

# Terms of Employment Q&A: India

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India-specific information concerning the key legal and commercial issues to be considered when drafting terms of employment for use internationally.

This Q&A provides country-specific commentary on *Practice note, Terms of employment: International*.

See also *Standard document, Terms of employment: International*, with country specific drafting notes.

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## Regulation of the employment relationship

1. How is the employment relationship governed and regulated?

### Written employment terms

The relationship between an employer and employee in India can either be express or implied. However, the practice of executing employment contracts is widely followed by almost all businesses (whether engaged in manufacturing or non-manufacturing activity). To avoid any dispute between the employer and employee, it is recommended that parties have a written employment contract in place.

In a few states (including Karnataka and Delhi), employers are under an obligation to issue a written employment contract to employees employed in non-manufacturing enterprises.

However, the standard practice in India is to ensure that every employee signs a detailed employment contract. It is also common for employers to have an employees' handbook or manual containing other standard terms governing employment.

A written contract of employment may take several forms. The terms of employment could be set out in an appointment letter or an email to the employee. In each case, the signed copy by the employee should be retained by the employer.

Note that the Occupational Safety, Health and Working Conditions Code 2020 (OSH Code), which seeks to replace 13 extant labour laws but is yet to be brought into force, requires every employer to issue a letter of appointment to every employee in the manner prescribed by the "appropriate government", which would be the relevant state government in the case of most private sector establishments. While several state governments have not yet indicated

what the format of the appointment letter would be, one may, for reference purposes, refer to the draft rules framed by the central government under the OSH Code for establishments in respect of which it would be the "appropriate government". The draft rules provide that the letter of appointment shall contain particulars such as Aadhaar number (unique identity number issued to the residents of India), Universal Account Number (relevant for employees' provident fund account), Insurance Number (relevant for employees' state insurance fund account), category of skill, wages, avenue for achieving higher wages/higher position, nature of duties, and so on.

### **Are any express terms required to be included in the written terms by law**

Other than in a few states and certain specified industries, there is no statutory requirement at present to include any specific term. Some of the terms typically included in an employment contract are:

- Name and address of the employer and the employee.
- Job title or nature of the work (job description).
- Probation.
- Place of employment.
- Wages/salary.
- Date of commencement of employment.
- Period of notice.
- Restrictive covenants (non-solicitation, confidentiality obligation and so on).
- Leave entitlement.
- Conditions under which a transfer can take place.

### **Implied terms**

The Indian courts have taken the view that certain terms and conditions of service which are regulated by statute will constitute implied terms of a contract of employment. Therefore, provisions relating to payment of wages, bonus, gratuity payments on termination and contributions towards employees' provident fund and employees' state insurance can be considered to be implied terms of a contract of employment and need not be recorded in writing.

Most of the conditions of service covered under the Industrial Employment (Standing Orders) Act 1946 (IESO Act) (wherever applicable) are not required to be recorded in writing in the employment contract or letter, as they stem from statute and are not entirely the result of free consent of the parties. They would, therefore, constitute implied terms of employment. The IESO Act regulates the conditions of service/employment of "workmen" (that is, blue collar employees covered under the Industrial Disputes Act 1947 (IDA)) and covers matters such as working hours, holidays, leave, termination of employment, domestic enquiries (that is, internal enquiries conducted by an organisation into alleged misconduct) and so on. The IESO Act applies to certain specified industrial enterprises having 100 or more workmen.

### **Collective agreements**

The employment relationship is governed by an employment contract (individual or collective). In India, collective bargaining agreements are primarily the product of a charter of demands and several rounds of negotiations between a particular employer and the members of a trade union.

Collective bargaining agreements can only establish better employment conditions than those prescribed under various employment and labour law statutes. Collective bargaining agreements typically entail working conditions, remuneration (including bonus and yearly increments), leave entitlement and so on.

In a few states (such as Maharashtra), employers may be under an obligation to enter into collective bargaining agreements with the members of the trade union. The Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act 1971 (Maharashtra TU Act) provides that a union with a membership of at least 30% of the total number of employees employed in any undertaking may apply to an industrial court for recognition.

