



Labour and Employment Comparative Guide



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1. Legal framework

1. 1. Are there statutory sources of labour and employment law?

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There are as many as 165 labour and employment laws, including nearly 50 central (federal) laws, in India. The main statutes and regulations relating to labour and employment are:

- the Industrial Disputes Act 1947;
- the Factories Act 1948;
- the Shops and Commercial Establishments Act, as applicable in each state;
- the Industrial Employment (Standing Orders) Act 1946;
- the Contract Labour (Regulation & Abolition) Act 1970;
- the Maternity Benefit Act 1961;
- the Payment of Wages Act 1936;
- the Minimum Wages Act 1948;
- the Payment of Bonus Act 1965;
- the Equal Remuneration Act 1976;
- the Employees' Compensation Act 1923;
- the Employees' State Insurance Act 1948;
- the Employees' Provident Fund and Miscellaneous Provisions Act 1952;
- the Payment of Gratuity Act 1972; and
- the Trade Unions Act 1926.

Both central (federal) and state governments have specific rules setting out the procedure for proper enforcement of a statute. In India, states have some statutes that deal with specific issues under the umbrella of the broader federal statutes.

1. 2. Is there a contractual system that operates in parallel, or in addition to, the statutory sources?

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In addition to the labour and employment statutes, the employment relationship may be governed by the employment contract (provided that the terms thereof are no less favourable than those under the applicable statutes).

1. 3. Are employment contracts commonly used at all levels? If so, what types of contracts are used and how are they created? Must they be in writing must they include specific information? Are implied clauses allowed?

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In India, most labour and employment laws are applicable to employees in the category of 'workmen' (i.e.

in India, most labour and employment laws are applicable to employees in the category of 'workmen' (ie, blue-collar employees). A 'workman' is defined under the Industrial Disputes Act 1947 as a person who is employed to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, excluding a person:

- who is employed mainly in a managerial or administrative capacity; or
- who, being employed in a supervisory capacity, draws a salary exceeding INR10,000 per month or exercises functions mainly of a supervisory or managerial nature.

Apart from certain labour and employment statutes that may apply to other categories of employees, the employment relationship for such employees is usually governed by the employment contract.

The Companies Act 2013 further provides for the passing of a resolution and the conclusion of an employment contract for the appointment of a managing director of a company.

Although there is no specific requirement that an employment contract be in writing, some employment statutes or state-specific statutes (or both) require an employment contract covering limited aspects to be issued. As a matter of good corporate practice, written employment contracts are executed between the employer and the employee, or a detailed written appointment letter is issued to the employee whose terms must be duly accepted and acknowledged by the employee.

The employment contracts generally used in India include the following information:

- name and address of employer and employee;
- job title or nature of work (or job description);
- place of work;
- probationary period, if any, and its duration;
- option of the employer to transfer an employee from one office to another branch office, affiliate or similar;
- date of commencement of employment;
- wages or salary details;
- any concessions or benefits to which the employee is entitled;
- type of contract – permanent or fixed term;
- period of notice required for termination of employment;
- leave entitlement;
- conditions under which the employer can terminate the contract;
- non-compete, confidentiality and non-solicitation provisions; and
- working hours.

The provisions of employment contracts may depend on the nature of employment and different rules may apply for fixed-term employees, apprentices and permanent employees.

2. Employment rights and representations

2. 1. What, if any, are the rights to parental leave, at either a national or local level?

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Every female employee who has been employed for at least 80 days in the 12 months immediately preceding

the date of expected delivery shall be entitled to paid maternity leave for the following purposes:

- leave for delivery;
- leave on account of miscarriage or medical termination of pregnancy;
- leave for tubectomy;
- leave for maternity-related illness; and
- adoption leave.

Male employees have no statutory entitlement to parental leave. Male employees may use their annual or other leave for such purpose. However, employers may, at their discretion, provide such leave as a benefit for their employees.

2. 2. How long does it last and what benefits are given during this time?

