

EY People Regulations' Insights

August 2024

EY People Regulations services: helping organizations prepare, plan and manage all people-related regulatory challenges, including compliance with regulations.

Format of third-party audit report released for Private Provident Fund Trusts maintained by exempted establishments

On 11 July 2024, the Employees' Provident Fund Organisation ('EPFO') issued a circular¹ to all its zonal and regional offices, publishing the format of the third-party audit report (Form RM-6).

Private Provident Fund Trust ('PF Trust') maintained by an exempted establishment/employer under the Employees' Provident Funds ('EPF') Scheme is subject to audit and may also be subject to re-audit by a qualified auditor, if required by the Provident Fund Commissioner.

In this regard, the EPFO has issued the format for the third-party audit report which shall be submitted to the Provident Fund Commissioner along with the audited balance sheet of the PF Trust. The EPFO is yet to release the format of the Balance Sheet for the PF Trust (Form RM-5).

This circular has been issued in addition to the Standard Operating Procedure for management and regulation of EPF exempted establishments published on 06 October 2023, reiterating key compliances applicable for an exempted establishment/employer running a PF Trust for its employees.

Format of Balance Sheet, once issued, may provide clarity on the accounting related aspects applicable to the PF Trust.

- ▶ Establishments with PF Trusts may take note of the published format and may take necessary steps to comply with all applicable conditions that may be examined by the auditors.

1. No. E-III/10(116)2023/SOP-ManagementandRegulation-Part(1)/6102

Revised Standard Operating Procedures for joint declarations to be submitted for updating member profile in EPF records

On 31 July 2024, the EPFO issued SOP¹ version 3.0 in supersession of the earlier SOP, thereby amending the list of parameters which can be corrected / updated by EPF member through the joint declaration form. Following are the updated parameters as per the SOP version 3.0:

| | | |
|--------------------|-----------------------|-----------------------|
| i. Name | v. Mother's name | ix. Reason of leaving |
| ii. Gender | vi. Spouse's name | x. Date of leaving |
| iii. Date of birth | vii. Marital status | xi. Nationality |
| iv. Father's name | viii. Date of joining | xii. Aadhaar number |

Additionally, the EPFO has also updated the list of acceptable documents for correcting member profile details. This includes submitting an Aadhaar card with the father's, mother's, or spouse's name to update these details, or providing a death certificate to reflect a change in marital status.

Accordingly, an updated joint declaration form has been issued by the EPFO. However, such changes are yet to be implemented on the EPFO member portal.

- ▶ EPF members may take note of the changes introduced by revised SOP while making any changes to their details on the online portal, as and when implemented.

1. No.WSU/2022/(E-54018)/3931

Campaign to promote Facial Authentication Technology for submission of Digital Life Certificate for pensioners under the Employees' Pension Scheme

On 11 July 2024, the EPFO issued a circular¹ regarding the launch of a promotion campaign to increase the adoption of Facial Authentication Technology ('FAT') for submission of Digital Life Certificate ('DLC'), aiming to reduce the dependence of pensioners under the Employees' Pension Scheme ('EPS') on banks and other intermediaries for updating their life certificates. Under the campaign, each field office is directed to take the following key actions:

- ▶ Involve pension disbursing banks
- ▶ Send emails and hold awareness sessions for employers and unions of employees
- ▶ Send SMS to pensioners in all pending cases wherein DLC has not been received before the due date
- ▶ In the case of Physical Life Certificate, send SMS to pensioners two months before the due date about FAT
- ▶ To issue a handout on the process of DLC submission

The publicity division should create and present a video about FAT at all 'Nidhi Apke Nikat' camps in July 2024 to educate pensioners about the entire process.

On 08 June 2024, the Ministry of Labour & Employment had issued a press release² announcing the use of FAT by EPS pensioners for DLC submission. Pensioners are required to submit a life certificate every year for continuation of the pension being paid to them. Previously, pensioners had to go to banks to submit a Physical Life Certificate, which had its challenges, resulting in some grievances.