Once the trade union is recognised, refusal by an employer to bargain collectively in good faith is regarded as an unfair labour practice. Therefore, it is imperative for an employer of an undertaking to which the Maharashtra TU Act applies, to enter into a collective bargaining agreement where there is a recognised trade union which intends to enter into such an agreement with the employer.

2. What are the terms in the employment agreement called in your jurisdiction?

The terms in a contract of employment are typically called clauses. Broadly speaking, these clauses relate to term of appointment, job description, remuneration, termination, confidentiality, intellectual property, indemnification, notices, restrictive covenants, governing law and jurisdiction.

## Employment status

3. Does the law distinguish between different categories of worker? If so, what are the requirements to fall into each category, the material differences in entitlement to statutory employment rights and are there any maximum time periods for which each category of worker can be engaged?

## Categories of worker

An employee may be classified as a workman or a non-workman. An employee's entitlement to various benefits is contingent on their classification. An employee's classification is typically determined based on the nature of their work, their period of employment, the remuneration they receive and so on.

## Classification of employees under the Industrial Disputes Act 1947 (IDA)

The IDA deals with the investigation and settlement of industrial disputes raised by workmen. The term "workman" is defined in the IDA and typically includes any person who is employed to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work, for hire or reward, and excludes a person who:

- Is employed in managerial or administrative capacity (that is, having the power to take certain administrative decisions, such as sanctioning leave, awarding increment, taking or recommending disciplinary action or terminating or suspending a worker).
- Being employed in a supervisory capacity, with a salary exceeding INR10,000.

The Supreme Court in India has laid down various tests to determine whether a person falls within the definition of a workman. One relevant test is the "dominant nature" test. This test takes into account the actual work performed by an employee to determine that employee's status. In other words, an employee will be classified as a workman based on the nature of their job profile, and not their designation.

An employee is deemed to be employed in a supervisory role if people in the organisation report to them to perform various functions. A person employed in a managerial or administrative capacity has authority to take certain administrative decisions in an organisation, including the power to sanction leave, award increments, take or recommend disciplinary action and terminate or suspend a worker.

## Classification of employees under the IESO Act

The IESO Act (which applies to certain establishments with 100 or more workmen, and in some states, such as Karnataka, also to smaller establishments), classifies workmen into five categories based on the duration of their employment, as follows:

- **Permanent employee.** A permanent employee is a person who is not employed for a fixed term and who continues to be employed until the time of retirement, or termination of services in any other manner provided in the contract of employment.
- **Temporary employee.** A temporary employee is an employee who has been engaged for work which is of an essentially temporary nature and likely to be completed within a limited period.
- **Probationer.** A probationer is a worker who has been employed for a fixed term for the purpose of assessment, and whose continuation in the business is subject to a decision made by the employer or a person appointed by the employer based on that assessment.
- **Badli worker.** A *badli* worker is a worker who has been employed in place of another worker for the duration of their absence from work.
- **Fixed-term employee.** A fixed-term employee is an employee who has been engaged under a written contract of employment for a fixed period.

If an employer continues to employ temporary or *badli* workers (for a continuous period) with the object of depriving them of the statutory benefits available to a permanent employee, the courts may treat this as amounting to unfair labour practice and the workmen may claim regularisation. Such claims can be filed in the Labour Court under the IDA; in case of an adverse order a writ petition in the High Court or Supreme Court must be filed. If the court finds that the workmen are performing the same functions and responsibilities as permanent workmen, then it may regularise them, requiring that they be treated as permanent workmen.

A similar issue may arise in case of an employee engaged on a fixed-term contract basis if their contract is renewed continuously.

## Entitlement to statutory employment rights

Workmen are a protected class and an employer must comply with certain conditions before terminating them (other than on grounds of misconduct):

- Prescribed notice periods or salary in lieu of notice (see [Question 30](#)).
- Service of notice in a prescribed form and compensation payment in circumstances of retrenchment (see [Question 30](#)).
- Retrenched workmen who are citizens of India who offer themselves for re-employment must be given preference for re-employment over other persons.

