UPDATES

Labour & Employment – Legal Milestones for 2019 and a Look Ahead

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This update covers:

1 The Year that Was

The past year witnessed both the Central government and State governments undertaking various initiatives in the labour and employment sector, including the introduction of legislative changes and measures to simplify and boost legal compliance.

In recent years, the Labour Ministry's efforts have concentrated around streamlining the vast number of central labour laws into 4 codes. The earlier endeavors of the Central government were directed towards formulating the draft-codes and obtaining stakeholder comments. In 2019, these efforts further crystallised into bills that were introduced in the Parliament. The Code on Wages, 2019 (Wage Code) was passed by both the Houses of the Parliament and has received Presidential assent.

From landmark judicial pronouncements to progress in statutory reforms, 2019 was an interesting year in the domain of employment laws in India. This update summarises some of the key developments in 2019 and gives a brief overview of what can be expected in 2020.

The judiciary also delivered some note-worthy judgments on labour law in early 2019. Significant amongst them is the Supreme Court's (SC) decision that brought more clarity on the definition of 'basic wages' under the provident fund (PF) laws, and the Karnataka High Court quashing the obligation on employers to pay a 'service seniority allowance' under various minimum wages notifications issued in that State.

2019 also witnessed some interesting changes in the legislative space, prompted by the government's objective of enhancing 'ease of doing business' in India. Some of the noteworthy changes on this front include: (i) the introduction of a new shops and commercial establishments (S&E) law in Gujarat, (ii) renewal of exemptions given to IT/ITeS companies (and other types of establishments) from the applicability of certain provisions of the Telangana S&E Act and from the applicability of the Industrial Employment (Standing Orders) Act, 1946 (SO Act) in Karnataka, (iii) elimination of the registration-renewal requirements under the S&E laws in some States, (iv) permission given to factories in Karnataka to employ women at night (subject to conditions), (v) amendment to the applicability of the law on engaging apprentices, and (vi) coverage of the S&Es in Haryana under the SO Act.

2 Major Developments in 2019

1.1 Supreme Court's ruling on the definition of 'basic wages' under the PF law

The meaning of the term 'basic wages' under the PF law has been a long-debated and highly litigated issue. While the SC had laid down legal principles on the allowances that can be included and excluded from 'basic wages' as early as 1962 (in the case of *Bridge and Roof Co. (India) Ltd.* v. *Union of India*), several high courts were taking different views on this issue. Thereafter, even the PF office had issued internal circulars directing the authorities to refer to such high court rulings while determining what amounted to 'basic wages' for calculating PF contributions.

In the 2019 ruling of *Regional PF Commissioner, West Bengal* v. *Vivekananda Vidyamandir*, the SC reiterated the principles laid down by it in *Bridge and Roof.* It also upheld the view that the crucial test for inclusion of allowances as part of 'basic wages' is universality i.e., PF contributions should be computed on all allowances which are uniformly, necessarily and ordinarily paid to all the employees on a guaranteed basis (and not conditional payments).

Questions were later raised on whether this ruling should be implemented prospectively or even retrospectively. While the legal position on this issue was unambiguous (the ruling would also have retrospective applicability), representations were made to the PF authorities and to Labour Ministry, requesting that the ruling be applied only prospectively. No formal response was received to these representations from the authorities or the Ministry. However, in August 2019, the Employees' Provident Fund Organisation (EPFO) issued an internal notice, directing PF field officers to not undertake 'roving inquiries' on establishments merely based on the 2019 SC Ruling. Field officers were further directed to obtain prior approvals and follow internal EPFO guidelines before initiating inspections and inquiries for past non-compliances.

1.2 Code on Wages, 2019

The Wage Code received Presidential assent in August 2019. Once notified by the Central Government, the Wage Code will replace the current laws on payment of wages, payment of bonus, minimum wages and equal remuneration. Some prominent changes that the Wage Code will introduce to the existing legal regime include:

- Providing a uniform definition of the term 'wages'. Currently, the definition of this term varies across various legislations, leading to ambiguity. The uniform definition under the Wage Code will offer some relief to employers. However, the manner in which wages is defined still leaves a lot of room for determining which allowances should be included and which excluded.
- The Wage Code does away with the concept of 'scheduled employments' that exists under the current minimum wages law. Instead, it introduces an obligation on the Central Government to consider the worker's minimum standard of living and to fix a 'Floor Wage' which will apply across the country (although

different Floor Wages could be fixed for different geographical areas). Basis the Floor Wage, the State Governments could fix State-specific minimum wages.

- The current law on payment of wages (PW), among others, regulates the specific purposes for which employers can make salary deductions, and also prescribes the limits on permitted deductions. The current PW law applies to factories, mines and plantations in the first instance, and to commercial establishments in some States. In most states, even in the establishments to which the PW law applies, only employees earning monthly wages of INR 24,000 or less are covered. In contrast, the applicability of the PW provisions under the Wage Code is neither restricted to a specific set of industries nor to employees earning salary below a particular threshold. Thus, the restrictions related to salary deductions under the PW provisions would apply in respect of all employees. Given the broader applicability of PW provisions under the Wage Code, employers would need to be mindful of the limits on salary deductions for *all* their employees.
- The penalties under the Wage Code for first-time offences relating to non-payment of dues to employees are significantly higher than the penalties prescribed under the existing laws. However, the Wage Code provides some relief in that it makes provision for compounding of offences which are punishable with a fine.

1.3 Creche obligations introduced under the Karnataka Maternity Benefit (Amendment) Rules, 2019

In August 2019, Karnataka became the first Indian State to introduce rules on creche facilities under the maternity benefit law. Key duties on employers in this State include providing a creche,

- in every establishment with 50 or more employees, in accordance with the prescribed infrastructural requirements,
- for the use of children (below the age of 6 years) of all employees, irrespective of the type and nature of employment whether permanent, temporary, regular, daily wage, contract, etc.,
- that is situated within 500 meters of the entrance of the establishment.

1.4 New Obligations on Employers in Telangana & South Mumbai under the sexual harassment law

The Department of Child and Women Welfare (DWCD) in Telangana launched an online portal (T-she Box) in June 2019 to enable women in the State to file workplace sexual harassment complaints with the government authorities.

Similarly, in south Mumbai, the DWCD directed employers to constitute an internal committee to investigate complaints of sexual harassment as required under law and submit the details of the same to the DWCD.

1.5 Reduction in employee's state insurance (ESI) contribution rates

The ESI law was amended in June 2019 to reduce the rate of both, employer's and employees' ESI contributions. The amendment reduced the employer's contribution rate from 4.75% to 3.25% of an employee's monthly wages, and the employee's contribution rate from 1.75% to 0.75% of the monthly wages. The new rates have been made applicable since 1 July 2019.

3 Looking Ahead

In 2020, the Wage Code is expected to be notified by the Central government and hopefully, the State governments would also formulate rules for implementation of the Wage Code. Also, the bills which have introduced the codes on industrial relations, social security, and occupational safety and health in the Parliament are expected to be passed and brought into force this year. The current labour law regime in India could, therefore, undergo significant changes and employers should keep a close watch on the developments in this space.

For a round-up of some of the key legal developments across sectors in 2019 and a brief insight on what to expect in 2020, please read our sector-wise updates, which can be accessed at: https://trilegal.com/knowledge-repository/page/2/?title=milestone