Q & A

We are a company having an office in India, registered under the name of the wholly owned subsidiary of our parent company in the US. The Indian operations are in an SEZ unit. One of our IT staff is requesting for a 6 month deployment at Pune, where his wife will be residing for six months. He is requesting that he may be allowed to work for the Indian SEZ unit from his wife's Pune residence (outside SEZ) during this period. Please share the pros and cons of the above situation and also suggest the best possible way in which we can manage the request.

Please note that Instruction No. 85 dated August 2, 2016 issued by the SEZ Division of the Ministry of Commerce & Industry lays down the general conditions under which an employee of an SEZ unit may work from home or from outside the SEZ premises. The said conditions are reproduced below:

"(a)The person should be a regular employee of the SEZ unit and should be authorized by the SEZ unit [issued Identity cards as per Rule 70(2) of SEZ Rules, 2006] to undertake the work pertaining to that unit.

(b) The work to be performed by the employee permitted to work from home should be as per the services approved for the SEZ unit, and the work is related to a project of the SEZ unit.

(c) For the purpose of work from home, SEZ unit should provide laptop/desktop and secured connectivity (for e.g. VPN, VDI etc) to establish a connection between the employee and work must be related to a project of the SEZ unit.

(d) Ensure export revenue of the resultant products/services should be accounted for by the SEZ unit to which the employee is tagged and at no given point should work from home involve the export of services from outside the SEZ unit.

(e) Once the employee ceases to be part of the project of SEZ unit, the employee shall be untagged from the respective SEZ unit and the unit shall surrender the I-Card (form-K) to Specified Officer as per rule 70(2) of SEZ Rules 2006."

Therefore, in our opinion the concerned employee may be permitted by your company to work from home / outside the SEZ premises so long as the conditions mentioned above are complied with.

We had appointed an accounts executive and he was to serve a probation period of six months. After the completion of his probation, he is claiming that he is entitled to be confirmed and also a hike in the salary. Though we wish to confirm his employment, we are not ready to increase his salary. We have not even mentioned any such provision in our appointment letter. What is the legal definition of a probationer? Is the company bound by law to increase the compensation / salary after a new employee completes his probation?

Please note that the word 'probation, or 'probationer' is not defined under any employment / labour legislation. However, probation, in the context of employment means a period where the employee is being evaluated and tested by the employer as regards his/her suitability for the position for which he/she has been engaged. In other words, during the probation period, the employer generally retains the right to terminate the services of the probationer without notice or any other obligation. The rights and obligations of the employer and the employee during the probation period may vary from company to company depending on policy, or may be set out in the employment contract. However, in the absence of any such policy or provision, it is generally understood that the employer is evaluating the performance or suitability of the probationer and reserves the right to discontinue the probationer's service at will if the employer is not satisfied or does not consider the probationer suitable for the job.

In the instant case, since the appointment letter issued to the employee concerned does not stipulate a promise of salary hike after the completion of the probation

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period, your company neither has an obligation to increase his salary after the probation period nor does the executive has any right to demand such a raise. Increasing the salary of the said executive post probation period is completely at your company's discretion.

I run a shop in Mumbai and have 12 people employed in my shop. Last month, one of them, while reaching for goods placed on the top shelf, somehow got disbalanced and fell from there. He broke his leg and had to be taken to a nearby nursing home. The employee's wife is now claiming compensation as well as medical expenses incurred due to the accident. Please tell me whether I am liable to compensate since mine is only just one shop and there was no contract between me and this employee.

Please note that the law governing the employees' compensation (for injury caused by accident) is provided in the Employees' Compensation Act, 1923 ("Compensation Act").

Given that you are running a shop in Mumbai, please note that you are governed by the Bombay Shops and Establishment Act, 1948 ("Establishment Act"). Section 38A of the Establishment Act provides that the Compensation Act is applicable to all the shops/establishments covered under the Establishment Act and accordingly, Compensation Act will be applicable to your shop/establishment also.

Further, you may note that according to Section 3 of the Compensation Act, an employer is liable to compensate the employee for an injury caused to him/her by an accident arising out of or in the course of his/her employment. It is understandable that climbing up the shelves of your shop to reach different goods was a part of his duty and well within the scope of his employment.

Since the injury caused to the employee is temporary in nature, therefore as per section 4 of the Compensation Act, you will be liable to a half monthly payment of the sum equivalent to 25% of his monthly wages. Such half monthly wages will have to be made to the employee on sixteenth day either from the date of disablement if such disablement lasts for a period of 28 days or more or on the nineteenth day where such disablements last for a period of less than 28 days, and, thereafter half-monthly during the disablement or during a period of five years, which ever period is shorter.

However, please note that you will not be liable to pay compensation if:

- the injury is caused by an accident which is directly attributable to:-
  - the employee having been at the time of the accident under the influence of drink or drugs; or
  - the willful disobedience by the employee of an order and rule expressly given to secure the safety of the employee; or
  - the willful removal or disregard by the employee of any safety devices/guard provided for the safety of employee.