Employees falling under certain salary brackets are given additional benefits under law. For example, bonuses are payable to certain employees (see [Question 17](#)).

Employees who are employed in non-manufacturing businesses are governed by the state-specific shops and establishment legislation (depending on the location of the business), which stipulates the terms and conditions of employment/service of employees (including termination of services). Most of the state-specific rules covering shops and business mandate employers to provide one month's written notice or salary in lieu of notice to terminate the services of an employee (provided the termination is not on account of misconduct).

Employees employed in a managerial and supervisory role are typically excluded from the purview of the provisions of some state-specific shops and establishment rules. These employees are governed by the terms and conditions of their respective employment contract.

## Contract labour arrangement

A contractor is not an employee of the principal employer, as no employer-employee relationship exists between them. In India, the judiciary has laid down various tests to distinguish an independent contractor from an employee. One of the most crucial tests is the "direction and control" test, which looks at the degree of direction and control exercised by the principal employer over the employee/independent contractor.

The Contract Labour (Regulation and Abolition) Act 1970 (CLRA) applies to contractors who employ or have employed, on any day in the preceding 12 months, 20 or more workmen (in some states, the threshold has been increased to 50) and undertakes to produce a given result for the establishment (other than mere supply of goods and articles for manufacture) through contract labour, or a person who supplies contract labour for any work of the establishment. The definition of "contractor" for the purposes of this Act includes a sub-contractor.

"Contract labour" refers to every workman employed in or in connection with the work of an enterprise by or through a contractor, with or without the knowledge of a principal employer. An employer-employee relationship exists between the contractor and the contract labour.

## Part-time workers

4. To what extent are part-time workers entitled to the same rights and benefits as full-time workers?

The Indian labour and employment laws do not make any distinction between the rights available to full-time workers and those available to part-time workers.

For the purpose of the IDA, the Supreme Court has taken the view that the definition of "workman" includes both part-time and full-time employees (*Division Manager, New India Assurance Company Limited v Sankaralingam* [AIR 2009 SC 309]).

Similarly, if a part-time worker completes the minimum period of continuous service required to receive benefits under certain legislation (for example, four years and 240 days under the Payment of Gratuity Act 1972), they will be entitled to those benefits notwithstanding the nature of their employment.

## Restrictions on managers and directors

5. Are there any restrictions on who can be a manager or company director in your jurisdiction?

### Conditions for appointment of a manager

In India, a manager is regarded as part of the key managerial personnel of a company. The term "manager" is defined under the Companies Act 2013 (Companies Act) to mean an individual who, subject to the supervision, control and direction of the board of directors of the company, has the management of the whole, or substantially the whole, of the affairs of a company. No company is permitted to appoint a person as a manager who:

- Is below the age of 21 years or has attained the age of 70 years (in the latter case, the company may appoint a person as manager if the appointment is made by a special resolution and the explanatory statement clarifies the reasons for the appointment).
- Is an undischarged insolvent or has at any time been adjudged as an insolvent.
- Has at any time suspended payment to their creditors or has made a composition with them.
- Has at any time been convicted by a court of an offence and sentenced for a period of more than six months.

(Section 196, Companies Act.)

## Conditions for appointment of a director

A person is not eligible for appointment as a director of a company if:

- They are of unsound mind and have been so declared by a competent court.
- They are an undischarged insolvent.
- They have applied to be adjudicated as an insolvent and their application is pending.
- They have been convicted by a court of any offence and sentenced to imprisonment for at least six months, and a period of five years has not elapsed from the expiry of the sentence (if the person has been sentenced to imprisonment of seven years or more, they will at no point be eligible to be appointed as a director).
- An order currently in force disqualifying them from appointment as a director has been passed by a court or tribunal.
- They have not paid any calls in respect of any shares of the company held by them, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call.
- They have been convicted of the offence of dealing with related party transactions at any time during the preceding five years.
- They have not been allotted a Director Identification Number.
- They hold directorship in more than 20 companies or ten public companies at the same time.

