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Labor & Employment Law in the BRIC Jurisdictions – India

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While some economists have been proclaiming that the “I” in the BRIC might be a bit [unstable](#) these days, after [Brazil](#) and Russia, this blog post will address the labor and employment law challenges that a multinational company has to watch out for when engaging employees in India.

No Engagement through Foreign Entity. Like Brazil and Russia, India does not permit engagement of an employee through a foreign entity. A local corporate presence is required, which could be a subsidiary, branch or

representative office.

Engagement of Agency Employees. Engagement of an employee through an agency is permissible. If the service recipient engages 20 or more agency employees, however, the service recipient is required to register under the Contract Labour (Regulation and Abolition) Act.

Secondments. Indian courts have been very aggressive in asserting a permanent establishment of the home country when an employee is seconded to India. Since October 1, 2008, foreign employees working in India are subject to the provisions of the Indian social security system, i.e., the Provident Fund. As of March 20, 2013, India had social security treaties with [18 countries](#). To date, there is, however, no social security treaty between the U.S. and India.

Workmen vs. Nonworkmen. Indian law distinguishes between workmen and nonworkmen. Workmen are defined under the Industrial Disputes Act to exclude (i) any person engaged in managerial or administrative capacity; and (ii) any person engaged in supervisory capacity earning wages exceeding Rs. 10,000 per month. This means that absent managerial authority, employees such as engineers are typically workmen.

Federal and State Laws. Workmen in India are subject to the provisions of the Industrial Disputes Act, which is a federal law. Most importantly, the Act regulates the termination (referred to as “retrenchment”) of workmen and payment of severance. Subject to limited exceptions, all employees in a commercial establishment, whether workmen or nonworkmen, are subject to the provisions of the state-specific Shops and Establishment Act, which govern issues such as working time requirements, leaves, holidays and employment termination. There are numerous other laws regulating the employment relationship, such as the Factories Act, Payment of Bonus Act, etc.

Bureaucracy. Indian laws contain many bureaucratic and sometimes seemingly archaic rules. For instance, the

Standing Orders Act requires various so-called “standing orders” (duly approved policies addressing certain mandatory topics) if the company (to which the Act applies) employs 100 or more workmen.

Bonus. The Payment of Bonus Act requires each company with 20 or more employees to pay a bonus on the basis of profits or productivity, at a minimum of 8.33% of the employee’s salary.

Gratuity. The Payment of Gratuity Act provides for a payment of 15 days’ salary per completed year of service to every employee who has completed at least 5 years of continuous service upon resignation or other termination.

Terminations. Most terminations in India are implemented through voluntary resignations. Permitting an employee to resign is deemed culturally appropriate, and avoids some of the formal requirements for unilateral terminations. For instance, terminations of workmen employees engaged by certain companies (referred to as ‘industrial establishments’) with 100 or more workmen employees require advance government approval. Terminations of workmen employees in other companies requires government notification.

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