



EMPLOYMENT LAW OUTLOOK 2015

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India Employment Law Outlook 2015

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The year 2015 could see significant changes in Indian employment law as the government tries to catch up with a rapidly changing labor environment. In particular, labor legislation has failed to keep pace with dramatic shifts in the workplace driven by social media, increasing competition for talent and the influx of millennial generation employees with attitudes and expectations different from those of their older colleagues.

Over the last several years, for example, the emergence of hyper-connected, multidimensional, differentiated and diverse talent pools has compelled employers in India to rethink their talent management strategies. Implementing new practices, however, has sometimes been hampered by out-of-date employment laws.

In fact, existing labor legislation is often so complicated and self-contradictory that employers and employees have difficulty determining its actual meaning, let alone how they can comply with it, making the consolidation, simplification and clarification of these statutes and regulations an imperative for the Indian government.

The coming year provides great opportunities for the new Bharatiya Janata Party-led government to recast existing laws to allow their easier and more sensible implementation and create robust new laws and policies to prepare for the workplace of the future. The year will certainly test the new government's ability to implement labor law reforms. The previous coalition government's inability to implement the most pressing reforms has negatively affected India's economic performance and eroded investor confidence. With the new government controlled by a single party and led by a dynamic prime minister in Narendra Modi, the country expects large-scale reforms.

Introduction of Labor Law Codes

Possibly the most important reform the new government is expected to take up is the recasting of existing labor law into five broad codes: industrial relations, wages, social security, safety and welfare and working conditions. As early as 2002, the Second National Commission on Labour

had suggested the formulation of labor codes similar to those in Russia, Germany, Hungary, Poland and Canada.¹

India currently has over 40 national (federal) labor laws and close to 100 state laws. Within this spider's web of legislation, employers have found it difficult to remain consistently and completely in compliance, employees and their representatives to identify and take advantage of the protections existing law offers workers and the government to effectively enforce the laws. Some laws, for example, contain differing definitions of employee and employer, making it difficult even to determine who is covered.

News reports have suggested that drafts of the five labor codes already exist and will be presented to the inter-ministerial group for review.

Ban on Child Labor

The Child Labour (Prohibition and Regulation) Amendment Bill seeks to completely ban child labor, making it a crime to employ children under the age of 14 or to employ those 14 to 18 years old in hazardous industries. This change would make the labor laws consistent with the Right of Children to Free and Compulsory Education Act, 2009. The amendment would also make parents liable if their children continue to work in prohibited activities after an initial warning.

Amendments to the Factories Act

The Factories (Amendment) Bill would introduce some important changes to the Factories Act, 1948, including:

- raising the threshold for applicability to 20 (if power is used) and 40 (if power is not used) to exempt smaller factories from regulation and compliance;
- removing restrictions limiting the sorts of machinery on which women may work and allowing them to work between 7:00 p.m. and 6:00 a.m. if adequate safeguards are provided by the employer;
- imposing restrictions on the employment of pregnant women and disabled persons;
- introducing new requirements for workers' safety such as supplying protective equipment and clothing to workers exposed to hazards and implementing safeguards for the operation of hazardous processes;
- providing shelters or restrooms in a factory employing at least 150 workers;
- increasing the maximum number of overtime hours an employee may work; and

¹ Sharma, Yogima, "Labour laws to be recast into five codes to ensure clarity," *The Economic Times*, Nov. 25, 2014: http://articles.economictimes.indiatimes.com/2014-11-25/news/56455176_1_labour-laws-labour-reforms-senior-labour-ministry-official

- reducing guaranteed paid leave.

Proposed Changes to Other Labor Laws

Other statutory changes would include:

- amendments to the Apprentices Act, 1961 intended to facilitate enforcement, while eliminating imprisonment as a possible penalty for noncompliance;
- passage of the Small Factories (Regulation of Employment and Conditions of Services) Bill to apply existing labor law to enterprises employing fewer than 40 workers and allow them to take advantage of online registration of units and e-filing of compliance returns, while requiring that wage payment be made directly into employee bank accounts rather than in cash; and
- amendments to the Minimum Wages Act, 1948 to set a national wage floor and require the revision of minimum wages every five years in accordance with NSSO's² consumer expenditure survey and every six months in accordance with the consumer price index.³

Law on Prevention of Sexual Harassment at the Workplace

A strict new law forbidding sexual harassment in the workplace—The Sexual Harassment of Women at Workplaces (Prevention, Prohibition and Redressal) Act—was enacted in December 2013 requiring employers of any size to provide safe working environments for women, set up internal complaints committees and educate employees on harassment issues through training programs, workshops, posted materials and other means.

Now that the law has been fully implemented, employers are likely to see a significant increase in harassment complaints as female employees become more aware of their new legal protections.

Conclusion

In a July 2014 speech, Finance Minister Arun Jaitley underscored the government's sense of urgency and the likelihood that many labor reforms will be fast-tracked with the result that 2015 and the years following will see genuine and substantial labor law reform at the federal level.

² The National Sample Survey Organisation (now known as National Sample Survey Office) set up by the Ministry of Statistics.

³ "Govt considering amendments to Minimum Wages Act," *The Hindu Business Line*, Aug. 11, 2014: <http://www.thehindubusinessline.com/economy/policy/govt-considering-amendments-to-minimum-wages-act/article6304203.ece>

Also important in this regard, some state governments, including those of Rajasthan, Madhya Pradesh and Haryana, have taken the initiative in introducing changes to labor laws to attract business investment. In November 2014, for example, the government of Rajasthan enacted amendments to three federal labor laws that will allow businesses operating in the state to hire and fire workers more easily, while simultaneously making it more difficult for workers to unionize.

For the first time in decades, there appears the possibility of meaningful reform bringing labor law into line with business needs and the possibility of a new era where government plays a facilitative rather than an antagonistic role in its dealings with business.

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