(Section 164, Companies Act.)

## Continuity of employment

6. Does your jurisdiction recognise the concept of continuity of employment (see [Standard document](#), [Terms of employment: International: clause 1.3](#))?

The Indian labour and employment laws recognise the concept of continuity of employment in a particular establishment for the purpose of entitlement to benefits under certain statutes. For example, entitlement to receive a gratuity amount after cessation of employment and obtaining the maximum annual leave entitlement (see [Question 19](#) and [Question 20](#)). Employment with previous employers is not taken into account in this calculation.

Where a transfer of business results in change of ownership or management of an undertaking (as defined in the IDA) and workmen are consequently transferred from one employer to another (which will not be the case on a share transfer or acquisition), every workman who has been in continuous service for not less than one year will be entitled to notice pay and retrenchment compensation as if they had been retrenched. However, this is not required where:

- The workmen are absorbed by the transferee company with continuity of service (or are not impacted as a result of share transfer).
- The terms and conditions of employment being offered by the new employer are no less favourable.
- The transferor, under the terms of the transfer, agrees to pay to the transferred employee, in the event of their retrenchment (termination), compensation on the basis that their service has been continuous and has not been interrupted by the transfer.

7. What statutory rights does an employee have on commencement of their employment? What employment rights does an employee acquire after a period of continuous employment?

## Statutory rights on commencement

Apart from basic entitlements to wages, leave and so on, there are certain other statutory benefits that are available to an employee on commencement of employment, subject to fulfilment of certain conditions. For example, membership of the Employees' Provident Funds Scheme 1952 (EPF Scheme) (Employees' Provident Funds and Miscellaneous Provisions Act 1952 (EPF Act)) (see [Question 18](#)).

Similarly, every employee whose wages do not exceed INR21,000 per month is entitled to be insured under the Employees' State Insurance Act 1948 (ESI Act). Their employer must make monthly contributions to the authorities appointed under the ESI Act. By virtue of a recent amendment with effect from 1 July 2019, the contribution rate has been reduced. Employees are now required to contribute 0.75% of their monthly wages, and employers must now contribute 3.25% of the wages. In the event of sickness, medical treatment, miscarriage, disablement or any other specified benefit, the insured employee or their dependants become entitled to receive benefits from the authorities.

## Statutory rights acquired

Several statutes entitle an employee to receive benefits only after completing a specified period of service in the organisation such as:

- Bonus payments (see [Question 17](#)).
- Gratuity payment after cessation of employment (see [Question 19](#)).
- Retrenchment compensation (see [Question 30](#)).

Also, women employees are entitled to receive maternity benefits (26 weeks in case of women who have fewer than two surviving children and 12 weeks in other cases) under the Maternity Benefit Act 1961 (MB Act), provided they have worked for the employer for a minimum of 80 days in the period of 12 months preceding the date of expected delivery.



## Permission to work

8. In your jurisdiction, is it permissible to make the employee's employment subject to the requirements set out in *Standard document, Terms of employment: International: clauses 1.5 and clause 1.6*?

### Maintaining permit / visa / pass

It is permissible for an employer to provide in the employment contract that an employee's employment is contingent on their having a valid employment visa. The Government of India has released detailed requirements as regards employment visas ([https://mha.gov.in/PDF\\_Other/AnnexIII\\_01022018.pdf](https://mha.gov.in/PDF_Other/AnnexIII_01022018.pdf)). These requirements stipulate the maximum duration for which a foreign national can work in India with an employment visa. Accordingly, a provision in the employment contract subjecting the employee's employment to this condition is reasonable.

### Maintaining the necessary qualifications

It is permissible for an employer to make continuation of an employee's employment subject to their possessing the requisite qualification, licence or clearance. These provisions are considered reasonable to ensure compliance with applicable laws. Any non-compliance with the requirements of law by the employee may entail not only imposition of prescribed sanctions by the relevant statutory or government authority on the employee, but may also entail legal and reputational risks for the employer.

