Rs. 50,000, or with both.





- Public holidays in Japan were established by the Public Holiday Law (An Act on public holidays"; Act No. 178 of 1948) of 1948 (as amended).
- A provision of the law establishes that when a national holiday falls on a Sunday, the next working day shall become a public holiday, well known as "compensatory public holiday"/"substitute holiday").
- Additionally, any day that falls between two other national holidays shall also become a holiday, known as "citizens' holiday").



- A pandemic bonus of \$1,500 has been announced by a leading Tech company for all its employees, as a gesture of appreciation for their hard work amidst challenges. This bonus will be enjoyed by all the employees —spread across all other locations, globally — below the rank of corporate vice president, including contract workers and part-time workers.
- Earlier this year, the Company had offered extra vacation days to its employees too. However, the subsidiary companies of the Tech company will not be eligible for any bonus. This bonus pay out will cost the Company around \$200 million, which is apparently not even worth two days' of profit the company.





T.M.Ramamoorthy vs. Presiding Officer

W.A.Nos.2438 and 2470/2012

Dated: 17.06.2021

T.M.Ramamoorthy vs. Presiding Officer

- The employee raised a dispute seeking promotion other benefits. The dispute was raised without approaching the conciliation authority.
- The Labour Court held that any dispute that is brought before the labour court under Section 2A of the ID Act cannot be maintain as the employee had not approached the Conciliation machinery and also as promotion cannot be a subject matter of a dispute Section 2A.
- The Writ Petition confirmed the order of the Labour court, against which the appellant had preferred this Writ Appeal.
- The Division bench of the Madras High Court dismissed the Writ Appeal and upheld the order in the Writ Petition.



Dong Wei v Shell Eastern Trading (Pvt) Ltd

[2021] SGHC 123

Dong Wei v Shell Eastern Trading (Pvt) Ltd

- A case arising out of Singapore.
- Internal investigation was initiated in October 2017 against Mr. Dong Wei and the outcome, was not communicated to him.
- In January 2018, his employment was terminated, and he claimed that Shell Eastern Trading denied his request to reveal the outcome of the investigation. He claimed that the investigation was predetermined and that the employer did not give him fair opportunity to respond to the allegations.
- The court, though held that the investigations were fair and proper, laid down the following guidelines for the employers to comply while conducting internal investigations and established minimum standards.
 - i) There exists an implied term of trust and confidence between the parties in all employment contracts and this is violated when the employer's conduct of inquiry is below the 'minimum standards of fairness'
 - ii) As long as the investigations do not amount to a 'hatchet job' – Minimum standards of fairness is satisfied,
 - iii) The allegations against the employee must also be sufficiently clear such that he understands the case that is made against him and has an opportunity to clarify his position,
 - iv) Suspension of employees can be carried out only based on clear and credible sources of information. Suspending an employee as result of a "knee-jerk reaction" to an unclear or unspecific allegation may fall below the minimum standard of fairness required
 - v) The minimum standards are not so broad that the employer does not have to import all the obligations of natural justice or due process obligations that may apply in other contexts, including informing of investigation outcome or suspending and investigating allegations against employees in a particular way.
 - vi) Employers are not under a general implied duty of care to protect their employees from economic or reputational harm

• [2021] SGHC 123



COMPLIANCE



REPORTING PERIOD - AUGUST-2021			
Act	State	Due Date	Activity
Employees Provident Fund & Miscellaneous Provisions Act	Pan India	15-Sep	PF Remittance
Employees Provident Fund & Miscellaneous Provisions Act	Pan India	15-Sep	IW Returns
Employees Provident Fund & Miscellaneous Provisions Act	Pan India	25-Sep	Monthly Returns-For Exempted Employer Under EDLI Scheme (FORM 7(IF))
Employees State Insurance Corporation Act	Pan India	15-Sep	ESIC Remittance
Professional Tax Act	Andhra Pradesh	10-Sep	Professional Tax Remittance cum Return
	Telangana	10-Sep	Professional Tax Remittance cum Return
	Madhya Pradesh	10-Sep	Professional Tax Remittance
	Gujarat	15-Sep	Professional Tax Remittance
	Karnataka	20-Sep	Professional Tax Remittance cum Return



	West Bengal	21-Sep	Professional Tax Remittance
	Maharashtra	30-Sep	Professional Tax Remittance cum Return
	Odisha	30-Sep	Professional Tax Remittance cum Return
	Assam	30-Sep	Professional Tax Remittance cum Return
	Nagaland	30-Sep	Professional Tax Remittance
	Meghalaya	30-Sep	Professional Tax Remittance
	Mizoram	30-Sep	Professional Tax Remittance
	Sikkim	30-Sep	Professional Tax Remittance
	Manipur	30-Sep	Professional Tax Remittance
	Tripura	30-Sep	Professional Tax Remittance
	Tamlinadu	30-Sep	Professional Tax Remittance
Kerala Shops & Commercialized Establishments Workers Welfare Fund Act	Kerala	05-Sep	WWF Remittance
Kerala Shops & Commercialized Establishments Workers Welfare Fund Act	Kerala	15-Sep	WWF Return



QUIZ!

QUIZ!

Which of the following are the duties of the employer under the OSHC 2020?

- a) Carrying out tests and examination of an article in the establishment
- b) Issuing a letter of appointment**
- c) Both 1 & 2
- d) None of the above

**Let's Connect again at 4PM on 25th
September, 2021**



*Thank
you*

T.S.GOPALAN & CO

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