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Regulatory Updates



Launch of Prime Minister's Internship Scheme on a pilot basis

The Government of India released¹ the Office Memorandum ('OM') on the Prime Minister's Internship Scheme ('PMIS') for the Financial Year ('FY') 2024-25. The PMIS has been launched on a pilot basis for partner companies to provide training and impart skills through 1.25 lakh internship opportunities.

The PMIS has guidelines, FAQs and a list of top 500 partner companies in India. It provides details of eligible candidates and the duration of the internship period. In case voluntary participation is opted by companies not seen in the partner company list, an approval from Ministry of Corporate Affairs ('MCA') would need to be obtained.

The PMIS would be implemented through an online portal developed by the MCA. This portal would be a centralised platform for end-to-end implementation and internship lifecycle management. Companies would need to upload details of internship opportunities while registered candidates may apply for available opportunities. Candidates have to share their profile information, qualification, preferred location, possibility to migrate etc. post which there would be a mapping at the backend to shortlist suitable candidates.

Candidates will be shortlisted using an algorithm-based selection and profiles will be shared with the companies. Companies can then select from those. The criteria for selection caters to those who belong to a lower employability segment and represent a broader group. Based on this, offers would be made to suitable candidates and acceptance would be over the portal.

The companies' policies and rules on attendance, code of conduct, working hours, leaves, etc., would be applicable to the interns.

Once enrolled with the company, INR 500 would be provided to the intern by the company and INR 4500 would be disbursed by the government through Direct Benefit Transfer on a monthly basis for the duration of the internship (i.e. 12 months). Companies are free to pay a higher amount if they wish to. Upon successful completion of the internship, a Certificate of Completion would be issued by the company.

The Ministry also will set up a transparent process by which recognition and award will be given to interns, companies based on their exceptional performance, etc.

Impact:

The introduction of the PMIS is a commendable step to bridge the employability gap for students coming fresh out of college and other eligible candidates. At the macro-level, the PMIS is a step towards India's goals of employment generation and skill-development. Based on the list of 500 companies released, it is seen that the internships are being offered in diverse sectors, ranging from manufacturing, automotives and textiles, to banking, financial services, travel and hospitality.

Through this government initiative, interested companies are given an opportunity to train and upskill talent to meet industry requirements. It also serves as a stage for aspiring students to experience the clinical and practical demands of their theoretical knowledge in the workplace. It would help in skill building and generation of competency at the individual level.

At present, the features of the pilot project seem comprehensive and upon it being functional, other practical challenges may arise which would need to be addressed. Some concerns raised are on: augmentation of workforce as supervisors are needed for each intern, consideration on the types of terms and conditions that can be agreed to between the employer and the intern and the investment of time to implement the internship training, etc.



Restriction on the use of surplus and reserves by exempted PF trusts

Employers are permitted to establish and manage their in-house Provident Fund ('PF') Trusts under Section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ('EPF Act'), provided they comply with the conditions set forth in the EPF Act and Income-tax Act, 1961. Such establishments are referred to as 'Exempted Establishments'.

The Employees' Provident Fund Organisation ('EPFO') has, vide Circular² addressed the issue of utilisation of the reserves and surplus of private PF Trusts for crediting interest to existing members. EPFO has noted instances wherein Exempted Establishments have sought permission for utilising the reserves and surplus-for crediting interest to existing members at a rate significantly higher than that declared by the EPFO. EPFO has called such actions of the Exempted Establishments as 'illegal' and in contravention of Para 60 of the EPF Scheme and Section 17 of the Indian Trusts Act.

The circular also clarifies that the total accumulated fund, including undistributed interest on investment, is required to be transferred to EPFO upon surrender or cancellation of exemption in accordance with the Para 28(2) of the EPF Scheme.

Impact:

This circular of EPFO is a deviation from the earlier position affirmed through its past circulars dated 20 October 2010 and 17 March 2011. Organisations having private PF Trusts should carefully examine the implications of this circular especially in case they have balance lying in the Reserves and Surplus as on date.

