Bloomberg BNA

Employment Law Outlook 2017

India

India Employment Law Outlook 2017

By Ajay Singh Solanki and Preetha S

Ajay Singh Solanki is a senior member of the HR Law practice at Nishith Desai Associates. He specializes in advising clients on Indian employment and labor matters. His primary focus lies in complex legal issues pertaining to compensation structuring, employee benefits, employment termination, stock options, secondment arrangements and immigration.

Preetha S is a member of the HR Law practice at Nishith Desai Associates, based out of Bangalore. She primarily focuses on Indian employment and labor law, including issues relating to recruitment, transfer of employees, retrenchment and disciplinary actions.

The Indian government's employment legislation priority in 2016 was to provide greater benefits to workers and to safeguard their rights. To this end, amendments to labor welfare legislation such as the Payment of Bonus Act, 1965; the Child Labor (Prohibition and Regulation) Act, 1976; the Maternity Benefit Act, 1961 and the Employees' Compensation Act, 1923 were pushed forward.

Possibly the most significant labor amendment in 2016 was a more than 100 percent increase in the wage threshold for eligibility under the Bonus Act, effective Jan. 1, 2016, which allowed a larger number of employees to qualify for statutory bonuses. The amendment was to have retroactive effect, but certain courts have issued stay orders on that provision.

Progress in the consolidation of labor laws relating to conditions of service, wages and social security and other labor reforms intended to enhance the ease of doing business in India was not significant in 2016, although the government did adopt measures to simplify employer reporting requirements.

Political challenges and resistance from labor unions continue to affect the government's ability to implement labor reforms, which may explain why India has failed to make significant improvement in its ranking for ease of doing business in the World Bank's Annual Report 2017. (India moved up only one place in its ranking: from 131 in 2016 to 130 in 2017 among 190 economies evaluated.)

While the government sees flexibility in labor markets as a prerequisite for economic growth and generating jobs, labor unions see this as a strategy for profit maximization and curbing the bargaining power of employees and trade unions *vis-a-vis* employers. This requires the government to adopt an approach to labor reform that satisfies the requirements of all stakeholders (employers, workers, multinational companies and international financial agencies).

Key Labor Law Reforms Anticipated in 2017

The Maternity Benefit (Amendment) Bill, 2016

The Maternity Benefit Bill has been passed by the upper house of parliament and is pending approval in the lower house.

Key changes proposed include:

- Maternity leave for eligible employees would be increased to 26 weeks from the current 12 weeks for women who have fewer than two surviving children. In other cases, the 12-week limit would continue. No more than eight weeks' leave could be taken before the expected date of delivery.
- Women who use a surrogate mother and those who adopt children under the age of 3 would be entitled to 12 weeks of maternity leave from the date they are given custody of the child.
- Businesses employing 50 or more workers would be required to provide childcare facilities either onsite or at a shared facility within a specified distance of the worksite. The employer would be required to allow four visits a day to the childcare facility.
- Employers could allow eligible female employees to work from home if the nature of their employment allows. Conditions governing at-home work would be mutually agreed between the employer and the employee.
- Every employer would be required to inform in writing and electronically every female employee on hiring of the benefits available to her under the Maternity Benefits Act.

To become law, the Maternity Benefit Bill must still be passed by the lower house of parliament and signed by the president.

The Model Shops and Establishments (Regulation of Employment and Conditions of Service) Bill, 2016

The Model S&E Bill was introduced to improve employee working conditions, create more job opportunities for women and provide a more favorable environment for doing business. The bill has been approved by the cabinet after detailed deliberations and discussions with the public and with employees/labor representatives, employers' associations/federations and state governments through tripartite consultations.

The proposed legislation would:

- apply to establishments employing 10 or more workers except manufacturing units;
- allow establishments to remain open 365 days a year;

- permit women to work during night shifts, if shelter, restrooms, transportation and other protections are provided;
- exempt highly skilled workers (for example, those in IT, biotechnology and R&D) from limits on daily work hours subject to a maximum 125 overtime hours in a quarter;
- prohibit discrimination against women in matters of recruitment, training, transfer or promotions and
- provide a simplified procedure for employer online registration.

The Model S&E bill may be adopted by state governments in total or with modifications of state-specific shops and establishments acts, but states are not required to do this.

