

HR Law Hotline

September 15, 2021

UPDATE ON PROPOSED LAW ON EMPLOYMENT OF LOCAL CANDIDATES IN GURUGRAM (GURGAON)

- The Haryana State Employment of Local Candidates Act, 2020 was passed by the Governor of the State of Haryana on March 2, 2021.
- The HSELCA Act *inter alia* aims at reserving 75% of employment in the State of Haryana for local candidates

The Haryana State Employment of Local Candidates Act, 2020 ("HSELCA Act") has been passed by the Haryana state government to provide for 75% employment of local candidates¹ by employers (including private employers) in the State of Haryana, which includes the city of Gurugram (previously known as Gurgaon). The HSELCA Act which has been notified in the Haryana gazette on March 2, 2021² is expected to come into effect once a notification has been issued.

The rules under the HSELCA Act are yet to be released. Once made effective, the HSELCA Act will operate in Haryana for 10 years from its effective date.

OVERVIEW OF HSELCA ACT

As per the HSELCA Act, "employer" includes companies registered under the Companies Act, 2013³ and a limited liability partnership as defined by the Limited Liability Partnership Act, 2008. The HSELCA Act will also apply to any person employing ten or more persons.

Once the HSELCA Act is made effective by the Haryana state government, the important obligations of employers will be as follows:

- Register all employees receiving gross monthly salary up to Rs. 50,000 (USD 700 approx.) on the designated portal, within 3 months of the effective date.⁴
- Recruit at least 75% "Local Candidates" who are duly registered on the portal designated by the State Government for posts where the gross monthly salary is not more than INR 50,000 (USD 700 approx.). "Local Candidates"⁵, are candidates domiciled in the State of Haryana, from any district of Haryana. The employer is however permitted to restrict employment of Local Candidates from any specific district to 10% of the total number of Local Candidates.
- Furnish quarterly reports as prescribed on details of Local Candidates appointed during the respective quarter.⁶
- Submit all records, information or document as required by the Authorized Officer appointed under the HSELCA Act.⁷

Where adequate number of Local Candidates with the desired skill, qualification and proficiency are not available, employers will need to apply for an exemption from the requirements of the HSELCA Act to the designated officer. *The designated officer may accept or reject the application or direct the employer to train Local Candidates so as to acquire the desired level of skill and proficiency.*⁸

The HSELCA Act has overriding effect on any other law inconsistent therewith in the State of Haryana.⁹

PENALTIES FOR NON-COMPLIANCE OF HSELCA ACT

The HSELCA Act provides for significant monetary penalties. Besides the general penalty for contravention of the provisions of the HSELCA Act¹⁰, if an employer in the State of Haryana fails to register an employee as per the HSELCA Act, the employer may be punishable with a fine of INR 25,000 (USD 350 approx.) which may extend up to INR 100,000 (USD 1,500 approx.), with additional penalty of INR 500 (USD 7 approx.) per day in case of a continuing offence after conviction.¹¹ Where an employer does not recruit Local Candidates as prescribed, the employer may be punishable with fine of INR 50,000 (USD 700 approx.) which may extend up to INR 200,000 (USD 3,000 approx.), with additional penalty of INR 1,000 (USD 15 approx.) per day in case of a continuing offence after conviction.

If the offence has been committed by a company, every director, manager, secretary, agent or other officer or person concerned with the management shall be deemed to be guilty of such offence, unless such person proves that the offence was committed without his/her knowledge or consent.

Luckily, there are no imprisonment provisions under the law.

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The HSELC Act recently faced controversy in view of the Deputy Chief Minister's statement claiming lower un-employment rates in the state of Haryana as compared to its neighbouring states¹². While there were reports of the state authorities intending to notify the provisions of the HSELC Act with effect from May 2021, due to the fatal second wave of the Covid-19 pandemic, the initiative had taken a considerable set-back, with talks of implementation of the same resurfacing in September 2021.¹³

Basis a statement made by the Deputy Chief Minister¹⁴ of the state of Haryana, it was recently reported that the Haryana government plans to implement the HSELC Act in September 2021. However, pending issuance of the draft rules and creation of the data site as required under the HSELC Act, it seems unlikely that the law will be made effective this month.

