

## HR Law Hotline

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### INDIA EMPLOYMENT LAW OUTLOOK 2018

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The Indian government has been actively working to raise the country to among the top 50 in the World Bank's *Ease of Doing Business* rankings. In the most recent survey, India jumped 30 positions to 100<sup>1</sup> and was recognized by the report's authors as one of the top 10 improvers and the only large country to have achieved such a significant shift in a year's time.<sup>2</sup>

#### LABOR REFORMS TO DATE

Among the most significant labor reforms in 2017 were:

- the extension of maternity leave to 26 weeks, placing India among the top three countries in generosity of maternity benefits;
- the implementation of the Rights of Persons with Disabilities Act, 2016, which recognizes 21 types of disabilities and complies with the principles of the United Nations Convention on the Rights of Persons with Disabilities; and
- raising the salary threshold for eligible employees under the Employees' State Insurance Act, 1948 to provide coverage to more employees.

These changes are indicative of the efforts to provide greater benefits and facilities to employees.

In a move to make it easier for employers to comply with certain labor laws, the Indian government reduced from 56 to five the number of registers employers are required to keep under nine different federal level labor statutes.<sup>3</sup> Employers are permitted to maintain these registers in electronic form as long as the integrity, serial numbers, and contents of the columns of the consolidated registers are not modified.

Similarly, the number of forms and returns employers are required to file under three federal labor laws has been reduced from 36 to 12 by eliminating redundancies and duplications.<sup>4</sup>

In addition, several administrative and e-governance initiatives have been undertaken by the federal and state governments to generate employment and facilitate ease of doing business. These include launching an online platform for registration under five central laws<sup>5</sup> and providing online availability for registration of establishments for the purpose of provident fund (social security) and employees' state insurance contributions.<sup>6</sup>

While reforms undertaken to this point have made it easier to do business in India, the government still has much to do, and outdated employment laws remain a hindrance to the economic growth of the country. Important reforms likely to be implemented in 2018 are discussed below.

#### CODE ON WAGES, 2017<sup>7</sup>

The Code on Wages Bill, 2017<sup>8</sup> proposes to replace four federal labor laws: The Minimum Wages Act, 1948; The Payment of Wages Act, 1936; The Payment of Bonus Act, 1965; and The Equal Remuneration Act, 1976. Among the key features of the Wage Code are the following:

- The revised code will ensure minimum wages for all employees and timely payment of wages. At present, the provisions of The Minimum Wages Act, 1948 and the Payment of Wages Act, 1936 don't cover many employees because their coverage is limited to certain occupations or employees drawing wages within a prescribed threshold.
- The Wage Code will introduce a national minimum wage to be administered by the federal government, which will have the authority to set different minimum wages for different states or other geographical areas. No state government will be allowed to set a minimum wage below the federal rate.
- The central or state governments can set the number of hours that constitute a working day, and employees who work beyond that limit must be paid double time. Employers will also be required to provide a weekly day of rest for employees.
- Employers may make deductions from employee wages only for specified purposes, including payment of fines or repayment of advances, penalty for absence from duty, and to compensate the employer for accommodations provided

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by employers.<sup>9</sup>

- Penalties for violations of the Wage Code will be progressive based on the seriousness of the offense. The maximum penalty will be imprisonment for up to three months and a fine of up to 100,000 rupees (about \$1,550).<sup>10</sup>

The Wage Code has already been approved by the Union Cabinet and has been introduced in the lower house of the parliament. The legislation requires the consent of both houses of parliament and presidential assent to become law.

It has been proposed that several other federal labor laws be consolidated into three codes: Code on Industrial Relations,<sup>11</sup> the Code of Social Security and Welfare,<sup>12</sup> and the Code on Occupational Safety, Health & Working Conditions. However, trade union resistance has so far blocked legislative action.

## SOCIAL SECURITY: PROVIDENT FUND AND GRATUITY

The Employees' Provident Fund & Miscellaneous Provisions Act, 1952 is one of India's most important social security laws. There are proposals to amend the act by:

- reducing the employee number threshold for coverage from 20 to 10,<sup>13</sup>
- allowing small establishments employing up to 40 workers to contribute at the rate of 9 percent to 12 percent of wages instead of the standard 12 percent, and
- increasing the wage threshold for coverage from the current 15,000 rupees per month (about \$250) to 21,000 rupees (\$325).

The government may also allow employees a one-time option to switch from contributing towards the EPF Act to the National Pension Scheme.

Employees in India are entitled to receive severance in the form of gratuity, provided certain conditions are met. The per-employee gratuity ceiling under the Payment of Gratuity Act, 1972 is currently 1,000,000 rupees (about \$15,500), which the Union Cabinet has proposed to double through the Payment of Gratuity (Amendment) Bill, 2017.