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Every eligible female employee shall be entitled to the following benefits:

- Leave for delivery: All eligible female employees are entitled to a maximum of 26 weeks' paid maternity leave weeks up to and including the expected day of delivery and 18 weeks immediately thereafter. However, if a female employee has two or more surviving children, she will be entitled to 12 weeks of paid maternity leave, of which up to six weeks can be taken prior to the expected date of delivery.
- Leave for miscarriage or medical termination of pregnancy: In case of miscarriage or medical termination of pregnancy, a female employee shall, on production of sufficient proof, be entitled to paid leave for a period of six weeks immediately following the date of her miscarriage or medical termination of pregnancy.
- Leave for tubectomy: In case of tubectomy, a female employee shall, on production of sufficient proof, be entitled to paid leave for a period of two weeks immediately following the day of the operation.
- Leave for maternity-related illness: A female employee shall also be entitled to paid leave for a maximum period of one month in case of illness arising out of pregnancy, delivery, premature birth, stillbirth, miscarriage, medical termination of pregnancy or tubectomy. A female employee may be required to submit medical proof regarding any such illness as may be requested by the employer.
- Adoption leave: Every female employee who adopts a child below the age of three months or who is a commissioning mother (ie, a biological mother who uses her egg to create an embryo implanted in another woman) will be entitled to paid maternity leave of 12 weeks from the date the child is handed over to her.

2. 3. Are trade unions recognised and what rights do they have?

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The Trade Unions Act 1926 provides for the registration of trade unions, but it does not make registration mandatory. However, registration is beneficial as it leads to certain privileges. A registered trade union is deemed to be a body corporate, giving it the status of a legal entity. As a result, a registered trade union has

perpetual succession, the power to acquire and hold property and the power to enter into contracts. It also has the power to sue and to be sued. A registered trade union is also immune from certain contractual, criminal and civil proceedings. Generally, registration of trade unions under the Trade Unions Act does not automatically imply that a particular trade union has gained recognition status from the employer.

Registration of trade unions is different from recognition of trade unions. The key distinction is that registration of trade unions is effected through the registrar of trade unions, while recognition of trade union is effected by the management as collective bargaining agents (in case of a single trade union) and collective bargaining councils (in case of more than one trade union). Recognition of trade unions is the process through which an employer accepts a particular trade union as having a representative character and hence engages in discussions with the union on matters concerning the interests of workers. In this regard, some states in India have enacted separate laws relating to recognition of trade unions. Ideally, in order to receive certain rights and privileges, a trade union must obtain legitimacy through registration under the Trade Unions Act and thereafter seek recognition as a sole bargaining agent either under the appropriate law or under an employer-employee agreement.

The rights conferred on a recognised trade union include the following:

- The executive of the trade union is entitled to negotiate with the employer regarding employment, non-employment, terms of employment or conditions of employment on behalf of any employee or all employees.
- The executive of the trade union is entitled to display trade union notices in the workplace and the employer must make necessary arrangements for the same;
- The executive of the trade union may appear on behalf of any employee or employees in any domestic or departmental enquiry;
- The trade union may appoint a nominee to represent workmen on a works committee constituted under the Industrial Dispute Act 1947; and
- The trade union enjoys the right to be the sole bargaining agent or a principal bargaining agent.

2. 4. How are data protection rules applied in the workforce and how does this affect employees' privacy rights?

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India does not have robust laws on data privacy and protection. The Information Technology Act 2002 provides for privacy law in India with regard to personal information and sensitive personal data and information.

All employers (or entities authorised on their behalf) that collect, receive, process, store, deal with or handle personal data or sensitive personal information must put in place a privacy policy which covers the following aspects, among others:

- details regarding the handling or processing of such information;
- details regarding the type of information collected;
- the purpose of collection and use of such information;
- any disclosure or transfer of such information (including to a third party); and

- reasonable security practices and procedures for the protection of information, as approved and notified by the government.

Other obligations include the following:

- Employers should obtain consent in writing (through a letter, fax or email) from employees if they obtain information including passwords, financial information (eg, bank account, credit card or debit card or other payment instrument details), physical and mental health condition, sexual orientation, medical records and history or biometric information, or any other personal information;
- This information must be used only for the purposes for which it was obtained; and
- Employers must give employees access to carry out any necessary corrections to such information, or to withdraw consent.

In case of wrongful disclosure of personal information, an aggrieved employee can claim monetary compensation for any damage caused.

2. 5. Are contingent worker arrangements specifically regulated?

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The Contract Labour (Regulation & Abolition) Act regulates contingent worker arrangements. An employer that engages 20 or more contingent workers must register under this act. A contractor that supplies contingent workers must also obtain a licence.

