



Monthly Labour Law Update

October 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

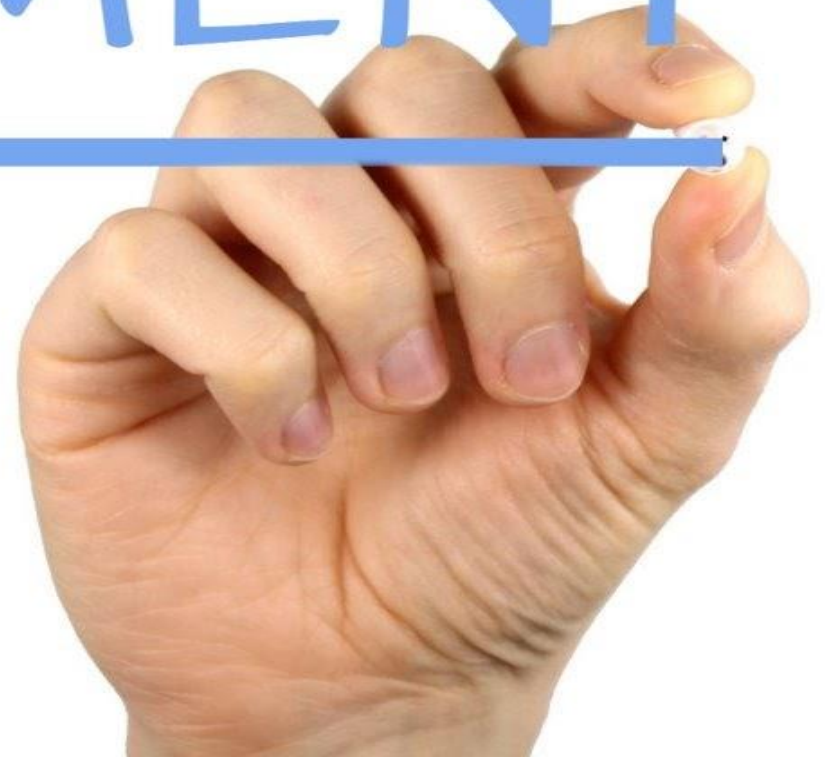
Compliance



AMENDMENT



ORDINANCE





**The Tamil Nadu Labour Welfare Fund
(Amendment) Act, 2021.
L.A. Bill No. 28 of 2021**

Date: 01.10.2021



The Tamil Nadu Labour Welfare Fund (Amendment) Act, 2021.

- Section 15 of the Tamil Nadu Labour Welfare Fund Act, 1972, is now amended and has received the Governor's assent and has been published in the Gazette.
- The annual contribution is amended to be increased to
 - From Rs.10 to Rs 50 by employees,
 - From Rs.50 to Rs 100 by employers and
 - From Rs.10 to Rs 50 from the State government.



The Himachal Pradesh Building And Other Construction Workers (Regulation of Employment And Conditions of Service) Amendment Rules, 2021

Date: 25.09.2021



The Himachal Pradesh Building And Other Construction Workers (Regulation of Employment And Conditions of Service) Amendment Rules, 2021

- **Rule 298: Female Birth Gift Scheme:** The Board to provide a sum of Rs. 51000/- (FDR) on the birth of a female child (upto 2 girls), can be encashed upon the child turning 18 years.
- **Rule 299: Mentally Retarded Children Benefit Scheme:** Financial assistance for mentally retarded or handicapped children with disability of 50% and above- Rs 20000 per year upon production of valid medical certificate issued by competent authority.
- **Rule 300: Widow Pension:** A widow to be provided pension of sum of Rs. 1500/- per month after the death of the said beneficiary. She should not be employed in any Govt./semi-govt. or autonomous body under the Government of India/Government of Himachal Pradesh on regular, contract or daily wage basis.



The Himachal Pradesh Building And Other Construction Workers (Regulation of Employment And Conditions of Service) Amendment Rules, 2021

- **Rule 301: Hostel Facility Scheme:** A maximum amount of Rs. 20000/- for the expenses incurred on lodging, boarding and food of children living in any hostel.
- **Rule 302:** A beneficiary enrolled either under Pradhan Mantri Awas Yojna or Mukhya Mantri Awas Yojna, will be provided a sum of Rs. 1,50,000 to build home.
- Rule 281(1) has been amended to provide new rates for financial assistance for education of children of the beneficiary from the Fund.