## CONTRACT LABOUR (REGULATION AND ABOLITION) AMENDMENT ACT, 2017

On Sept. 28, 2017, the government released the draft Contract Labour (Regulation and Abolition) Amendment Bill, 2017,<sup>14</sup> which would amend the Contract Labour (Regulation and Abolition) Act, 1970 to:

- revise the definition of contract labor to exclude workmen regularly employed in the establishment of the contractor,
- fix the period required for renewal of licenses to three years,
- require a contractor to notify the appropriate government agency of work orders it receives from client companies, and
- increase the monetary penalty for certain offences.<sup>15</sup>

## LAW PERTAINING TO FACTORIES

The Factories (Amendment) Bill, 2016 was passed by the lower house of parliament on Aug. 10, 2016.<sup>16</sup> The bill would significantly expand the powers of state governments in the regulation of employment:

- State governments would be permitted to prescribe rules on a range of matters, including double employment, details of adult workers to be included in the factory's register, and exemptions for certain workers.
- State governments would have authority to regulate overtime hours as long as total overtime hours do not in most cases exceed 100 in a quarter. The current limit is 50. The federal government can also regulate overtime.
- State governments could make rules allowing adult employees to work up to 115 hours in a quarter under exceptional circumstances. The current limit is 75.
- The federal or state governments could extend the 115-hour limit on overtime in a quarter to 125 hours in cases of excessive work load or if the public interest requires it.<sup>17</sup>

The Factories Bill is awaiting passage by the upper house of parliament and signing by the president.

## MODEL SHOPS AND ESTABLISHMENTS ACT

The Union Cabinet approved the Model Shops and Establishment (Regulation of Employment and Conditions of Service) Bill, 2016 as a way to bring national consistency to the regulation of employment and to make it easier to do business in India.<sup>18</sup> State governments are free to adopt the act in its existing form or to modify it to meet state-specific requirements.

The state government of Maharashtra adopted the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017<sup>19</sup> on Sept. 7, 2017, although it is not yet effective. The act will, among other things, revise procedures for employer registration with the government, rules governing women working night shifts, and employee leave entitlement.

The state of Kerala is planning to also adopt the model legislation.<sup>20</sup>

## CONCLUSION

The federal government is expected to continue to push labor reform at the state and federal levels throughout 2018 in the run up to the 2019 elections. It remains to be seen, however, if the government can in fact eliminate the bureaucratic impediments to a transparent, responsive, and accountable regulatory system.

— Preetha S & Vikram Shroff

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- <sup>1</sup> <http://www.doingbusiness.org/rankings>
  - <sup>2</sup> <http://www.worldbank.org/en/news/press-release/2017/10/31/india-jumps-doing-business-rankings-with-sustained-reform-focus>
  - <sup>3</sup> Under the Compliance to Maintain Registers under various Labour Laws Rules, 2017 (available at: <http://www.labour.nic.in/sites/default/files/registers.pdf>)
  - <sup>4</sup> Under the Rationalization of Forms and Reports under Certain Labour Laws Rules, 2017 (available at: <http://www.labour.gov.in/sites/default/files/294%20E.pdf>)
  - <sup>5</sup> <https://www.ebizfilling.com/p-pf-registration-services-india.htm>
  - <sup>6</sup> <http://labour.gov.in/sites/default/files/Ease%20of%20Doing%20Business-%20MoLE%20initiatives-09.03.2017.pdf>
  - <sup>7</sup> <http://www.prsindia.org/uploads/media/Code%20on%20Wages,%202017/Code%20on%20Wages,%202017.pdf>
  - <sup>8</sup> <http://www.prsindia.org/uploads/media/Code%20on%20Wages,%202017/Code%20on%20Wages,%202017.pdf>
  - <sup>9</sup> <http://www.prsindia.org/uploads/media/Code%20on%20Wages,%202017/The%20Code%20on%20Wages%20Bill%20Summary.pdf>
  - <sup>10</sup> <http://pib.nic.in/newsite/PrintRelease.aspx?relid=170541>
  - <sup>11</sup> Combines the Industrial Disputes Act, 1947, the Trade Unions Act, 1926, and the Industrial Employment (Standing Orders) Act, 1946
  - <sup>12</sup> Total of 15 labor laws including EPF Act, ESI Act, Maternity Benefit Act, Payment of Gratuity Act, Employees Compensation Act, Unorganised Social Security Act, and various Welfare Fund acts
  - <sup>13</sup> <http://pib.nic.in/newsite/mbErel.aspx?relid=141121>
  - <sup>14</sup> <http://www.prsindia.org/uploads/media/Contract%20Labour%20Bill,%202017/Contract%20Labour%20Amendment%20Bill,%202017.pdf>
  - <sup>15</sup> Please note that this may not be the final form of the bill placed before parliament. Additional changes may be made based on public comments.
  - <sup>16</sup> <http://www.prsindia.org/billtrack/the-factories-amendment-bill-2016-4368/>
  - <sup>17</sup> [http://www.prsindia.org/uploads/media/Factories/Bill%20Summary%20Factories%20\(Amendment\)%20Bill,%202016.pdf](http://www.prsindia.org/uploads/media/Factories/Bill%20Summary%20Factories%20(Amendment)%20Bill,%202016.pdf)
  - <sup>18</sup> <http://www.labour.nic.in/sites/default/files/model%20bil%20englsih%20.pdf>
  - <sup>19</sup> <http://bombayhighcourt.nic.in/libweb/acts/Stateact/2017acts/2017.61.pdf>
  - <sup>20</sup> <https://timesofindia.indiatimes.com/city/kochi/with-amended-act-shops-could-be-open-247/articleshow/60154945.cms>
  - <sup>21</sup> For original article, please [click here](#).
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