ANALYSIS

There were news reports in March and April 2021 stating that the new reservation law is being perceived as a regressive step being adopted by the state and accordingly representations were being made to the Haryana government seeking review of the law, especially considering its impact on labour-intensive sectors like the Information Technology and Information Technology enabled Services in Gurgaon. In fact, a writ petition was filed by A.K. Automatics challenging the HSELC Act before the High Court of Punjab and Haryana in March 2021 which was dismissed as the HSELC Act was yet to come into force at that time.

A similar law was passed by the state of Andhra Pradesh earlier in 2019¹⁵ but it is yet to be implemented in full force, reportedly due to low industrial activity in the state, lack of adequately trained candidates, government's decision to provide time to the employers to meet the necessary quota and the lack of necessary enforcement mechanisms¹⁶.

The Karnataka (Bengaluru) government had also proposed a similar law earlier in 2020¹⁷ which had also faced resistance and accordingly could not be implemented¹⁸. Recently, the Jharkhand assembly also reportedly passed a similar bill providing for 75% reservation of locals in jobs with monthly salaries of up to INR 40,000 (US\$ 550 approx.) in private sector in the State of Jharkhand.¹⁹

While the objective of enacting such laws has been to help the local unemployed population tap into opportunities in the state, in a fast progressing country like India, such protectionist laws could derail India's overall focus on enhancing its ease of doing business besides attracting foreign investment. Such laws are also perceived to be in violation of the Constitutional protections guaranteed under Articles 14, 16 and 19 and may be challenged.

In any case, we can at least hope that state governments are considerate to employers by limiting and applying any such reservation laws to new recruits, while excluding its coverage to existing employees who are already recruited from all over the country and possibly the world.

– Sayantani Saha, Preetha S & Vikram Shroff

You can direct your queries or comments to the authors

¹ As per Sec. 2(g) of the HSELC Act, "Local Candidate" means a candidate who is domiciled in the State of Haryana;

² The HSELC HSELC Act has been gazetted on March 2, 2021. However, it is unclear whether it has been made effective as the notification states: "It shall come into force on such date, as the Government may, by notification in the Official Gazette, specify."

³ Sec. 2(d), HSELC Act

⁴ Sec. 3, HSELC Act

⁵ "Local Candidate" means a candidate who is domiciled in the State of Haryana;

⁶ Sec. 6, HSELC Act

⁷ Section 7(2) of the HSELC Act

⁸ Sec. 5, HSELC Act

⁹ Sec. 12, HSELC Act

¹⁰ Sec. 10, HSELC Act: Any general contravention will lead to a penalty of INR 10,000 (INR 150 approx.) to INR 50,000 (USD 700 approx.), with additional penalty of INR 100 (USD 2 approx.) per day in case of a continuing offence after conviction.

¹¹ Sec. 11, HSELC Act

¹² <https://timesofindia.indiatimes.com/city/chandigarh/haryana-despite-governor-nod-coalition-govt-yet-to-notify-law-on-75-quota-in-private-jobs/articleshow/85529878.cms>

¹³ <https://timesofindia.indiatimes.com/city/chandigarh/will-enforce-75-haryana-quota-in-private-jobs-this-month-deputy-cm/articleshow/85843575.cms>

¹⁴ Ibid.

¹⁵ Andhra Pradesh Employment of Local Candidates in the Industries and Factories Act, 2019 was passed in the state assembly on July 17, 2019

¹⁶ <https://www.hindustantimes.com/cities/others/andhra-pradesh-s-local-job-quota-law-cleared-20-months-ago-yet-to-pick-up-pace-101615641920960.html>

¹⁷ <https://www.news18.com/news/india/yediyurappa-govt-mulls-75-reservation-for-kannadigas-in-govt-and-private-jobs-in-karnataka-2490129.html>

¹⁸ <https://www.deccanherald.com/state/top-karnataka-stories/karnataka-keeps-law-on-job-quota-for-locals-at-bay-915607.html>

¹⁹ https://www.business-standard.com/article/economy-policy/jharkhand-house-nod-to-bill-for-75-quota-in-private-sector-jobs-for-locals-121090800907_1.html

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