Additionally, please note that as per Section 4 (2A) of the Compensation Act, you will also have to reimburse the actual medical expenses incurred by the employee for treatment of injuries caused to him. HC

Proposed Reforms In Labour Laws

- BY **K.V.SINGH AND ANKITA RAI**

Most of the labour laws in India were enacted decades ago, when the industry practices and employment conditions were squarely different from the current scenario. However, the laws have not been updated with the changing times. There is therefore a pressing need to revisit these laws and ensure that their benefits reach the maximum number of workforce and entitle them to real and tangible benefits. The enforcement machinery responsible for the implementation of relevant laws must also be strengthened.

To undo the malady in the Indian labour market and to encourage economic growth and generate employment opportunities in the country, the Government has proposed that 44 labour laws be codified into just five, viz. (i) the Industrial Relations Code Bill 2016 (dealing with industrial relations); (ii) Wage Code Bill 2016 (dealing with wages); (iii) the Small Factories (Regulation of Employment and Conditions of Services) Bill (dealing with safety and social security); (iv) Employees Provident Fund and Miscellaneous Provisions (Amendment) Bill (dealing with welfare); and (v) the Shops and Establishments (Amendment) Bill.

The Labour Code on Industrial Relations Bill 2015, which will consolidate the statutes dealing with industrial relations, i.e., Trade Unions Act 1926, Industrial Disputes Act, 1947 and Industrial Employment Act, 1948 is one of the most significant proposals in labour law. The Ministry of Labour and Employment introduced the draft Labour Code on Industrial Relations Bill, 2015 (hereinafter referred as 'Draft Bill') in April 2015. The proposed amendment aims to overhaul several issues pertaining to industrial relations, including registering trade unions, standing orders, notice of change of terms of employment, strikes, lockouts, lay-offs, retrenchment, investigation and settlement of disputes and other related matters.

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The Draft Bill contains 107 sections and 3 schedules, which not only consolidates the three Acts, but also amends the law substantially. While the present Industrial Disputes Act, 1947 requires industrial establishments hiring at least 100 workers to obtain the permission from the

Government in the event of lay off, the Bill proposes to allow industrial establishments employing up to 300 workers to lay off workmen without seeking any approval from the Government.

Further, the Bill proposes to limit the liberty of the workers in registration of trade unions. It provides that a minimum of 10% of the workers employed in an establishment would be required to make an application for registering a trade union. However, the perimeter of minimum 10% would not apply in the following circumstances: (i) where 10% of the workers exceed 100, it would be sufficient if the application is made by 100 workers; and (ii) where 10% of the workers is less than 7 workers, a minimum of 7 workers shall be required to make an application for registration.

The Draft Bill further aims to increase the compensation at the time of retrenchment to 45 days' average pay for each completed year of continuous service, or any part year in excess of six months. Currently, the Industrial Disputes Act, 1947 requires the employer to pay compensation equivalent to 15 days' average pay for each completed year of service, or any part year in excess of six months.

Another significant proposal to overhaul the labour laws is by way of proposing a wide definition of 'strike' to include within its ambit casual leave on a given day by 50% or more workers in an industry. Further, while the Industrial Disputes Act, 1947 permits the workers employed in public utility service to go on strike only after giving 14 days' advance notice to the employer, the Draft Bill proposes to govern all industrial workers by the same stringent conditions of strike which are currently applicable only to public utility service workers under the Industrial Disputes Act, 1947.

The Draft Bill abolishes the concept of labour courts and proposes to introduce a dispute resolution mechanism through Industrial Tribunals. Furthermore, while the employer and the workmen can refer an industrial dispute to arbitration only prior to approaching a labour court/ tribunal under Section 10A of the Industrial Disputes Act, 1947, Section 50 of the Draft Bill entitles the parties to refer the dispute to arbitration at any time.

Section 35 of the Draft Bill envisages an extensive list of matters to be covered by Model Standing Orders drafted by the Central Government and considered as acts of misconduct. For example, sexual harassment, refusal to undergo training organised by the employer, etc. have now been classified as misconduct under the Model Standing Orders. The Draft Bill has also introduced a time limit for completion of disciplinary proceedings within 90 days from the date of suspension.

India has been a socialistic country with stringent labour laws. It has been contended that the labour laws in India make employers prone to harassment, thereby making it difficult for them in India to compete against the global giants in countries with simplified laws. Several recommendations have been made to make labour laws less restrictive for employers, in order to give them a level playing field against their international counterparts. In this regard, the introduction of the Draft Bill is a significant proposal to overhaul the labour laws. Presently, labour laws are so numerous and ambiguous that they promote industrial disputes rather than facilitating a business-friendly environment for employers. In this regard, India needs a good labour policy that simplifies and rationalizes the complex and ambiguous extant pieces of labour legislation into a simple code rather than impaired or shortsighted law amendments that would address only the present problems. With the present economic slowdown taking the situation from bad to worse, the attempt made by the Government is a laudable effort, as it will certainly provide flexibility to the employers, which will lead to increased confidence in the industry. However, overhauling and simplifying labour regime should also be accompanied with a renewed thrust on enforcement, to make sure that the system works. HC