An employer which is covered by the Contract Labour (Regulation & Abolition) Act will be considered a 'principal employer'. A principal employer must ensure that the contractor complies with all applicable labour and employment laws. In case of non-compliance by the contractor, the principal employer must take necessary corrective action (eg, if the contractor does not pay wages to the contingent workers, the principal employer must pay wages to the contingent workers and thereafter can recover the same from the contractor).

3. Employment benefits

3. 1. Is there a national minimum wage that must be adhered to?

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In India, the Minimum Wages Act 1948 provides for the establishment and enforcement of minimum wages in respect of scheduled employment. The act requires the appropriate government (at both federal and state level) to establish the minimum rates of wages in respect of employment specified in the schedule, and to review and revise the same at intervals not exceeding five years. Currently, there are approximately 45 types of scheduled employment in the federal sphere and approximately 1,650 types of scheduled employment in total in all states.

In 1996 the federal government introduced the National Floor Level of Minimum Wage (NFLMW). This was fixed at INR35 per day and has since been revised approximately every two years, taking into consideration the consumer price index for industrial workers. The NFLMW was increased from INR160 to

INR176 per day in 2017.

3. 2. Is there an entitlement to payment for overtime?

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All employees – except those who fall under the definition of ‘employer’, such as a director, occupier or manager of a factory or any other person in control of the affairs of the business who is exempt under a specific applicable law – are entitled to overtime payments. The state-specific Shops and Commercial Establishments Acts specifically exempt notified employees (as notified by the employer from time to time) from this entitlement. Applicable statutes may also cap the maximum percentage of employees so exempt.

Overtime wages are calculated at a rate of up to twice the normal wage, depending on the location or place of work of the employee.

3. 3. Is there an entitlement to annual leave? If so, what is the minimum that employees are entitled to receive?

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All employees are entitled to annual leave. The relevant legislation providing for annual leave entitlement is the Factories Act 1948 for employees working in factories and the state-specific Shops and Commercial Establishments Acts for employees who work in establishments other than factories.

An employee who has worked in a factory or manufacturing unit for 240 days in a calendar year is entitled to 19 days of annual leave.

Typically, employees who work in establishments other than factories are entitled to between 12 and 21 days of annual leave.

3. 4. Is there a requirement to provide sick leave? If so, what is the minimum that employees are entitled to receive?

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Statutes that deal with sick leave and sickness pay include the state-specific Shops and Establishment Acts and the Employees’ State Insurance Act 1948.

Depending on the state, the Shops and Establishment Act may provide for sick leave for between seven and 14 days. Sick leave is generally paid leave in most states. In case of sickness, an employee can also utilise any accrued casual or annual leave.

In the case of employees covered under the Employees’ State Insurance Act 1948, sickness benefits are paid by the government at the rate of approximately 60 per cent of their salary, subject to the fulfilment of certain conditions.

3. 5. Is there a statutory retirement age? If so, what is it?

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Specifying a retirement age is not mandatory in private employment. Generally, employers specify a retirement age of between 55 and 60 years. In certain industrial establishments where the Industrial Establishment (Standing Orders) Act, 1946 applies, employers must set the retirement age at 60 years or above.

4. Discrimination and harassment

4. 1. What actions are classified as unlawfully discriminatory?

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The Constitution of India provides for equality of opportunity in matters of public employment as a fundamental right. The Constitution prohibits discrimination on the grounds of race, gender, religion, place of birth, domicile, caste and descent.

Additionally, the Industrial Disputes Act 1947 and the Industrial Establishment (Standing Orders) Act 1946 set out a list of 'unfair labour practices' and 'misconduct' for employers and employees respectively. Unfair labour practices are prohibited under the Industrial Disputes Act 1947 and some may amount to harassment in the workplace. Similarly, an employee charged of misconduct amounting to any kind of harassment shall be subject to punishment.

In specific circumstances, private sector employees can also seek protection against discrimination, which is treated as a bad-faith action on the part of the employer. However, no specific statute in this respect exists.

Insofar as discrimination based on gender is concerned, the Equal Remuneration Act 1976 prohibits discrimination on the grounds of gender and against women in matters of employment (eg, recruitment, salary).

Further, the Rights of Persons with Disabilities Act 2016 prohibits employers from discriminating on the grounds of disability, except where such act or omission is a proportionate means of achieving a legitimate aim.

Also, the federal government recently enacted the HIV and AIDS (Prevention and Control) Act 2017, under which discrimination against or unfair treatment of persons with HIV or AIDS in matters of employment is prohibited. Also, anyone who is living or has lived with a person who is HIV positive is protected against discrimination.