9. In your jurisdiction, is it possible for employees to provide the warranty as set out in *Standard document, Terms of employment: International: clause 1.7* (that is, that they are not in breach of any other agreement, contract or arrangement that prevents them from lawfully fulfilling their employment obligations to the new employer)? If not, is there any other wording that would be used to give the same effect?

It is possible for an employer to obtain a warranty from an employee to the effect that the latter is not in breach of any other agreement or arrangement that prevents them from lawfully fulfilling their employment obligations to the new employer. Courts have held that stipulations in the employment contract which are reasonably necessary for the adequate protection of the interests of the employer are valid and enforceable.

Given that a former employer can initiate action against the new employer in the event of breach of confidentiality by the employee on the ground of alleged inducement by the new employer to disclose certain information, it is prudent that such a clause be inserted to protect the new employer in the event of any breach committed by an employee in relation to their prior engagements.

## Probationary periods

10. In your jurisdiction, are probationary periods recognised and what are the legal requirements in relation to them (see *Standard document, Terms of employment: International: clause 1.4* and *Practice note, Probationary period: International*)?

Probationary periods ranging from three to six months are typically included in employment contracts.

The law does not place any ceiling on the period of probation or any extension. The Supreme Court has observed that it is possible for the letter of appointment to confer the power on an employer to extend probation without there being a maximum period of probation (*Khazia Mohammed Muzammil v The State of Karnataka [(2010) 8 SCC 155]*). However, courts may intervene if the extension of the probationary period is motivated by extraneous considerations and has no factual basis.

Most state-specific shops and enterprises statutes provide for a minimum notice period on termination of service. Therefore, an employer should comply with the minimum statutory notice requirement, whether or not the employee is on probation.

## Job duties

11. Will the duties listed in *Standard document, Terms of employment: International: clause 2.2* be understood in your jurisdiction? Are there any other duties that would be standard practice to include within the agreement? Are any additional duties implied by national law?

An important stipulation in the contract of employment relates to the duties of an employee. Employees' duties would typically include:

- Performing the tasks and responsibilities assigned by the employer diligently.
- Maintaining discipline and punctuality.
- Maintaining ethical conduct in dealing with customers, dealers, vendors and staff.
- Complying with the employer's internal policies and procedures, including service rules and standing orders (if applicable).

The duties listed in *Standard document, Terms of employment: International: clause 2.2* are recognised in India and incorporated in employment contracts.

## Implied duties

While it is always advisable that the duties of an employee are adequately specified in their employment contract, some duties are regarded as implied terms in the contract of employment and need not be expressly provided. The judiciary has delved into this issue and observed that it is an implied term of every agreement that a party will act in conformity with the law. The Bombay High Court has observed that terms such as obedience, fidelity and confidentiality are implied terms of an employment contract (*Dattatraya Shankarrao Kharde v Executive Engineer, Chief Gate Erection Unit No. 2, Nagpur [1994 MhLJ 776]*).

## Working overseas

12. In your jurisdiction, is there a legal requirement for employers to provide certain information to employees who will be working overseas (see *Standard clause, Working overseas: International*)?

While Indian law does not require an employer to provide information pertaining to overseas assignments to the relevant employees, the standard practice is to have a relocation clause in an employment agreement or policy.

If the employee is seconded, the general practice is to enter into a secondment agreement between the parties (that is, the foreign entity, the Indian entity and the employee in the proposed arrangement) which would govern the terms of the secondment.

Please note that if an Indian employee continues to receive salary in their home country (India) and has been sent to countries with which India does not have a social security agreement, they may be required to contribute to both Indian and the host country's social security schemes.

## Relocation expenses

13. If an employer agrees to pay the employee's relocation expenses in accordance with *Standard clause, Relocation expenses: International*, what exemptions from tax, social security or other charges may be applicable under national law?

