

Research Paper

Human Resource Laws in India



Business Laws

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MAIN SOURCES OF HUMAN RESOURCE LAWS



Indian human resource (“HR”) or employment laws stem from the Constitution of India, statutes legislated by the Central Government and State Government, and judicial precedents. Of the over 40 national level employment laws, the key laws are:

- (i) Industrial Disputes Act, 1947 (“ID Act”): The ID Act, one of India’s most significant employment legislations governing employer-employee relationships, inter alia, contains the mechanism for settlement of industrial disputes, provisions with respect to unfair labour practices, layoffs, retrenchment (termination), strikes, lockouts and closure of an establishment.
- (ii) Factories Act, 1948 (“Factories Act”): The Factories Act contains provisions for ensuring the welfare of workers employed in factories in terms of health, safety, working hours, benefits, leave, overtime pay, etc.
- (iii) Industrial Employment (Standing Orders) Act, 1946 (“SO Act”): The SO Act prescribes the framework for establishments to formally define and publish the conditions of employment of workmen.
- (iv) Child Labour (Prohibition and Regulation) Act, 1986: The statute regulates the engagement of children in certain occupations.
- (v) Minimum Wages Act, 1948: The statute empowers the State and Central Governments to notify the minimum wages payable to employees. Minimum wages are determined based on factors including the industry, location and nature of work done.
- (vi) Payment of Wages Act, 1936: The statute regulates the payment of wages to employees and contains provisions, inter alia, with respect to the time and manner of payment of wages and permissible wage deductions.
- (vii) Equal Remuneration Act, 1976 (“ER Act”): The ER Act mandates payment of equal remuneration to men and women workers and prohibits discrimination against women in connection with employment.
- (viii) Employees’ Provident Funds and Miscellaneous Provisions Act, 1952: This is one of India’s most important security legislations. The statute provides for the institution of a contributory provident fund, pension fund and deposit-linked insurance scheme for employees.

- (ix) Employees' State Insurance Act, 1948 ("ESI Act"): The ESI Act envisages benefits to employees in case of sickness, maternity and employment injury.
- (x) Payment of Bonus Act, 1965: The statute provides for payment of compulsory bonuses to persons employed in certain establishments under defined circumstances and wage limits.
- (xi) Maternity Benefit Act, 1961 ("MB Act"): The statute envisages provision of maternity leave, maternity bonus and other benefits with respect to childbirth.
- (xii) Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("SH Act"): The statute prescribes a mechanism for prevention and prohibition of workplace sexual harassment and for redressal of grievances pertaining to workplace sexual harassment.
- (xiii) Employees' Compensation Act, 1923: The statute provides for payment of compensation to employees or their family in case of accidental death or disability.
- (xiv) Contract Labour (Regulation and Abolition) Act, 1970: The statute governs and regulates the employment of contract labour and prescribes the duties of the contractor and the principal employer.
- (xv) Payment of Gratuity Act, 1972 ("Gratuity Act"): The Gratuity Act provides for the payment of a gratuity to employees upon cessation of employment.
- (xvi) Trade Unions Act, 1926 ("TU Act"): The TU Act provides for the registration of trade unions and prescribes the rights and duties of registered trade unions.
- (vii) Shops and Establishment Act ("S&E Act"): The state-specific legislations governing shops and commercial establishments prescribe basic terms of employment such as work hours, overtime payment, leave entitlement, termination mechanism, etc.

CONTRACT OF EMPLOYMENT

Certain state specific Shops and Establishments Acts require an employer to issue an 'appointment order' containing basic information including employer name and address, employee details, rate of wages, joining date and designation. Most employers issue appointment letters to, or execute employment agreements with, their employees, which set out the terms and conditions of employment. Terms of employment can be implied into a contract of employment by way of

custom, usage or practice. Also, certain courts have acknowledged that an employee's duty of good faith towards the employer, confidentiality and non-disclosure obligations may be considered as implied terms of an employment relationship. It is recommended that all important terms of employment be reflected in the employment contract. Also, there are certain procedural requirements to be complied with in case of change of terms of employment.