4. 2. Are there specified groups or classifications entitled to protection?

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Please see question 4.1.

4. 3. What protections are employed against discrimination in the workforce?

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Generally in India, employers implement policies prohibiting discrimination on the grounds of gender, caste, race, religion, sexual orientation or disability. Additionally, employers provide various training and awareness programmes for employees to sensitise them to the subject of discrimination and the procedures for reporting discrimination.

4. 4. How is a discrimination claim processed?

India

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Anyone who is discriminated against may approach the employer's grievance redressal committee. In specific circumstances, private sector employees can also seek protection against discrimination, which is treated as a bad-faith action on the part of the employer. However, no specific statute in this respect exists.

An employee who is discriminated against on the grounds of disability may approach the designated authority prescribed under the employer's equal opportunity policy.

4. 5. What remedies are available?

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Based on the circumstances of each case, an employee who is found guilty of discrimination in the workplace shall be subject to appropriate punitive actions under the service rules and policies of the employer, including termination of employment.

4. 6. What protections and remedies are available against harassment, bullying and retaliation/victimisation?

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An employer must establish an internal complaints committee in each of its offices with 10 or more employees in order to handle grievances regarding sexual harassment.

All other forms of harassment, bullying and retaliation or victimisation are dealt with as per the service rules and policies of the employer. Generally, employers designate a senior-level officer or a committee of senior-level officers to handle such complaints. Upon receipt of a complaint regarding harassment, bullying or retaliation or victimisation, the officer or committee will initiate formal disciplinary proceedings against the delinquent employee and, if found guilty, impose a punishment pursuant to the service rules and policies of the employer.

5. Dismissals and terminations

5. 1. Must a valid reason be given to lawfully terminate an employment contract?

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The laws relating to dismissal or termination are different for employees who are categorised as ‘workmen’ and other employees.

Employees who are categorised as ‘workmen’ cannot be terminated without cause. Causes for termination include misconduct, continued ill health, non-renewal of contract, redundancy and non-performance.

Other employees can be terminated without cause (except in a few states where the reasons for termination must be provided or grounds must be disclosed) by giving the required notice or issuing payment in lieu, as per the terms of the contract or the state-specific Shops and Commercial Establishments Act. Recently, the courts have held that reasonable cause is also required for termination of other employees.

5. 2. Is a minimum notice period required?

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Most state-specific Shops and Commercial Establishments Acts provide that no one may be dismissed without written notice (which is usually a period of 30 days) or payment in lieu. However, in case of misconduct, an employee can be terminated without notice or payment in lieu, although an inquiry (following principles of natural justice) must be conducted before dismissing an employee in such a situation.

5. 3. What rights do employees have when arguing unfair dismissal?

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If a dismissal is found to be unfair or illegal, the aggrieved employee may claim reinstatement with back wages, along with costs and compensation provided under the law.

5. 4. What rights, if any, are there to statutory severance pay?

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Statutory severance is payable only to employees who are categorised as ‘workmen’. In terms of the Industrial Disputes Act 1947, a ‘workman’ who has been in continuous service for at least one year is entitled to severance compensation (referred to in India as ‘retrenchment compensation’). Retrenchment compensation is payable at the rate of 15 days’ salary for every completed year of service or any part thereof in excess of six months.

Certain state-specific compliances may also need to be observed.

If the terms of the employment contract provide for a more generous severance compensation than that

which is statutorily prescribed, they will apply accordingly.

6. Employment tribunals

6. 1. How are employment-related complaints dealt with?

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Any employment-related complaint must be made in writing to the prescribed authority. Upon receipt of such complaint, the jurisdictional authority will summon the employer to appear and file such replies or documents as may be required. Both employer and the employee are given an opportunity to prove their case and to present relevant evidence on record. Based on the evidence available on record and the arguments of both parties, the authority will issue its final order.

6. 2. What are the procedures and timeframes for employment-related tribunals actions?

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Please see question 6.1.

With regard to the timeframe, although the law provides for settlement of employment disputes within 90 days of receipt of the complaint, in practice it takes around two to three years to conclude the entire matter.

7. Trends and predictions

7. 2. What are the procedures and timeframes for employment-related tribunals actions?

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8. Tips and traps

8. 2. What are the procedures and timeframes for employment-related tribunals actions?

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