Circular & Notification





Employees State Insurance Corporation



Employees State Insurance Corporation

Tripura (Dated 23.09.2021)

- ESIC has notified to implement the provisions of Chapter IV (Contribution), Chapter V (Benefits), Chapter VI (Adjudication Of Disputes and Claims) of ESIC Act effective from 1.10.2021 in all the areas of Dhalai, Gomati, North Tripura and Sepahijala district in the State of Tripura.

Assam(Dated 24.09.2021)

- Notification to extend the provisions of Chapters IV, V and VI effective from 01.10.2021 in Baksa, Charaideo, Dima Hasao, Hailakandi, Hojai and Kokrajhar districts in the State of Assam



QUIZ!

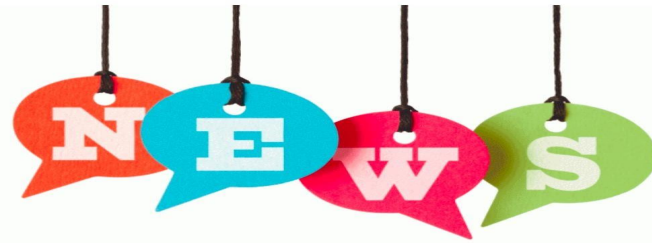


QUIZ!

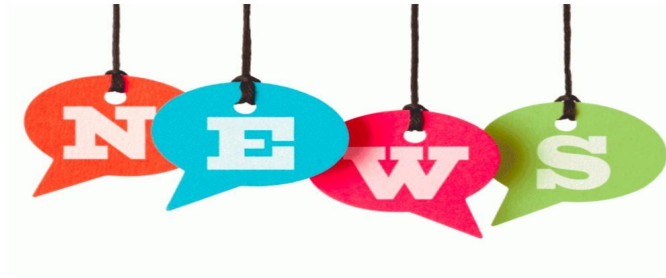
Q. Pregnant women employees are entitled to paid maternity leave for how many weeks?

- (a) 6 weeks
- (b) 10 weeks
- (c) 12 weeks
- (d) 16 weeks





- Canteen services for employees out of GST net in Gujarat
- Canteen charges collected from employees will now be outside the scope of goods and services tax following a tax ruling that offers some relief to several large industrial and manufacturing units.
- In a recent ruling, the Gujarat Authority for Advance Ruling (AAR) said that GST is not applicable on the amount collected from the employees towards canteen charges, which is paid to the canteen service provider



- In the United Kingdom, the Supreme Court held that provisions of the labour legislations will extend to drivers of UBER in the country.
- Uber has guaranteed various entitlements, including holiday pay, a pension plan and limited minimum wage.
- About 70,000 drivers are expected to be benefitted by this





Employer's Liability under Employee's Compensation Act, 1923



Amendment

- BEFORE THE AMENDMENT :- Workmen's Compensation Act, 1923
- AFTER THE AMENDMENT :- Employee's Compensation Act, 1923



When is an Employer Liable?

- Occupational Disease:
 - Part A of Schedule III
 - Part B of Schedule III
 - Part C of Schedule III
- Injury:
 - Personal Injury/Accident arising out of and in the Course of employment.



Determination of Eligibility for Compensation

- 1) He should come within the ambit of the term "Employee".
- 2) Employee should have engaged in the business of employer and not in any activity for his personal benefit.
- 3) Accident should take place when he was performing his allotted duties.
- 4) Injury should be a result of risk incidental to the duty of the service or condition of the employment.



Doctrine of Notional Extension



Exemptions to Employer



SAIL Rourkela Plant v. Kanchanbala Mohanty

- The Employee had met with an accident while going to his house which resulted in his death due to a construction work in the route. The actual residence was very far away from the area where accident took place and court observed that - "doctrine of notional extension will apply when a person going to or coming from his residence to the place of work, whereas in this case employee adopted a route which was not normal thus not compensated."

