

Managing the employment relationship in India

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The employment relationship

Country specific laws

What laws and regulations govern the employment relationship?

Some states require that the employer prepare an appointment order for new hires, although this is seldom observed. There are no direct laws dealing with probation on a general basis in India, which is, however, a common practice. The (federal) Industrial Employment (Standing Orders) Act 1946 (which is applicable to workmen), provides for a probationary period of up to three months. Certain states have built in the probation concept indirectly into their local laws, which ranges from three to six months. Ideally, a probation period should not exceed 240 days, as several statutory social welfare laws apply to employees who have worked for such period. The Industrial Disputes Act 1947 (applicable to workmen), prescribes that if certain terms of service change, notice must be given to the employee. It also prescribes requirements for termination for convenience, including notice and compensation.

Who do these cover, including categories of worker?

There are essentially two types of employer and two types of employee. Employers are either:

- ‘establishments’ – a term which encompasses all employers; or
- ‘factories’ – a term which typically encompasses manufacturing units.

Employees are either:

- ‘employees’ – a term which covers all employees in any kind of role; or
- ‘workmen’ (as defined in the Industrial Disputes Act, 1947) – that is, employees whose primary role is not supervisory, managerial or administrative.

In addition, certain state laws may exclude a limited percentage of senior management employees from their scope of application.

Misclassification

Are there specific rules regarding employee/contractor classification?

Indian law regulates and in some cases prohibits the use of contract workers. To engage contract workers, the contractor must hold a licence and the employer must be registered as a ‘principal employer’.

Contracts

Must an employment contract be in writing?

Except in states which require an appointment order, Indian law does not explicitly require that an employment contract be in writing, although this is the typical practice followed by most employers.

Are any terms implied into employment contracts?

Certain legal terms are implied in the employment contract. A duty of care, a right to privacy and a duty to maintain confidentiality are implied in the employment contract.

Are mandatory arbitration/dispute resolution agreements enforceable?

Yes.

How can employers make changes to existing employment agreements?

Under Indian contract law, a contract requires the consent of both parties. Thus, the employer cannot unilaterally make changes to the employment agreement. Typically, compensation terms are set out in an annex to the agreement, which should provide that these will be subject to change from time to time. Standard terms of employment – such as working hours, vacation, benefits, security procedures and disciplinary procedures – are normally set out in the employment terms of service, rather than in the employment contract. The employment contract should state that these terms of service apply to the employee and will be subject to change from time to time.

An employer cannot change specified service conditions (eg, compensation, grade classification and customary concessions) for ‘workmen’ (as defined in the Industrial Disputes Act, 1947) without providing 21 days’ prior statutory notice and notice to the labour authorities. This should be considered when implementing changes to an employment agreement.

Foreign workers

Is a distinction drawn between local and foreign workers?

A significant difference between local and foreign employees is evident in the law on provident funds, which is a type of pension. The threshold to qualify, the manner of deduction and the benefits are different for foreign employee, and differ further depending on whether the country of origin has a social service agreement with India. There are no other substantive distinctions between local and foreign employees.

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