Further guidance is required from EPFO regarding prospective applicability of this circular to avoid ambiguity where PF Trusts have already utilised reserves and surplus for crediting interest at higher rates to the members based on the erstwhile circulars. Another aspect on which clarification would be required is the timing of the transfer of surplus by exempt Trusts that retain this status

Kerala exempts transfer fee payment in its amended Factories Rules

The Government of Kerala has amended³ the Kerala Factories Rules, 1957, by way of notification dated September 11, 2024. Under the Kerala Factories Rules, 1957 the licence for a factory can be transferred to another person by the regulatory authorities, upon application by the holder along with the original licence and a fee receipt. In an effort to support distressed industries, the amendment now exempts the transfer fee where a closed factory is taken over by another factory due to specific challenges such as financial crisis, insufficiency of raw material, non-profitability, etc. duly certified by the regulatory authorities.

² E.III/10(122)/2024/Circular/Exemption/5435) dated October 7, 2024

³ September 11, 2024



Launch of E-shram 2.0: a one-stop solution for unorganised workers

The Ministry of Labour and Employment ('MOLE') has launched⁴ E-shram 2.0- one-stop solution. As the name suggests, the portal would serve as a comprehensive database on the social security schemes available for gig and platform workers.

The purpose of E-shram is to simplify the registration process for unorganised workers and facilitate their access to government welfare schemes. The platform will act as a bridge, connecting the workers to the numerous benefits offered by the government and making the registration process easier and more transparent.

One Stop Solution entails consolidating and integrating data from various Central Ministries/ Departments into a single repository as per the recent Budget Announcement and 100 days agenda of Ministry of Labour and Employment. Key welfare schemes such as One Nation One Ration Card, Mahatma Gandhi National Rural Employment Guarantee Act, National Social Assistance Programme, National Career Service, Pradhan Mantri Shram Yogi Maandhan etc. have been integrated with eShram, and onboarding of other welfare schemes is also in progress.

Impact:

The launch of E-shram 2.0 would help in streamlining efforts taken to further extend social security benefits to the unorganised workforce.

Karnataka Government proposes to charge percent cess on all e-commerce orders

The Karnataka Government seeks to impose cess on e-commerce orders to fund the welfare schemes directed at gig workers. The cess will be charged on all kinds of e-commerce orders including food delivery, quick commerce, traditional commerce, and even cab and auto rides. The imposition of a cess may increase the cost of e-commerce orders and disincentivize gig workers from upskilling.

Once the Winter session of the Assembly is completed, more clarity on the imposition of cess is expected.

Changes in online and compliance dashboard in West Bengal

The Government of West Bengal had introduced the Online and Compliance Dashboard to promote 'ease of doing business' in the state. The Dashboards promoted transparency and helped to track applications made on the system. The Department for Promotion of Industry and Internal Trade, Government of India, has recommended to modify and develop a smart Dashboard having the provision to drill down for displaying details. The same has been implemented⁵ by the Government of West Bengal under various labour, boiler, and factories Acts. The online Compliance Inspection Dashboard will also indicate the number of inspections conducted and average time taken for the same.



Notification clarifying the list of manufacturing processes falling under the Factories Act

The Government of Kerala has issued a notification⁶, which pertains to the application of the Factories Act, 1948. This notification clarifies which manufacturing processes will fall under the purview of the Factories Act, within the state of Kerala.

The notification specifies that the provisions of the Factories Act will apply to any manufacturing process described in the accompanying schedule, regardless of the location within the state.

The notification outlines various manufacturing processes, including but not limited to:

- Manufacture and treatment of lead and its compounds.
- Production of footwear primarily made from vulcanized rubber or plastics.
- Manufacturing of electronic equipment and components.
- Processing of rubber and plastic waste products.

The notification emphasizes the importance of compliance with the provisions of the Factories Act, which aims to ensure safe and healthy working conditions for employees in manufacturing sectors.



Kerala Labour Welfare Fund rules amended to simplify process for remittances and compliances

The Government of Kerala (Oct 1) issued a notification⁷ in the Kerala Gazette amending the Kerala Labour Welfare Fund Rules, 1977. Key amendments are as below:

- Rule 3(1) has been amended to allow for online payment of accumulations/fines in addition to the existing options of cheque, money order, or cash.
- Rule 11 has been amended to allow payment of contributions through online mode and also provides an option to furnish the Statement in Form 'A' online.
- Rule 21(1) has been amended to allow for the maintenance of required registers electronically as well.

