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Analysing developments impacting business

GOVERNOR GIVES ASSENT TO HARYANA STATE EMPLOYMENT OF LOCAL CANDIDATES BILL, 2020

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In what may not please many businesses, the Governor of Haryana granted his assent to the Haryana State Employment of Local Candidates Bill, 2020 (Bill) on 26 February 2021. The Bill, which reserves 75% of the jobs in specified private sector posts for local candidates, was [published](#) in the Official Gazette for general information on 2 March 2021 and will take effect on such date as may be notified by the state government. Interestingly, the Deputy Chief Minister of Haryana has, on his official Twitter [handle](#), stated that the Bill has been brought into effect, although there does not appear to be any official notification indicating the same.

As the Bill inches closer towards implementation, we examine important provisions thereof and discuss the way forward.

Important Provisions of the Bill

- Duration of operation of the Bill: The Bill provides that it shall cease to have effect on the expiry of 10 years from the date of its commencement.
- 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.
- Registration of employees: The Bill mandates 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.
- Recruitment of local candidates: 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.

- Reporting requirements: The Bill requires Covered Employers to furnish quarterly reports regarding local candidates recruited by them in the manner prescribed by the state government in its rules.
- Penalties for contravention: Non-compliance with 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 fines in 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. 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.

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.

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. Further, there is no express 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.

Way forward

Certain [news reports](#) have indicated that few local industry bodies reached out to the Punjab and Haryana High Court (High Court) challenging the vires of the proposed law. However, the High Court did not admit the petition on the ground that the Bill is yet to be brought into effect by way of a notification in the Official Gazette.

Irrespective of whether the Bill is subjected to constitutional scrutiny, in our understanding, the requirements thereunder may be construed to become applicable on a going forward basis, as and when there are vacant posts in an organisation. In other words, the authorities may not compel an employer to terminate the services of its existing non-local workforce so as to meet the 75% reservation requirement. Further, the Bill provides that no order or penalty thereunder shall be passed against the

employer unless an opportunity of being heard is duly provided. This provision may act as a safeguard against immediate prosecution especially in a scenario where the non-local workforce has been employed by the organisation prior to the commencement of the statute.

- Anshul Prakash (Partner), Abhinav Rastogi (Principal Associate) and Deeksha Malik (Associate)

For any queries please contact: editors@khaitanco.com

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Mumbai

One Indiabulls Centre, 13th Floor
Tower 1 841, Senapati Bapat Marg
Mumbai 400 013, India

T: +91 22 6636 5000
E: mumbai@khaitanco.com

New Delhi

Ashoka Estate, 12th Floor
24 Barakhamba Road
New Delhi 110 001, India

T: +91 11 4151 5454
E: delhi@khaitanco.com

Bengaluru

Simal, 2nd Floor
7/1, Ulsoor Road
Bengaluru 560 042, India

T: +91 80 4339 7000
E: bengaluru@khaitanco.com

Kolkata

Emerald House
1 B Old Post Office Street
Kolkata 700 001, India

T: +91 33 2248 7000
E: kolkata@khaitanco.com