



EMPLOYMENT LAW  
OUTLOOK 2016

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# India Employment Law Outlook 2016

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The new Indian government has embarked on a reform-oriented approach to making India a business-friendly nation, which has helped the country raise its position in the World Bank's ease of doing business ranking from 134 in 2015 to 130 in 2016 among the 189 nations examined.

For the government's "Make in India" initiative to succeed, it will be critical to reform and simplify India's labor and employment laws to boost the country's manufacturing sector, enhance job creation and improve ease of doing business. At the same time, the government continues to face political challenges in reforming the laws and opposition from strong labor unions, which have vehemently resisted the proposed reforms, alleging that the changes are anti-labor and anti-collective bargaining. Millions of workers went on a nationwide strike in September 2015 to oppose the labor reforms proposed by the government, particularly those affecting employees' job security and ability to unionize. The government insists that its proposals are in the interest of workers and will protect their rights while generating employment and improving the ease of doing business.

The government has commissioned an initiative to rank various Indian states based on ease of doing business, which has encouraged them to reform their labor laws to simplify compliance and attract investment.

## **Key Labor Law Reforms Anticipated in 2016**

The Labor Code on Industrial Relations, 2015, which was prepared by the Ministry of Labor and Employment and is pending introduction to parliament, seeks to consolidate three of India's

most important industrial laws: the Industrial Disputes Act of 1947, the Trade Unions Act of 1926 and the Industrial Employment (Standing Orders) Act of 1946.

Proposed changes to the Labor Code include the following:

- Businesses employing fewer than 50 workers would no longer be required to provide a minimum of one month's notice and severance at the time of retrenchment (layoffs).
- For larger employers, the severance pay obligation would be raised from 15 days of the laid-off employee's average salary to 45 days for every year of service.
- The headcount threshold above which an employer must obtain government permission for termination of employment or closure of an establishment would increase from the current 100 to 300 employees.
- The taking of casual (personal) leave by 50 percent or more of workers employed in an industry on any given day would be treated as a strike and additional notice requirements and other obligations of striking employees would be imposed.
- Monetary penalties for noncompliance would be increased.

Labor unions have expressed concern that these reforms would endanger job security by making it too easy for employers to terminate employees.

### **New Labor Code on Wages**

The Labor Code on Wages Bill would consolidate four laws on compensation: the Payment of Wages Act, 1936; the Minimum Wages Act, 1948; the Payment of Bonus Act, 1965; and the Equal Remuneration Act, 1976.

Key changes to the Wages Code would include:

- introduction of a uniform, comprehensive definition of "wages" for the calculation of compensation and benefits,
- the replacement of labor "inspectors" with "facilitators" to provide guidance to employers to ensure their compliance with the law and
- the prohibition of discrimination against transgender persons in the payment of wages.

These reforms are intended to clarify existing laws governing employee compensation and make it easier for employers to comply.

The government is also contemplating the imposition of a mandatory national minimum wage to ensure wage parity across the country. Minimum wages are currently set by state governments.

## **Social Security**

Important changes have been proposed to the most significant employee social security legislation: the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 and the Employees' State Insurance Act, 1948.

The Ministry of Labor and Employment has suggested amendments to the Provident Fund Act intended to expand coverage to additional employers and to clarify calculation of the tax. Key changes proposed include:

- The scope of the Provident Fund Act would be expanded by reducing the coverage threshold from 20 employees to 10.
- The definition of payments to employees requiring Provident Fund contributions would be clarified.
- Employees would be given a one-time option to join the New Pension Scheme launched by the Pension Fund Regulatory and Development Authority in 2004. If employees choose the option to invest in NPS, they would not be required to make contributions to the Employees Provident Fund.

## **Employee Insurance Act**

The Employees' State Insurance Corporation, the governing body for employee insurance contributions, has been discussing a proposal to provide employees the option of choosing between the benefits provided by the Employee Insurance Act and a health insurance product provided by a private carrier and recognized by the Insurance Regulatory and Development Authority. The new option is intended to promote competition between private insurance carriers and encourage them to develop insurance products that provide benefits similar to the Employee Insurance Act.

## **Child Labor**

The Union Cabinet has approved amendments to the Child Labor (Prohibition and Regulation) Amendment Bill that would:

- prohibit (with certain limited exceptions) the employment of children below the age of 14 in all occupations and processes,
- allow children to help family or family enterprises in nonhazardous occupations after school hours or during vacations,
- allow children to work in the entertainment industry subject to compliance with prescribed conditions and
- significantly increase penalties for employers found in violation of child labor laws.

## **Labor Laws for Factories**

The Factories Act, 1948 is archaic and inapplicable to the fast-changing global economy of the 21<sup>st</sup> century. The government has proposed significant changes to bring the law up to date:

- The government proposes to limit the applicability of the legislation by defining “factory” to mean premises where 40 or more employees are working or were working on any day of the preceding 12 months and in any part of which a manufacturing process is being carried on.
- The draft legislation emphasizes that every employee has an equal right to work opportunities and allows women the right to work night shifts if the employer provides adequate security.
- Transgender workers have an equal right to work opportunities in a factory, and state governments have been empowered to draft rules to secure their rights and to prohibit discrimination against them.

Registration under the Factories Act would be automated to the extent possible to ease employer burden. Employers would be issued provisional registration while their applications are being processed based on self-certification that standards for safety, health and hygiene have been met.

## **Employee Bonuses**

Announced Jan. 1, 2016, and effective retroactively from April 1, 2014, the Bonus Act has been amended to raise the employee eligibility threshold for payment of statutory bonuses to 21,000 rupees (\$325) per month from the earlier limit of 10,000 rupees (\$150). The wage ceiling for computing the bonus has also been increased: from 3,500 rupees (\$55) per month to 7,000 rupees (\$110) or the minimum wage prescribed under the Minimum Wages Act.

## **Women in the Workplace**

The Ministry of Women and Child Development has issued a handbook explaining the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act as part of an effort to increase compliance, which currently stands at about 66 percent for Indian corporations and 75 percent for global companies. The ministry also wants to make it mandatory that employers disclose whether they have an internal committee to inquire into sexual harassment complaints from female employees.

## **Conclusion**

This year will be critical for the success of the government's plans to rationalize India's labor laws, eliminate bureaucratic impediments to corporate growth and ensure that the government is transparent, responsive and accountable.

Considering the political challenges and the resistance of labor unions, however, it is less than certain that the government will be able to fulfill its election promises.

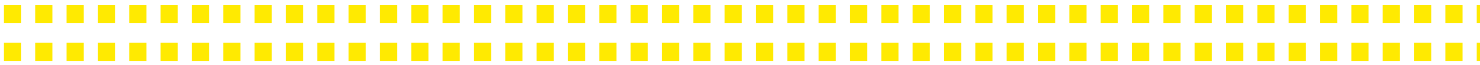
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