To enhance ease of living, the EPFO adopted DLC for its pensioners. EPFO accepts DLCs based on biometric authentication from the EPS pensioners.

- ▶ Reforms introduced by the EPFO introducing Facial Authentication Technology for submission of Digital Life Certificate aims to reduce dependence of pensioners on banks and other intermediaries.

1. No. Pension/FAT-Publicity/2023/3417

2. Release ID: 2023558

Bulk Aadhaar seeding of insured persons and their dependents

On 11 July 2024, the Employees' State Insurance Corporation ('ESIC') issued a letter¹ to the branch offices informing that an option to seed Aadhaar of several Insured Persons and their dependents in bulk, will be made available to all employers through an online system.

On 6 August 2024, the ESIC issued a letter² providing a user manual for bulk Aadhaar seeding of IPs and their dependents. Employers will now be able to upload Aadhaar details of IPs and their dependents in bulk by using the new Bulk Aadhaar Seeding Template, accessible from the employer portal. This facility has been made effective from 02 August 2024. Before uploading Aadhaar and mobile number of the ESIC beneficiaries in the Bulk Aadhaar Seeding Template, employers must ensure that:

- ▶ Uploaded details are correct and as per Aadhaar. In case of mismatch, Aadhaar will not be seeded
- ▶ Where a beneficiary desires to change personal details in ESIC portal as per Aadhaar, the same may be done through the IP / employer portal or by contacting the designated ESIC Branch Office
- ▶ In case of minor family member, mobile number of IP / parent / guardian may be uploaded
- ▶ Employer is only required to enter Aadhaar and mobile number of beneficiaries and not change any details of IPs and family members in the downloaded template

- ▶ The facility would make it easier for employers to streamline the process of linking Aadhaar with ESIC records, ensuring compliance with regulatory requirements.

1. File No.- 15/R/Misc/1/2022/Bft-2

2. No. N-16016/1/2023-Bft-II

Removal of Aadhaar Card from the list of acceptable documents for proof of date of birth for the purpose of Employees' State Insurance

On 29 July 2024, the Employees' State Insurance Corporation ('ESIC') issued a letter¹ removing Aadhaar Card from the list of acceptable documents for proof of date of birth in demographic details. The ESIC has implemented provisions to exclude the process of comparing date of birth during the Aadhaar seeding process for beneficiaries and the same has been made effective from 23 July 2023.

Previously, on 14 March 2024, the ESIC had issued a letter² clarifying that the Unique Identification Authority of India has removed Aadhaar from the list of acceptable documents for proof of date of birth basis which Aadhaar may not be considered as an acceptable document for correction of date of birth of Insured Persons and their dependents.

Since Aadhaar was removed as an acceptable document for proof of date of birth, the ESIC issued a letter³ dated 2 July 2024, clarifying that correction in date of birth of insured persons and their dependents shall be made in accordance with Regulation 80(2) of the ESI (General) Regulation, 1950 which provides a list of documents that may be accepted as proof of age as below:

- (a) Certified extract from an official record of birth showing the date and place of birth and father's name
- (b) Original horoscope prepared soon after birth
- (c) Certified extract from baptismal register
- (d) Certified extract from school record showing the date of birth and father's name
- (e) any other evidence as may be acceptable to the appropriate Regional Office as per the specific fact pattern

- ▶ Organizations may take note of removal of Aadhaar as a permissible document for authentication of date of birth.

1. No. N-12013/2/2023-Bft-II

2. No. N-12013/2/2023-BFT-II

3. No. N-12013/2/2023-BFT-II

8.25% annual rate of interest declared for Employees' Provident Fund Organisation member accounts for the Financial Year 2023-24

On 31 May 2024, the Ministry of Labour & Employment issued a circular¹ conveying the approval of the Central Government to credit interest at the rate of 8.25% for the Financial Year 2023-24 to the account of each member of the Employees' Provident Fund.