1994 SCC OnLine Ori 12



Savitri Devi vs. Bharti Filling Station and another

- In this case the claimant son was working as a driver with the defendant (tanker's owner) and his death incurred while he was on duty.
- The claim for compensation was denied by the defendant on the ground that there was no such connection between the death and the work of the deceased. Later, the Commissioner dismissed the petition filed for the purpose of compensation.
- Further, High Court held that the commissioner wrongfully concluded that there was no connection between work and death of the deceased as the very fact that the deceased was working as a driver and that too of oil tanker his job was full of stress and strain.

• **2015 SCC OnLine HP 3238**



Branch Manager, SBI General Insurance Company Limited v. Sri Dulal Debnath

High Court of Tripura

- The employee was assaulted while he was driving a vehicle on duty.
- The question for consideration was whether assault of an during course of employment can be considered as an accident arising out of/in the course of employment?
- The Tripura High Court, by relying on the definition of ‘accident’ as provided in the Halsbury’s Laws of England, held that an assault can be considered to be an accident, since the assault was an unlooked-for mishap or untoward event which brought about personal injury to the workman.

• Continued.....

MFA (E/C) NO.05 OF 2019



Branch Manager, SBI General Insurance Company Limited v. Sri Dulal Debnath

- Further, with respect to the question, as to whether such an accident can be considered as sustained in course of and arising out of his employment, the Tripura High Court relying on earlier judgments of various courts answered the question in affirmative by noting that when the incident of assault on the employee had happened, there was a causal relationship between the accident and the employment and the accident had occurred on account of a risk which is an incident of the employment.
- Therefore, the incident of assault was held to be an accident arising out of or in course of the employment.



Divisional Controller, NEKRTC v. Smt. Laxmi

Karnataka High Court

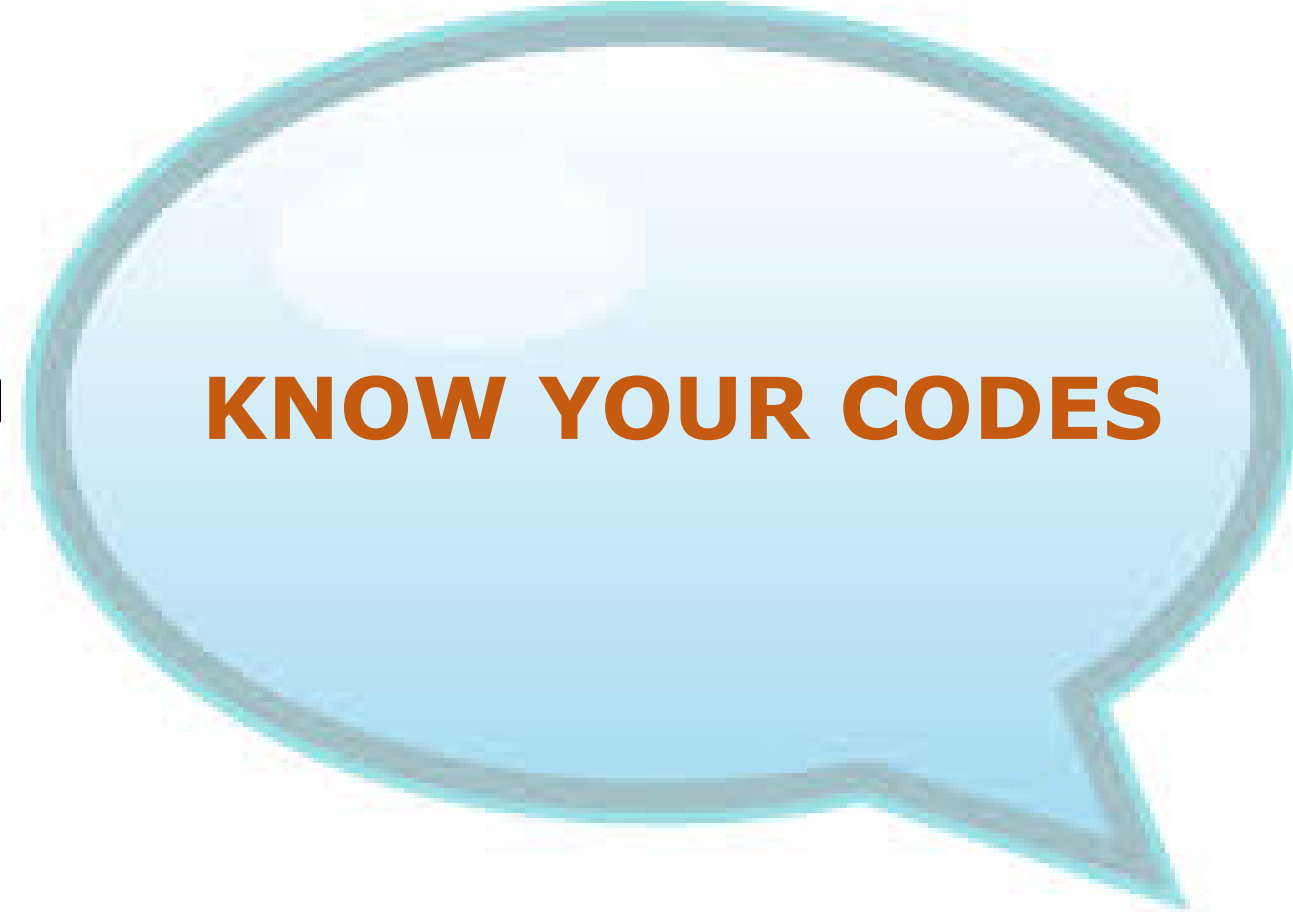
- Whether death caused to an employee due to stress amounts to accident during the course of employment was the discussed and decided in this case.
- The Court held that if a person suffers a heart attack caused due to the stress and strain of the job and dies, it necessarily means that, there has been an injury to the heart and that event, being a mishap not expected or designed, is an accident, and that if a workman suffers heart attack out of and in the course of his employment, then the same amounts to employment injury and the employer is liable to pay compensation under Section 3 (*Employer's liability for compensation*) read with Section 4 (*Amount of compensation*) of the Employee's Compensation Act.