By the above amendments, procedures are being simplified by introducing online mode of payment and maintenance of registers to reduce the compliance burden for both citizens and industries.

Impact:

Organizations may take note of this updates and make the necessary adjustments to their processes.

Revision in Professional Tax rates in Kerala

The Government of Kerala issued a notification⁸ revising the professional tax rates in Kerala. These changes aim to align the tax structure with the state's economic growth and development goals. The amendments are as follows:

Half Yearly Salary	Professional Tax per month
Up to INR 11,999	Nil
INR 12,000 to INR 17,999	INR 320
INR 18,000 to INR 29,999	INR 450
INR 30,000 to INR 44,999	INR 600
INR 45,000 to INR 99,999	INR 750
INR 1,00,000 to INR 1,24,999	INR 1000
INR 1,25,000 onwards	INR 1250

Impact:

The amendments have a minor impact on the take-home salary of individuals falling within the higher income brackets.

⁷ October 1, 2024

⁸ October 1, 2024



II. Case Updates

- **Supreme Court gives clarity on supervisory role which does not qualify for 'workman' status**

One of the critical distinctions lies between the categorization of individuals as "non-workman" and "workman" under the framework of the Industrial Disputes Act, 1947 ("ID Act"). This classification carries significant legal value, particularly in determining the rights, protections, and entitlements available to a workman.

In the facts of this case⁹, the employee was appointed for the position of 'Regional Business Head (South)-Government Enterprise Services. The Employee worked as the "Team Leader and Regional Business Head (South). He headed a team comprising of four Account Managers (Sales), wherein the said managers worked under the control and supervision of the Employee. The moot question before the Supreme Court in this case was whether the Employee fell under the definition of "workman" as per the ID Act.

The SC perused the relevant clauses of appointment letter, the facts of the matter and accordingly noted the following:

- That the Employee was a senior manager.
- That the Employee was also eligible for perks inter alia special allowance, car hiring charges, parking allowances.
- That the Employee had also previously worked in various other managerial positions.
- That the Employee performed a supervisory role over the managers and was the Assessing Manager of his team, which consisted of Managers in the B-1 & B-2 Levels.
- That the Employee had himself mentioned that he is applying for the position of "Head-Sales".

That with respect to the nature of working being undertaken, the absence of power to appoint, dismiss or conduct disciplinary enquiries against other employees cannot be the only reason for courts to conclude that an individual was a "workman".

That if this logic were to be applied then employees at very high positions, drawing fat salaries, cannot be considered as workman by virtue of the mere fact that they could not hire or fire. The SC opined that absence of power to appoint, dismiss or conduct disciplinary enquiries against other employees was not the only reason to conclude that the employee was a "workman". The SC has holistically analyzed the nature of the job of the Employee by taking into consideration facets like appointment letter, employment history, job application, amongst others to decide if the employee is a workman.

In view of the nature of duty performed by the Employee, the SC noted that the Employee was not a workman.



II. Case Updates

- **Contractual employees also entitled to maternity leave**

The High Court of Madras has passed a significant judgment¹⁰ re-emphasizing the right to avail maternity leave by contractual employees. The rationale for the same was based on the Maternity Benefit Act, 1961 taking precedence over the contractual terms and conditions agreed between the contractual employees and the employer. The aim of the legislation is to allow women the autonomy to work as well as to uphold their right to pregnancy and maternity leave.

- **'Canteen contract workers' to be treated as principal employer's employees**

As per the recent ruling¹¹ of the Supreme Court, the contract workers engaged to run the canteen facility of the factory, through a third-party vendor, have been held to be treated as the principal employer's employees. The rationale for this ruling is based on the onus of the obligation falling on employer under law. The SC held that when an industrial establishment engages a contractor to supply labour to run a canteen, which it is obliged under the law to run, workers employed by the contractor would be treated as those of the principal employer.

¹⁰ October 22, 2024

¹¹ October 24, 2024

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