On 10 February 2024, the Central Board of Trustees, Employees' Provident Fund Organisation had recommended an increase in the annual rate of interest to 8.25% for the Financial Year 2023-24, from the previous rate, which was 8.15% for the Financial Year 2022-23.

- ▶ Employers maintaining private provident fund trusts to credit interest to member accounts either at par or more than 8.25% for the Financial Year 2023-24.

1. No. INV-11/2/2021-INV/1460

Government of Maharashtra introduced requirement to include certificate of insurance of establishment in various forms and schedule

On 22 July 2024, the Government of Maharashtra issued a notification¹ notifying the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) (Amendment) Rules, 2024 ('Amendment Rules'). The Amendment Rules amend the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Rules, 2018 ('S&E Rules') thereby introducing the requirement to include a certificate of insurance of the establishments in the following Forms:

- ▶ Form A (Application for registration of establishment)
- ▶ Form D (Application for renewal of registration certificate)
- ▶ Form F (Application for intimation of commencement of business).

In line with the above, the list of documents to be uploaded (as per the Schedule appended to the S&E Rules) while filing application for registration / renewal / intimation has also been amended introducing the requirement to submit a copy of a certificate of insurance of the establishment.

Further, the requirement to provide insurance policy number and date of validity of insurance policy of establishment has also been introduced in the form of Annual Return to be uploaded by the employer (Form R). However, there is a lack of clarity on the kind of insurance coverage required to be obtained by the establishment.

- ▶ Employers of establishments in Maharashtra may take note of this new requirement and submit a copy of certificate of insurance of establishment along with applications for registration / renewal / intimation.

1. No.MS&EA-08/2021/C.R.153/Labour-10ss

Monthly deposit of Labour Welfare Fund contribution in Haryana

On 9 July 2024, the Haryana Labour Welfare Board issued a letter¹ stating that a provision has been made on the Haryana Labour Department e-Governance portal ('online portal') for making contributions towards labour welfare fund on a monthly basis. Previously, employers were required to make contributions on behalf of the employer and employees to the labour welfare fund annually.

As per the Punjab Labour Welfare Fund Act, 1965, an employee is required to pay 0.2% of his salary every month to labour welfare fund, subject to a limit prescribed by the Labour Welfare Board. An employer is required to contribute an amount equal to double the contribution paid by an employee.

The Haryana Labour Welfare Board, by notification dated 27 June 2023², had increased the maximum limit of contribution to be paid by an employee to the Labour Welfare Fund to INR31.

However, the procedure for submitting contributions monthly has not been implemented through the online portal.

- ▶ Organizations in Haryana may take note of the provision for monthly deposit of contributions to Labour Welfare Fund.

1. HLWB/REV/2024/3755-3804

2. HLWB/REV/2023/2733-2982

Timeline for obtaining compulsory gratuity insurance by establishments in Karnataka

On 4 July 2024, the Government of Karnataka issued a corrigendum¹ clarifying that the timeline for obtaining compulsory gratuity insurance with respect to establishments that are in existence at the time of commencement of the Karnataka Compulsory Gratuity Insurance Rules, 2024 ('Rules'), shall be six months from the date of commencement of Rules. Previously, the timeline was 60 days.

There is no change in the timeline with respect to employers of new establishments and every such employer is required to obtain a valid gratuity insurance policy within a period of 30 days from the date on which Rules become applicable to such establishment.

On 10 January 2024, the Government of Karnataka had published the Rules² prescribing the requirement for employers to obtain a valid insurance policy for their liability towards payment of gratuity to eligible employees under the Payment of Gratuity Act, 1972.

- ▶ Employers operating in Karnataka may take note of the requirement to obtain a gratuity insurance policy within the prescribed timelines.

1. No. LD 325 LET 2023

2. No: LD 397 LET 2023

Karnataka State Employment of Local Candidates in the Industries, Factories and other Establishments Bill, 2024 ('Employment of Local Candidates Bill') kept on hold

On 15 July 2024, the State Cabinet, Government of Karnataka, approved the Employment of Local Candidates Bill¹ with a focus to provide employment opportunities for local candidates in the industries, factories and other establishments ('organizations') in Karnataka.

