

## Updates in Labour Laws

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### Jurisdiction in 'Work From Home' Situations:

- In Mangala A G vs. HIL (India) Limited [Kerala HC WP(C) No. 2342/2021 26.11.2021], the question that has arisen for consideration is, what would be the jurisdiction of court in the case of employee who is working from home. The court stated that the question that now boils down to whether mere permission to work from home is sufficient to confer jurisdiction on the court, within whose jurisdiction the employee was working.
- The Court further stated that, if each person who works from home is permitted to raise their objection from his territorial jurisdiction, definitely, it may confer jurisdiction on umpteen number of Courts and may call upon the employer to face litigation in different jurisdictions.
- However, as the situation changes and telecommuting or work from home becomes a permanent feature, unlike the temporary phase that has arisen at present, wherein, as a part of contract of employment, persons who are freshly recruited are permitted to remain in different stations and work from there, with facilities being provided by the employer or where the employer pro-actively encourage the employee to improve the business there and/or provides facilities, in that jurisdiction, the situation may be different. The employer, in such cases will be free to include appropriate clause relating to jurisdiction in the contract of employment.
- ***In the above circumstances, the legal position seems to be very clear that, when a person is permitted to work from home merely as a concession or a convenience, place from where the person so work is not sufficient to confer any jurisdiction.***

### ESIC COVID-19 Relief Scheme – Notification dated 01.02.2022:

The scheme was notified on 13.8.2021 for a period of two years with effect from 24.03.2020. Now the eligibility condition of the scheme is as under:

The deceased Insured person must have been in employment on the day of diagnosis of COVID-19 disease and contributions for at least 35 days should have been paid or payable in respect of him/her during a period of maximum one year immediately preceding the diagnosis of COVID-19 disease resulting in death.

### ESI Act – Wages- Conveyance Allowance:

- In ESI Corporation Vs. M/s Texmo Industries [2021 LL 799 Supreme Court of India], the question that was taken for consideration is, whether the 'conveyance allowance' paid to employees should be taken as 'wage' for the purposes of determination of ESI Payable.

- The Honourable Supreme Court by referring to the definition of 'wage' as per Section 2(22) of ESI Act has stated that, in light of the specific exclusion in the definition of 'wage', the conveyance allowance should not be included.
- Accordingly, it is observed that, including 'conveyance allowance' in 'wages' on the basis that it is being paid every month to every employee to meet to and from conveyance expenses, is an erroneous construction of section 2(22) of the Act.

### **Provident Fund Contributions and Income Tax**

#### **Employee Contributions:**

- The interest earned on provident fund contributions made by the employee towards provident fund and voluntary provident fund above Rupees Two Lakhs Fifty Thousand will be taxable income. However, all contributions made by employees until March 2021, will be treated as non-taxable contributions.

#### **Employer Contributions:**

- Contributions made by the employer to Employee Provident Fund more than 12% of salary (salary includes dearness allowance, if the terms of employment provides, but exclude all other allowances and perquisites) will be treated as income from salary.
- Perquisites: Employer's contribution to PF, pension scheme covered under section 80CCD or approved superannuation fund in excess of Rs.7,50,000 is treated as perquisite.
- Interest accrued on the amount exceeding Rs.7,50,000 is treated as perquisite in the hands of employee and such Interest perquisite will be treated as taxable income.

#### **Provident Fund – NEEM [National Employability Enhancement Scheme]:**

##### **EPFO File No. Compliance/NEEM Scheme/2021 dated 24.2.2022 – Clarification on NEEM Trainees**

- The NEEM trainees are not exempted from the definition of "employee" under section 2(f) of the EPF & MP Act, 1952 and Regulation 15. of the NEEM Regulation 2017 is ultra vires to the provisions of the Act.
- **In view of the above all the NEEM trainees should be covered under EPF and ESI.**

#### **Maternity Benefit:**

- In Dr. Swetha, W/o A V Biradar vs. Union of India and Others [2021 LLR 964 Karnataka HC], the high court has held that a female employee is entitled to the benefits of maternity leave after she has put in 80 days of service in the past 12 months preceding the date of expected delivery, irrespective of her appointment being on regular basis or contract basis. Duration of maternity leave is 26 weeks with pay.

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