TERMINATION OF EMPLOYEE



- Q. Do employees have to be given notice of termination of their employment? How is the notice period determined?
- A. In case of termination of employment for reasons other than misconduct, employees have to be provided prior notice of termination or wages in lieu thereof. The minimum notice period is stipulated under the ID Act and applicable S&E Act and is ordinarily one month. A longer period of notice can be prescribed under the employment contract.
- Q. What protection do employees have against dismissal? In what circumstances is an employee treated as being dismissed?
- A. Indian employment law does not recognize an "at-will" employment. Employment may be terminated only for a reasonable cause or on account of employee misconduct. Employee rights pertaining to termination of employment are contained under the Industrial Dispute Act, state specific Shops & Establishment Acts, standing orders, and the employment contract. The Industrial Dispute Act stipulates that a workman who has been in continuous service for at least one year (defined to mean two hundred and forty days) may be terminated only if the workman has been: (i) given at least one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid wages in lieu of such notice; and (ii) paid retrenchment compensation (severance) equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months. If the termination of employment is in an 'industrial establishment', defined under the ID Act to be a factory, mine or plantation employing at least 100 workmen, the employer has an obligation to provide a minimum notice of three months or wages in lieu

thereof. The above requirements are in addition to notifying or obtaining prior government approval for termination, as the case may be.

Separately, an employer can terminate employment for reasons related to the individual employee, such as poor performance, breach of employment terms, misconduct, etc. Employment may also be terminated for business-related factors such as redundancy on account of mechanization, job elimination pursuant to outsourcing, business restructuring, etc. In case of litigation, it would be critical for the employer to be able to justify the reasons for termination, since termination of employment is generally considered as the last resort.

Payments to be made by an employer in case of termination of employment include: (a) severance: retrenchment compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months. Only a 'workman' who has been in continuous employment with the employer for more than one year is entitled to retrenchment compensation; (b) gratuity: this is to be paid in accordance with the Gratuity Act, which entitles an employee who has rendered continuous service of at least five years to gratuity, upon termination of employment. Gratuity is calculated at the rate of fifteen days' wages for every completed year of service or part thereof in excess of six months, subject to a limit of INR 10,00,000 ; (c) accrued leave encashment: the employee shall be entitled to payment of wages for accrued and unavailed leave days up to the date of termination of employment. The employer ordinarily has the option of paying wages in lieu of the termination notice.

- Q. Are there any categories of employees who enjoy special protection against dismissal?
- A. Female employees are protected from dismissal during the term of their maternity leave. Employees receiving sickness benefit, maternity benefit or disablement benefit under the ESI Act are protected from dismissal during the period that they are receiving the benefit.
- Q. What claims can an employee bring if he or she is dismissed? What are the remedies for a successful claim?
- A. An employee can bring claims of unfair dismissal or wrongful termination of employment. In certain situations, an employee can also allege unfair labour practice on the part of the employer. The remedies for a successful claim typically include reinstatement of the employee

with back wages. Alternatively, the courts may award damages for illegal or wrongful termination.

PROTECTING BUSINESS INTEREST FOLLOWING TERMINATION



Restrictive covenants: The Constitution of India allows Indian citizens the freedom to exercise any trade, business or profession. The Indian Contract Act, 1872 stipulates that an agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. A restrictive covenant, in the nature of a non-compete, extending beyond the term of service is void, irrespective of reasonability of such restriction, except in cases involving sale of goodwill. Accordingly, courts have determined that a post termination non-compete restriction is void and unenforceable. Covenants with respect to non-solicitation after employment ends, or in cases of unauthorised disclosure of confidential information, may be enforced. Employers can enforce restrictive covenants by seeking injunctions or damages in a court of law.

DATA PROTECTION AND EMPLOYEE PRIVACY



The Information Technology Act, 2000 along with the Reasonable Practices and Procedures and Sensitive Personal Data or Information Rules, 2011 (“Data Protection Rules”) contain provisions for protecting the personal data of an individual. In the event the employer is negligent in implementing and maintaining “reasonable security practices and procedures” in relation to any sensitive personal data or information (“SPDI”), and such negligence causes wrongful loss or wrongful gain to any person, the entity can be made liable to pay damages by way of compensation to the affected person. SPDI may include the employee’s passwords, financial information, physical, physiological and mental health conditions, sexual orientation, medical records and history, and biometric information. The employer is

required to obtain the employee's consent and follow the mechanisms prescribed under the Data Protection Rules, while collecting, storing, using or disclosing employee SPDI. An employer is required to obtain employee consent prior to collection of SPDI. Employees have the right to withdraw such consent at any point in time and require that the SPDI be returned or destroyed. Employees shall also have the right to review the information provided and ensure that any personal information, SPDI or other information found to be inaccurate or deficient is corrected.

Additionally, Indian law does not envisage any restriction on the employer's right to monitor employee emails, telephone calls or use of computer systems. As a best practice, surveillance rights and procedures are ordinarily built into the employee handbook/policy manual, to mitigate any privacy claims. However, regarding social media, Indian law does not envisage any restriction on the employer's right to monitor employee emails, telephone calls or use of computer systems. As a best practice, surveillance rights and procedures are ordinarily built into the employee handbook/policy manual, to mitigate any privacy claims.

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The author is a corporate lawyer empaneled with Evaluator. Views expressed are personal.