MISCELLANEOUS FIRST APPEAL No.200122/2018(WC)



Trustees of the Port of Bombay Vs. Yamunabai

- The workman was employed as a carpenter in a workshop along with other workmen and he was killed as a result of injuries received by him by the explosion of a bomb which was placed by an unknown person near the place where the workman was doing his work.
- The test propounded was whether the accident occurred during the working hours and at the time he was on work and at the place where he was working. The expression "arising out of his employment," it was held therein, suggested both the time as well as the place of the employment and that the expression "out of" conveyed the idea that there must be some sort of connection between the employment and the injury caused to a workman as a result of the accident
- The Court held that the workman had received personal injury as a result of an accident arising out of his employment. The words 'arising out of his employment' are wide enough so as to cover a case, where there may not necessarily be a direct connection between the injury caused as result of an accident and the employment of the workman.



KNOW YOUR CODES



**KNOW YOUR
CODES**

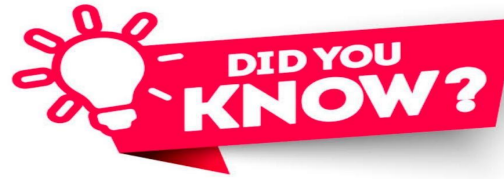
Under the Code on Social Security, 2020, the offence of non-payment of gratuity shall be punishable with imprisonment for a term which may extend to one year or with fine upto Rs. 50,000, or with both.



**KNOW YOUR
CODES**

In the Code on Social Security, 2020, failure to pay contribution by the employer in case of unlawful deduction from employee's wages shall be punishable with imprisonment upto 3 years and fine upto Rs,1,00,000.





- The United Airlines is terminating employees who did not comply with the mandatory vaccination guidelines
- In August 2021, United Airlines were the pioneers in bringing the mandatory vaccination policy for all its employees in the US.
- The Airlines has claimed that 99% of its employees are vaccinated and that it is on the verge of terminating about 600 employees who are not vaccinated despite numerous reminders and policy in place.
- Can you do this in INDIA????