The key highlights of the Employment of Local Candidates Bill are as under:

- ▶ Organizations in Karnataka to engage 50% local candidates for management categories and 75% in non-management categories. The term 'local candidate' means a candidate who is/has: (i) born in Karnataka; (ii) domiciled in Karnataka for 15 years; (iii) capable of speaking, reading and writing in Kannada; and (iv) passed a requisite test conducted by Nodal Agency notified by the state government.
- ▶ Local candidates not possessing secondary school certificate with Kannada as a language will be required to pass a Kannada proficiency test.
- ▶ Where qualified and suitable candidates are not available, the organizations shall take steps along with the State Government, within three years, to train and engage local candidates
- ▶ In case of insufficiency of local candidates, the organizations may apply to the state government for relaxation; however, the relaxation shall not be less than 25% for management categories and 50% in non-management categories.
- ▶ If there is a violation, the employer, occupier, or manager of the organization will be responsible for paying a penalty that can range from INR10,000 to INR25,000.

Currently, the Employment of Local Candidates Bill has been temporarily put on hold by the State Government of Karnataka.

- ▶ Organizations in Karnataka may assess the impact of the Bill and keep track of further developments in relation to implementation of the Bill.

1. C.2/ Labour/ Bill- 2024/ the Karnataka State Employment of Local candidates in the Industries, Factories and Other Establishments Bill 2024/ Rad ha. R/I 1.07. 2024

Draft Jharkhand Platform-Based Gig Workers (Registration and Welfare) Bill, 2024 ('Draft Bill') issued

On 1 July 2024, the Government of Jharkhand notified the Draft Bill¹ to safeguard the rights of platform-based gig workers and impose responsibilities on the platforms with respect to social security and occupational health/safety of platform-based gig workers. Some key provisions of the Draft Bill include:

- ▶ **Applicability:** Aggregators/primary employers operating in Jharkhand and providing any of the following services: (i) ride sharing; (ii) food / grocery delivery; (iii) logistics; (iv) e-market place; (v) professional services; (vi) healthcare; (vii) travel and hospitality; and (viii) content and media. An 'Aggregator' means a digital intermediary for a buyer/user of a service to connect with a seller/service provider. However, the term 'primary employer' is not defined in the Draft Bill.
- ▶ **Registration of platform-based gig workers:** Aggregators to provide their database of gig workers to the Jharkhand Platform-Based Gig Workers Welfare Board ('Welfare Board') within 60 days of enforcement of the Act and to further intimate any changes in the data so provided.
- ▶ **Registration of aggregators:** Every aggregator/primary employer to get itself registered with the Welfare Board within 60 days of enforcement of the Act.
- ▶ **Welfare cess:** The Platform-Based Gig Workers Welfare Fee ('Welfare Cess') to be charged from an aggregator at such a rate (%) of the value of each transaction related to platform-based gig workers as may be notified. Welfare Cess to be deposited by the aggregator quarterly.
- ▶ **Responsibilities of aggregators:** (i) Contracts to be in simple language containing an exhaustive list of grounds for termination; (ii) No gig worker to be terminated without 14 days' prior notice; (iii) To intimate gig workers of the changes in contract at least 14 days in advance; (iv) to compensate gig workers at least on a weekly basis; (v) to provide a safe and risk-free environment and prevent discrimination; (vi) to provide a human point of contact for clarifications, etc.
- ▶ **Refusal of gig work request:** Gig workers may refuse specified number of gig requests per week without adverse consequences.
- ▶ **Dispute Resolution Committee:** Aggregators with more than 50 registered platform workers to constitute an Internal Dispute Resolution Committee. However, this will not restrain the gig workers from seeking relief under the Industrial Disputes Act, 1947
- ▶ **Penalties:** For contravention of provisions of the Act, the aggregators shall be liable for a penalty of INR50,000 to INR5 lakh; In the event of continuation of contravention after conviction, further penalty of up to INR5,000 per day may be levied.
- ▶ **Central Transaction Information and Management System ('CTIMS'):** All payments generated on platforms to be monitored by the Welfare Board via CTIMS.

