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# India: Restrictions on Fixed-Term Contracts Dropped

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*By Madhur Singh*

India has proposed to allow fixed-term contracts in all sectors of the economy in an effort to promote job creation in the formal sector.

"An independent study conducted recently has shown that 70 lakh [7 million] formal jobs will be created this year," Finance Minister Arun Jaitley said in his budget speech Feb. 1 announcing several measures "to carry forward this momentum," including fixed-term employment in all sectors.

On Jan. 8, the Ministry of Labour and Employment had proposed new rules to this effect—fixed-term workers would be entitled to the same wages and benefits as permanent employees, but no termination benefits such as notice or pay in lieu of notice.

Labor law practitioners say this would offer an ideal compromise between permanent employment, increasingly unpopular among employers looking for easy hire-and-fire options, and contract jobs, which unions claim have encouraged a race to the bottom in wages and working conditions.

"[S]ectors which require execution of term-based assignment projects and industries with seasonal nature of work will certainly benefit from this move," Ajay Singh Solanki, leader of the labor & employment law practice at Nishith Desai Associates, told Bloomberg Law in an email Feb. 15. "Sectors such as Oil & Gas, Mining, Tourism, Construction & Development, Information Technology/Information Technology-enabled Services, etc. may see a larger number of fixed-term employees in the near future."

## Draft Notification

The then Congress Party-led United Progressive Alliance government introduced fixed-term employment in 2003, only to withdraw it in 2007 due to opposition from trade unions.

In October 2016, the current pro-business National Democratic Alliance government allowed fixed-term contracts in the textiles and garments sector and in December 2017 in the leather footwear and accessories sector. The government has been focused on creating jobs, particularly in the manufacturing sector, and has launched several programs to this end, including Make in India and the National Skill Development Mission.

On Jan. 8, the government proposed the Industrial Employment (Standing Orders) Central (Amendment) Rules, 2018, which would:

- allow fixed-term employment in all sectors;
- mandate that fixed-term contract workers get the same wages, allowances, hours of work, and other benefits as permanent workers, as well as all statutory benefits proportionate to their period of service; and
- allow easy termination without notice or pay in lieu of notice within the terms of the contract.

Employers would be able to hire workers for fixed terms without having to go through contractors and for all kinds of jobs—at present, the Contract Labour Act provides for engaging contract workers only for “ancillary activities” and not for “core business activity.”

### Striking a Balance

Despite the provisions of the Contract Labour Act forbidding use of contract workers for “core business activity,” Solanki said some sectors were employing contract hires for all kinds of work.

“The contract laborers were also not being paid salaries/benefits at par with employees for generally doing the same type of work,” Solanki said. “The government seems to believe that allowing for fixed-term employment may change this trend.”

For employers, fixed-term contracts are attractive because they provide flexibility in hiring for a limited time, freedom from complexities relating to termination of employment, and exclusion from the requirements of the contract labor law.

“In this background, I do not believe that employers would be too unhappy about paying equal remuneration and social security to fixed-term employees,” Solanki said.

Multinational corporations and large employers in particular would be eager to use fixed-term contracts, and skilled and highly skilled workers are likely to benefit more than unskilled ones, Zulfiquar Hansi of Hansi Associates told Bloomberg Law by telephone Feb. 15.

“Skilled and highly skilled workers, such as in the IT/ITeS sectors, who are white-collar but not managerial, would be ideal candidates for fixed-term contracts,” Solanki said, explaining that such workers would not be afraid of limited-duration contracts because their skills are much in demand and command high wages.

Fixed-term contracts may not find many takers among India's vast number of small and medium-size businesses, however, which operate on thin profit margins and prefer contract workers who command lower wages, Hansi said.

“The vast majority of workers in apparels and textiles are still contract workers more than a year after fixed-term contracts were allowed,” he pointed out.

At the same time, unions will resist any efforts to promote nonpermanent employment, Hansi said. Permanent workers will not want fixed-term contract workers in their unions, who would not have the same desire to unionize as permanent workers.

“This move is likely to face stiff trade union opposition, which may see this largely as a pro-employer decision,” Solanki agreed, adding that the proposed rules would apply to only “industrial establishments” as defined under the Industrial Employment (Standing Orders) Act, 1946, and not to commercial establishments unless specifically extended to them.

“It still needs to be seen as to how the government intends to extend applicability of this proposal to all sectors/industries,” Solanki said.