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Employment India: Labour reforms to be introduced in line with business needs

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Today in India, there is a genuine likelihood that Prime Minister Mr Narendra Modi, and his team of ministers, will implement critical and possibly controversial labour reforms, something that has not happened in India in recent years. This is evidenced by the introduction of various Bills which aim to bring labour laws in line with business needs.

The Bills relate to women working at night in factories; the employment of children aged below 14; apprenticeships and trainees; the regulation and procedure for small factories; and the termination of employment of factory workers in larger organisations.

The following key changes are expected:

1. Factories (Amendment) Bill, 2014: This Bill proposes to increase the minimum number of employees an employer must have, before it has to comply with the Factories Act, 1948. Consequently, the new rules will not apply to smaller factories. The Bill also proposes to empower the state government to allow women to work at night in a factory or group of factories if (i) there are adequate safeguards for the safety, health and comfort of women, and (ii) it has consulted with, and obtained the consent of, the women workers, the employer and the representative organisations of the employers and workers.

The Bill also increases (from 50 to 100) the maximum number of overtime hours that any worker may work each quarter.

2. Child Labour (Prohibition and Regulation) Bill, 2012: This Bill proposes to render unlawful the employment of children below 14 years of age in any occupation. This will bring the law in line with the Right to Children to Free and Compulsory Education Act, 2009.

Employing a child below 14 years in any kind of occupation, except where the child helps his family after school hours, is set to become an offence for which the police can arrest the perpetrator without permission of the court, punishable with a maximum prison sentence of three years or a fine of up to INR 50,000 (~US\$800). The parents or guardians of the child will also be punished if they allow their child to be engaged in any occupation for commercial purpose.

The Bill also prohibits the employment of 14-18-year-olds in hazardous occupations.

3. Apprentices Bill, 2014: Changes relating to apprentices and trainees are also to be introduced. These include (i) prescribing a minimum age for apprenticeships in hazardous industries, (ii) requiring the central (national) government to prescribe the number of apprentices to be engaged by an employer in a designated trade and optional trade, (iii) amendments relating to practical training and the provision of a syllabus and equipment for such training, and (iv) removal of provisions relating to imprisonment for certain offences.

4. Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014 and the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers) Bill, 2011: It is proposed that enterprises employing up to 40 workers be brought under a new labour law, namely the Small Factories (Regulation of Employment and Conditions of Services) Act. The Bill seeks to regulate small factories but at the same time facilitate them to carry out business. The proposal is to cut down on cumbersome procedures by (among other things): (a) providing for online registration of units and (b) e-filing of compliance returns by employers through a single unified form, and (c) making certain laws inapplicable to small factories (for example see the changes proposed at point 1 above).

The key changes proposed to the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers) Act, 1988 include: (i) broadening the definition of 'small establishments', and (ii) providing flexibility to employers to maintain returns, files and the registers on a computer, computer disk or other electronic media and to provide information to the labour inspector via email.

5. Proposed changes by state governments: Central law provides that all factories employing over 100 workers need to seek the government's permission before any of its workers can be terminated. However, the state proposes to raise this limit to 300 workers. Also, it is proposed that the minimum threshold needed to form a trade union is increased to 30% of total workers, in an attempt to reduce the number of unions within an organisation.

Comment: Trade unions continue to remain strong in India, and they are expected to play a key role in the government's ability to implement the changes. Key parties will need to work together to implement the reforms which are designed to give greater confidence to entrepreneurs and investors alike, which in turn should stimulate employment. It is hoped these changes will better align labour law with business needs.