- ▶ Aggregators / primary employers operating in Jharkhand may analyze the applicability and impact of the Draft Bill and keep track of further updates

1. File No.-02/Shram.ka.Socialsecurity(Gig workers)-01/2024L&T

Amendment in the Tamil Nadu Shops & Establishment Rules, 1948 ('Rules')

On 2 July 2024, the Government of Tamil Nadu issued a notification¹ introducing amendments to the Tamil Nadu Shops & Establishments Rules, 1948 ('Rules'). The amendment has introduced the following key provisions in the Rules:

- ▶ Application for registration of establishment to be made in Form Y to the Inspector of the area where the establishment is located, along with a fee of INR100 through the designated web portal of the Labour Department.
- ▶ Registration certificate of the establishment to be issued by the Inspector online in Form Z within 24 hours of making the application.
- ▶ Employers of existing establishments to submit details of the establishment to the Inspector in Form ZB, through the designated web portal of the Labour Department.
- ▶ Application for amendment of registration certificate to be made through the designated web portal of the Labour Department. Fresh registration certificate shall be issued by the Inspector in Form Z within 24 hours of the making of the application.
- ▶ Employer to provide one first aid box for every 150 employees which shall be readily accessible during all working hours
- ▶ For contravention of any provision of the Rules, a fine of up to INR2,000 may be imposed. Prior to the amendment, the maximum fine of up to INR50 could be imposed.

On 2 July 2024, the Government of Tamil Nadu also issued a separate notification enforcing the Tamil Nadu Shops and Establishments (Amendment) Act, 2018 ('Amendment Act') (effective from 2 July 2024), thereby introducing the requirement for new establishments employing 10 or more workers to apply for registration within a period of six months from the date of commencement of business. Further, existing establishments employing 10 or more workers are required to furnish the details of the establishment along with a self-declaration to the Inspector, within a period of one year from the date of commencement of the Amendment Act.

- ▶ Organizations in Tamil Nadu may obtain registration certificates for new/existing establishments under the Tamil Nadu Shops & Establishments Act, 1948.

1. No. SRO A-13€/2024

Draft Goa Factories (Seventeenth Amendment) Rules, 2024 published

On 25 July 2024, the Government of Goa notified the draft Goa Factories (Seventeenth Amendment) Rules, 2024¹ ('draft Rules') thereby amending the Goa Factories Rules, 1985. Key highlights of the draft Rules are as under:

- ▶ Fee for obtaining a license and annual renewal of license by factories has been increased. The fee may range from INR 0 to INR 3,92,700 depending on the maximum horse-power (H.P.) installed and the maximum number of workers to be employed in the factory on any day during the year. Further, with effect from 1 January 2026, at the beginning of each calendar year, the fees payable for registration shall increase by 5% of the fees last paid.
- ▶ A time limit for amendment of license / refusal to amend the license by Chief Inspector has been introduced. Where an application for amendment of license is made, the Chief Inspector is required to amend the license or refuse the amendment within 21 days from the date of receipt of application, failing which the license shall be deemed to be amended.
- ▶ The following fee has been prescribed for an amendment of license:
 - ▶ For change in name of factory / organization status: INR500
 - ▶ For change in name of factory due to acquisition or merger: INR5000
 - ▶ For revision at the factory site by virtue of addition or deletion of premises: INR500
 - ▶ For change in manufacturing process: INR500
 - ▶ For exceeding the horse-power / workers limit specified in the license: difference between the licence/renewal fees due basis higher horse-power/workers and the licence / renewal fees already paid for the year
- ▶ Factories in Goa will be liable to pay a higher fee for obtaining / renewal of factory licenses once the draft Rules are notified.