The Labor Code on Industrial Relations Bill, 2015

The Labor Code seeks to consolidate three of India's most important industrial laws: the Industrial Disputes Act, 1947; the Trade Unions Act, 1926 and the Industrial Employment (Standing Orders) Act, 1946. Significant changes to the existing law proposed by the Labor Code include:

- The headcount threshold above which it is necessary for an employer to obtain government permission for termination of employment or closure of an establishment would increase from 100 to 300.
- Employers with fewer than 50 workmen would be exempt from the requirement to provide a minimum one month’s notice and severance pay.
- Severance pay would be increased to an amount equivalent to 45 days' average salary for every year of service from the current 15 days' average salary for every year of service.
- Fifty percent of workers taking personal leave on the same day would be considered a strike.
- Employees in all industries would be required to give six weeks’ notice of a strike and be subject to other pre-strike obligations that previously applied only to public utility services.
- Monetary penalties for noncompliance with industrial law would be increased.

Labor unions are strongly opposed to this reform on the grounds that it would endanger job security by making it easier for employers to terminate employees.

The Labor Code on Wages Bill, 2015

The Wage Code Bill aims to consolidate four laws governing wages and compensation: the Payment of Wages Act, 1936; the Minimum Wages Act, 1948; the Payment of Bonus Act, 1965 and the Equal Remuneration Act, 1976. The bill would:

- introduce a uniform, comprehensive definition of “wages” for the calculation of compensation and benefits;
- replace labor “inspectors” with “facilitators,” who would monitor and provide guidance on compliance with the wage law;
- prohibit discrimination against transgender persons in payment of wages and

- empower the central government to fix a minimum wage applicable across all sectors in the entire country.

Although government, labor and employers have consulted on the Wage Code, the bill still awaits cabinet approval, which is expected in 2017.

Social Security

Important changes have been proposed to such key social security legislation as the Employees' Provident Fund and Miscellaneous Provisions Act, 1952; the Employees' State Insurance Act, 1948 and the Employees' Compensation Act, 1923. The legislation would:

- reduce the employee eligibility threshold for the provident fund from 20 to 10 years,
- revise the definition of "wages,"
- allow businesses with up to 40 workers to contribute at the rate of 9 percent to 12 percent of wages instead of the otherwise required 12 percent and
- allow employees a one-time transfer to the National Pension Scheme.

There is also a proposal to increase the eligibility salary threshold for ESI to 21,000 rupees ($309) per month from the current 15,000 rupees ($220).

Employees' Compensation (Amendment) Bill, 2016

The Employees' Compensation (Amendment) Bill, 2016, would require that employers inform employees of their benefits under the statute and penalize those that don't provide this information to employees.

The ECA Bill was approved by the lower house of parliament in August 2016 and is pending before the upper house.

The Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014

The Small Factories Bill was introduced by the Labor Ministry to make it easier to do business in India and to encourage the creation of businesses. The legislation would combine provisions of various labor laws applicable to small factories in one place with the aim of simplifying compliance and reporting. The Small Factories Bill would:

- exempt units with fewer than 40 workmen from the tedious compliance procedures under multiple labor laws including the EPF Act and the ESI Act,
- require the creation of a grievance redressal committee with representatives from employers and workers in every small factory with 10 or more workers,
- require that women employed at night be provided with adequate transportation and security and
- require severance pay equal to 45 days' wages (up from the current requirement of 15 days') in cases of retrenchment, lay-off or closure.

Central trade unions have been protesting against the Small Factories Bill on the ground that it would compromise worker safety and social security benefits.

Certain amendments have also been proposed to the Factories Act, 1948 through the Factories (Amendment) Bill, 2016, which has been passed by the upper house of parliament and is pending before the lower house. The FA Amendment 2016 would enhance the limit on overtime work and empower the central government to devise rules relating to overtime.

Conclusion

Although there are several labor reforms on the table, it remains to be seen if the government can eliminate bureaucratic impediments in a transparent, responsive and accountable manner. Considering the political obstacles and the resistance of labor unions, this will definitely be a challenge.

Bloomberg BNA

International Human Resources Decision Support Network

Your compass to navigate your global HR needs.

Get the right answers to pressing questions that you and your department face every day.

Whether it's through your 12 custom research questions, searching the **Country Primers**, or reviewing our collection of white papers, Bloomberg BNA is your source for answers in every area of HR administration. Get the best-practice information you need for every member of your department.

Train and advise with best-practice insights from around the globe.

Our services are designed to give you and your staff the support you need. Use our webinar program for training and earn HRCI and SHRM credits, research best practices in international HR and global mobility, and see what your peers are asking as part of custom research.

Stay current with the latest global HR developments that affect your organization.

Get regular email updates on legislative developments, court decisions, and industry trends in the countries where your business operates. Use **Chart Builder** to compare legal requirements across the countries where you operate.

To learn more or to start your FREE trial, contact your Bloomberg BNA Representative, call 800.372.1033, or visit www.bna.com/internationalhrdsn

1116–JO21966