

## HR Law Hotline

June 14, 2023

### GIG WORKERS IN INDIA: FIRST STATE-LEVEL LAW PROPOSED

- As a first of its kind initiative at the state level, the state of Rajasthan has introduced the Rajasthan Platform-based Gig Workers (Registration and Welfare) Bill, 2023.
- The bill defines gig workers as individuals who are engaged in gig work on agreed rates and contractual terms, including all piece-rate work.
- The bill intends to facilitate guarantee of minimum social security to gig workers.

The Indian state of Rajasthan has introduced the Rajasthan Platform-based Gig Workers (Registration and Welfare) Bill, 2023 (the **"RGW Bill"**)<sup>1</sup> which is the first of its kind in India among state initiatives. As per estimates by the Rajasthan government, the state has approx. 300,000 gig workers<sup>2</sup>.

At the federal level, the Code on Social Security 2020 (which has been enacted but not yet made effective fully) (**"CoSS"**) provides for social security of gig workers. The finance budget speech of 2023-24 made a reference to enactment of a Gig Workers Welfare Act, establishment of a Gig Workers Welfare Board and setting up of a Gig Workers Welfare and Development Fund with a dedicated budget allocation.

#### RGW Bill - Some Important Terms

The RGW Bill defines a 'gig worker' as a "person engaged in gig work, irrespective of the duration of engagement".

'Gig work'<sup>3</sup> is defined as "work given on contract that results in a given rate of payment, based on terms and conditions laid down and includes all piece-rate work".

Few other prominent terms used in the RGW Bill include:

- 'primary employer' as "those individuals or organizations who directly engage platform-based gig workers for a particular task against payment"
- 'aggregator' being a "digital intermediary for a buyer or a user of a service to connect with the seller or the service provider, and includes any entity that coordinates with one or more aggregators for providing the services"<sup>4</sup>
- 'workplace' being "the physical place of carrying out the gig work"<sup>5</sup>.

The RGW Bill confers power on the state government to bring any aggregator or primary employer under its coverage. The usage of the term primary employer in the bill appears confusing in context of gig-workers as it indicates an 'employment' relationship. Additionally, inclusion of 'piece-rate' work under 'gig-work' may also require clarity in view of the Minimum Wages Act, 1948 provisions which use a similar term in context of employees.

#### Gig Workers Welfare Board

The RGW Bill envisages the constitution of the Rajasthan Platform-based Gig Workers Welfare Board (**"Board"**). The Board will be chaired by the state's labour minister and will comprise of principal secretaries from the departments of labour, information and technology, social justice and empowerment, transport, finance and equal number of representatives from amongst gig workers and aggregators, owners and manufacturers of platform based goods and services and civil society as nominated by the state government. At least one-third of the Board shall be women. The tenure of its members shall range from 2-4 years and they shall meet twice a year.

The Board has been empowered to inter alia:

- register platform-based workers, aggregators and primary employers operating in the state
- ensure monetary levies under the law are integrated into the application of the aggregators
- notify schemes for registered platform-based gig workers from amounts collected in social security fund,
- facilitate accessibility of services as per notified social security scheme
- hold regular consultations with trade unions working with platform-based gig workers
- nominate individuals competent to act on behalf of registered gig workers in respect of any legal claim.

The Board is required to formulate general schemes for all registered platform-based gig workers towards accidental insurance, immediate assistance to beneficiary, medical emergencies and other benefits, and provision of gratuity, social security, pension, insurance, and scholarships as may be prescribed. All monetary benefits shall be transferred to beneficiaries through direct benefits transfer (DBT). The state government has the discretion to

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constitute an advisory council to advise the Board on administration of the law and schemes thereunder.

The RGW Bill mentions provision of EPF and ESIC benefits to gig-workers. It appears ambiguous since these laws apply to employees and will eventually be subsumed by the CoSS.

## Board Responsibilities:

### *Registration of gig workers and aggregators*

Irrespective of the duration of engagement, all platform-based gig workers shall be automatically registered with the Board, the details of which shall be maintained by the Board. A unique ID shall be generated for every gig worker and the registration shall remain valid for 3 years. The Board is required to register and publish registered details of all the aggregators operating in the state.

### *Setting up a Welfare Fund for Gig Workers*

The RGW Bill proposes constitution of Rajasthan Platform Based Gig Workers Social Security and Welfare Fund (the "Fund") by the state government. Statutory levies like cess, contributions from individual platform-based gig workers, and state government grants shall be credited to the Fund. The Board shall determine how the Fund corpus shall be utilised.

Customers of the aggregator or primary employer shall be levied with a Platform Based Gig Workers Welfare Cess which shall be a certain percentage of the platform customer's total due. The RGW Bill mandates monitoring of transactions on platforms engaging gig workers.

## Rights of gig workers under the RGW Bill

The RGW Bill confers the right upon gig-workers to (a) be registered with the Board on being onboarded for any platform work (b) access social security schemes notified by the Board, (c) time bound grievances redressal mechanism and (d) participation in welfare decisions concerning themselves through their representatives.

## Other Salient Features of the RGW Bill

1. **Recovery of arrears:** The Board is empowered to recover any arrears payable to the Board through the district collector.
2. **Grievance redressal:** Gig workers may file petitions before the Board against their grievances regarding their benefits provided under law.
3. **Tracking and Monitoring:** All payments generated by platforms (including commissions, payments made to gig-workers, levied taxes and deductions) shall be mapped onto a Central Transaction Information System and made available for inspection.

## Penalties

As per RGW Bill, aggregators contravening provisions of the law shall be liable for a fine up to INR 1 million (approx. US\$ 12,000) for the first contravention and up to INR 10 million (approx. US\$ 120,000) for subsequent contraventions. Additionally, such aggregators may also be directed by the Board to temporarily or permanently suspend operations. For other individuals violating the law (potentially including primary employers), penalties up to INR 1 million (approx. US\$ 12,000) may be imposed.

## Looking forward

With the new labour codes being delayed, some of the state governments are acknowledging the need to define the contours for social security rights of gig workers. The charm of the gig economy has historically been independence for the workers and low liability for the corporates. With a sizeable working population opting for gig work and lack of regulations thereto, the state governments are likely to step in to secure social security rights for gig workers.

Though the RGW Bill is a step in the right direction, it remains to be seen whether it will truly protect and promote gig working arrangements. The proposed law will need to be fleshed with details of actual benefits that will flow to gig workers from the Fund. Such regulation may also deter aggregators and platform-companies from relying on gig working arrangements as they may be required to incur additional liability and share details of their financial transactions with the government. Such state level law may also create confusion when the CoSS is made effective as there will be multiple laws (federal v. state) regulating gig workers.

—Nipasha Mahanta, Sayantani Saha & Vikram Shroff

You can direct your queries or comments to the authors

<sup>1</sup>Para 68, Budget 2023-24, The Government of Rajasthan, Page 45, available at <<https://finance .rajastha n.gov.in/docs/budg et/stateb udget/202 3-2024/Bu dgetSpeech 2023-2024 .pdf>> last accessed on 7 June 2023.

<sup>2</sup>Id at 1.

<sup>3</sup>Section 2(c), the RGW Bill.

<sup>4</sup>Schedule I of the RGW Bill lists down statutorily recognised services provided by aggregators namely ride sharing services, food and grocery delivery services, logistics services, e-Market place (both market place and inventory model) for wholesale/retail sale of goods and/or services (B2B/B2C), professional services provider, healthcare, travel and hospitality, content and media services and any other goods and services provider platform.

<sup>5</sup>Section 2(h), the RGW Bill.

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