1. VI/FAC-6(L-1)Part-1/IFB-23-24/1758

Woman attaining motherhood through surrogacy entitled to maternity leave

On 25 June 2024, in the case of Supriya Jena vs. State of Odisha & Ors.¹, the Orissa High Court examined whether a woman who has attained motherhood through surrogacy shall be entitled to maternity leave.

In this case, the female employee was working as a Financial Advisor of Odisha State Police Housing Welfare Corporation, Bhubaneswar, and opted for childbirth through surrogacy. When the surrogate mother gave birth to the child, the female employee applied for maternity leave from October 2018 to April 2019. However, she was subsequently informed by the department that sanction of maternity leave for female government employees through surrogacy was not available due to non-existence of a specific provision for the same in the Odisha Service Code Rules.

The Orissa High Court held that right to life under Article 21 of the Constitution of India includes the right to motherhood. If the Government could provide maternity leave to an adoptive mother, it would be wholly improper to refuse maternity leave to a mother who had begotten a child through surrogacy. Maternity leave should be granted to employees who become mothers through surrogacy to ensure equal treatment and support for all new mothers, irrespective of how they become parents. Additionally, the initial period after the birth of a child is crucial for the mother's involvement in caregiving and nurturing, which is pivotal for the child's development.

The High Court further observed that the Maternity Benefit Act, 1961, which aims to protect the employment of women during maternity and ensure their full health, should be interpreted in an inclusive manner that encompasses all forms of motherhood. Accordingly, the High Court allowed the writ petition and directed the State of Orissa to sanction 180 days' maternity leave to the female employee within three months.

- ▶ Organizations may be required to provide maternity leave to women attaining motherhood through surrogacy and accordingly, amend their existing maternity benefit policy.

1. W.P. (C) No. 30616 of 2020

Onus to prove that a workman has abandoned his job lies on the employer

On 26 March 2024, in the case of State of Himachal Pradesh & Ors. vs. Prakash Chand¹, the High Court of Himachal Pradesh examined whether in the facts and circumstance of the case, the workman had abandoned the job.

In this case, the workman was hired on a daily wage basis by the Forest Division, Sundernagar, Himachal Pradesh ('Department') in March 2001. He worked continuously until March 2003, when he was disengaged orally without serving notice under Section 25-F of the Industrial Disputes Act, 1947 ('ID Act'). Dissatisfied with the termination, the workman approached the Himachal Pradesh Administrative Tribunal in 2003, whereby an interim order for his re-engagement was issued. From 2004 to 2009, the workman made repeated requests to permit him to join, but the Department failed to do so and accordingly, a reference was filed before the Labour Court-cum-Industrial Tribunal. The Labour Court-cum-Industrial Tribunal also held the workman entitled to re-instatement and hence the Department approached the High Court, challenging the Tribunal's decision.

Before the High Court, it was argued on behalf of the Department that the workman had not been disengaged, rather he abandoned the job, he never made himself available for re-engagement and further he failed to complete the requisite 240-days of work. Having perused the material available on record, the High Court was of the view that the Department failed to prove that the workman was unavailable for the purpose of reinstating him in the Department. The High Court also rejected the Department's plea of abandonment, emphasizing that the onus to prove abandonment lies upon the Department, which it failed to discharge. The Court took note of that fact that the workman approached the Himachal Pradesh Administrative Tribunal immediately after termination and thus it was hard to believe that the workman abandoned the job.

The High Court further observed that it is settled law that mere plea of abandonment, if any, taken by the employer may not be sufficient to prove that workman abandoned the job, rather it is incumbent upon the employer to place on record substantial evidence to prove that specific notice was issued to the workman before alleged abandonment advising / asking workman to join duty within stipulated period.

- ▶ Organizations may assess the impact of the ruling and ensure that termination of workmen is in alignment with the provisions of the ID Act.

1. CWP No.2565 of 2024

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