**P.B. Nayak
VS
MDB Steel Plant**

**Civil Appeal No(S) 4613 of 2013
Supreme Court**

Dated: 26.10.2021



P.B. Nayak Vs. MDDBS Steel Plant

- The Defendant Management was a club which also had a 'eating-house' attached to it. The members of the club and their families can avail the eating-house facility along with many others.
- The Appellant was working in the restaurant and was terminated in April 1997.
- The Appellants challenged the same and claimed that the Shops and Establishment Act would apply to the Restaurant and that they are entitled to all workmen benefits.
- The Appellate Authority had directed the management to pay full backwages to the terminated employees and held that the restaurant will be within the scope of the Shops and Establishments Act.



P.B. Nayak Vs. MDDBS Steel Plant

- The High Court set aside the order of the Authority on the grounds that the club, being a residential hotel comes within the scope of Section 3(j) of the M.P. Shops and Establishment Act and therefore the Act would not be applicable.
- The contention of the appellants is that they served food and refreshments to the public and therefore it would amount to being a restaurant and contended that the MP Shops and Establishment Act would apply.
- The Supreme Court held that the facility was one among many privileges enjoyed by members and their families. It would not amount to catering to the "public" as such and the club was not "wholly or partially" supplying meals and refreshments in the premises.
- The dismissal of the Appeal by the High Court' was upheld.



**Union of India & Ors
VS
Ilmo Devi & Ors**

**Civil Appeal No(S) 5689-5690 of 2012
Supreme Court**

Dated: 07.10.2021



Union of India and Ors Vs. Ilmo Devi & Ors

- The Respondents were working as part-time sweepers , had approached the Central Administrative Tribunal for regularization. Which was dismissed by the Tribunal;
- The Central Government formulated a policy for regularization following the case of State of Karnataka Vs. Uma Devi, whereby the aggrieved respondents didn't fall under.
- The Respondents approached the High Court, which in turn directed the Appellant to consider their application for regularization and asked the government to reformulate the policy.
- The Government preferred an appeal before the Supreme Court and



Union of India and Ors Vs. Ilmo Devi & Ors

- The Government argued that the vacant posts were not available and therefore cannot be sanctioned or directed by the HC to create those posts.
- It was held that the court cannot direct the government to formulate or re-formulate a particular policy. It was also observed that regularization cannot happen when there is no such post.
- The court observed that the High Court's direction to create posts is beyond the jurisdiction of the High Court in exercise of power conferred under Article 226 of the Constitution.



Union of India and Ors Vs. Ilmo Devi & Ors

- The Supreme Court held that a court of law cannot interfere in policy matters of the government. The government came out with a policy in pursuant to the direction in the Umadevi case for regularizing casual work. Only if the labourers satisfy the conditions, their service can be regularized. This is because part time workers cannot claim parity with a regular employees.





REPORTING PERIOD - OCTOBER-2020			
Act	State	Due Date	Activity
Employees Provident Fund & Miscellaneous Provisions Act	Pan India	15-Nov	PF Remittance
Employees Provident Fund & Miscellaneous Provisions Act	Pan India	15-Nov	IW Returns
Employees Provident Fund & Miscellaneous Provisions Act	Pan India	25-Nov	Monthly Returns-For Exempted Employer Under EDLI Scheme (FORM 7(IF))
Employees State Insurance Corporation Act	Pan India	15-Nov	ESIC Remittance
Employees State Insurance Corporation Act	Pan India	11-Nov	ESIC Half Yearly Returns
Professional Tax Act	Andhra Pradesh	10-Nov	Professional Tax Remittance cum Return
	Telangana	10-Nov	Professional Tax Remittance cum Return
	Madhya Pradesh	10-Nov	Professional Tax Remittance
	Gujarat	15-Nov	Professional Tax Remittance
	Karnataka	20-Nov	Professional Tax Remittance cum Return



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



QUIZ!



QUIZ!

Q. Pregnant women employees are entitled to paid maternity leave for how many weeks?

- (a) 6 weeks
- (b) 10 weeks
- (c) **12 weeks**
- (d) 16 weeks



**Let's Connect again at 4PM on 27th November,
2021**



*Thank
you*

T.S.GOPALAN & CO

ADVOCATES & NOTARIES

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