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Analysing developments impacting business

LOCALISM IN PRIVATE SECTOR EMPLOYMENT: LEGISLATIVE ASSEMBLY PASSES HARYANA STATE EMPLOYMENT OF LOCAL CANDIDATES BILL, 2020

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The year 2020 has given many jolts to businesses. As companies across sectors continue to grapple with the ongoing COVID-19 pandemic, those located in Haryana may now have to gear up for localism-driven recruitment as envisaged under the Haryana State Employment of Local Candidates Bill, 2020 (Bill). The Bill, when implemented, would reserve 75% of the jobs in specified private sector posts for local candidates. This update attempts to bring out the salient features of the Bill and briefly critiques the same from legal and practical standpoints.

Important Provisions of the Bill

1. Duration of operation of the Bill: Unlike the ordinance which preceded the Bill and did not carry an expiry date for operation of the law when implemented, the Bill provides that it shall cease to have effect on the expiry of 10 years from the date of its commencement (which date will be notified by the state government in its Official Gazette).
2. Application of the Bill: The Bill applies to all companies, societies, trusts, limited liability partnerships, partnership firms and persons employing 10 or more persons (Covered Employers). The Central Government, the state government and the organisations owned by the Central / state government are excluded from the purview of the Bill.
3. Registration of employees: The Bill mandates the Covered Employers to register on the government's designated portal, such employees in their establishment who earn gross 'salary or wages' up to INR 50,000 per month. The timeline provided for this registration process is 3 months from the commencement of the statute. The term 'salary or wages' has not been defined in the Bill.
4. Recruitment of local candidates: The Covered Employers are required to reserve 75% of the posts - wherein the monthly wages are not more than INR 50,000 - for persons domiciled in the state of Haryana. In the event a Covered Employer wishes to recruit from outside the state on the ground that there is a dearth of local candidates who meet the requisite skill, qualifications or proficiency, it would be required to apply to the Designated Officer appointed under the Bill. Before deciding on the application, the Designated Officer is required to assess whether the Covered Employer made attempts to recruit local candidates of the desired skill, qualifications or proficiency. The Designated Officer can not only

accept or reject the application, but also direct the Covered Employer to train local candidates so that they meet the requirements.

5. Reporting requirements: The Bill requires Covered Employers to furnish quarterly reports regarding the local candidates recruited by them in the manner prescribed by the state government in its rules.
6. Penalties for contravention: Non-compliance of the requirement of registration of employees as mentioned above may lead to imposition of a fine within the range of INR 25,000 - INR 1,00,000. Likewise, failure to fill in 75% of the relevant posts for local candidates in the manner set out in the Bill may attract fine within the range of INR 50,000 - INR 2,00,000. Notably, if an offence has been committed by a company, every director, manager, secretary or person concerned with the management of the company would be deemed guilty of the offence, unless he / she is able to prove that the offence in question was committed without his / her knowledge or consent.

Comments

Once in effect, the Bill may have significant ramifications in terms of the ease of doing business. India has been working towards improving its ease of business position on the global pedestal. Haryana as a state, and Gurugram in particular, is one of the biggest hubs for multinational companies in India, including the IT/ITeS sector. Often, the success of these sectors is inversely proportional to the extent of government interference in business operations. If an entity is mandated to justify its position and claim exemption from the government every time it intends to hire from outside the state in excess of the 25% window, the business environment may not remain conducive, ultimately impacting investments in the region. The private sector may then be constrained to look for alternative locations to carry on operations. A similar sentiment is [echoed](#) by industry bodies as well.

In addition to the above, the ongoing COVID-19 pandemic cannot be lost sight of. The outbreak of the pandemic has adversely impacted several companies in terms of their financial position, and the Bill is likely to significantly increase the costs of businesses on several fronts, including training of local candidates and displacement of the present non-local workforce.

Existing laws such as the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959, if properly implemented, can generate employment opportunities. The employment exchanges set up under the statute are aimed at creating a platform between persons who seek to engage employees and persons who seek employment. The private businesses (with employees above specified thresholds) are already mandated to notify vacancies to the said employment exchanges by filing Form ER-I. The state government can work towards improving the utilization and performance of these employment exchanges. As per an article published in [The Hindu](#), Karnataka was successful in its attempt to improve employability of locals when it converted some of its employment exchanges into institutions with private partnership wherein job seekers were provided counselling and training to be able to secure employment. As per another [report](#), the employment exchanges in Gujarat have been able to achieve several placements, although there is scope for improvement.

Aside from the above, the provisions of the Bill pose certain issues and challenges. For instance, the Bill does not limit the reservation in terms of the nature of job and applies across all kinds of jobs irrespective of the degree of skill, complexity, dexterity, and experience that a particular kind of job would entail. Perhaps, the Bill could have limited the reservation to the shop floor level of workers who are relatively easier to identify and engage as compared to employees at the higher rungs of the establishment (such as managerial employees) who possess specialised knowledge, skill set and experience.

Further, the Bill provides for immediate implementation of the requirement of reserving 75% of certain posts for local candidates. There is no window in terms of the time period within which an entity can transition from NIL to 75% reservation. This will create several practical challenges including treatment of the non-local workforce who are presently employed in private sector entities.

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