Any allowance specifically granted to an employee to meet expenses wholly, necessarily and exclusively incurred in the performance of duties, or any allowance related to the place of the employee's posting or residence, will not be

included in their total income for taxation purposes, to the extent that such expenses are actually incurred for that purpose (*section 10(14), Income Tax Act 1961* (applicable in India)).

In addition, under Indian employment laws, an employer is not required to contribute social security contributions (EPF and ESI) on relocation expenses, subject to the employee incurring the expenses on account of relocation.

Further, under section 10(14) of the Income Tax Act 1961, any allowance specifically granted to meet expenses wholly, necessarily and exclusively incurred in the performance of duties or any allowance related to the place of the employee's posting or residence will not be included in the total income for taxation purposes, to the extent to which the expenses are actually incurred for that purpose.

The provision for indemnification set out in *Standard clause, Relocation expenses: International: clause 1.2* is not typically provided in the contract of employment in India.

14. In your jurisdiction, is it permissible for the employee to have to repay relocation expenses paid to them, as set out in *Standard clause, Relocation expenses: International: clause 1.3*?

There is no legal embargo on the employer requiring the employees to repay the relocation expenses paid to them if they leave the organisation within a certain period. As a matter of practice, a clause can be included in an employment agreement providing that if an employee resigns before a specified period following their relocation they may be asked to reimburse the relocation amount to the employer as set out in *Standard clause, Relocation expenses: International: clause 1.3*. Such a clause is typically provided in an employment agreement of a senior level employee and not for workmen (blue collar employees).

## Salary and bonuses

15. Is it permissible in your jurisdiction for salary to be deducted as set out in *Standard document, Terms of employment: International: clause 4.3*?

Certain statutory deductions are made by employers from the salaries of employees. An employer must make deductions from its employees' salaries for contribution towards the employees' provident fund and the employees' state insurance (*EPF Act* and *ESI Act*).

The Payment of Wages Act 1936 (PoW Act) and some state-specific shops and establishments statutes list the kinds of deduction that can be made from an employee's salary. These include fines, deductions for absence from duty, deductions for recovery of advances or for adjustment of over-payments of wages, damage to or loss of goods

expressly entrusted to the employee, and deductions on account of providing amenities to an employee, such as house accommodation and so on. Deductions are generally permitted only up to 50% of the employee's wages/salary.

A deduction made by the employer in respect of sums due in respect of loans made to the employee, as suggested in *Standard document, Terms of employment: International: clause 4.3*, is expressly permitted under the PoW Act.

16. Is it common practice in your jurisdiction for performance and salary to be reviewed annually? Can the employer make any increase discretionary as set out in *Standard document, Terms of employment: International: clause 4.5*?

Employers typically conduct an annual review of the performance of their employees. Any increase in the basic salary of an employee is a matter of discretion at the hands of the management (as indicated in *Standard document, Terms of employment: International: clause 4.5*), provided the quantum of basic salary being paid to employees is in compliance with the applicable law (that is, the minimum wage rates prescribed by the appropriate government (federal or state) under the Minimum Wages Act 1948).

17. Is *Standard document, Terms of employment: International: clause 4.2* sufficient to ensure that a discretionary, non-contractual bonus is being offered to the employee? Are there restrictions or guidelines on what bonuses can be awarded?

*Standard document, Terms of employment: International: clause 4.2* provides that any bonus payment will be purely discretionary and will not form part of the contractual remuneration of employees. Where the employer is a factory (engaged in manufacturing activities) or an establishment employing 20 or more persons, every employee earning a monthly salary of up to INR21,000 must be paid a bonus at the prescribed rates (8.33% to 20%, depending on the allocable and allowable surplus), provided that the employee has worked in the establishment for at least 30 working days in that year.

*Standard document, Terms of employment: International: clause 4.2* should therefore be revised accordingly to ensure that the employer meets the statutory requirements regarding the payment of the minimum bonuses to eligible employees.

## Benefits

18. What provision for retirement is required to be made in your jurisdiction (see *Standard document, Terms of employment: International: clause 5.1*)?

The EPF Act provides a framework for ensuring financial security to employees on retirement or in other specified circumstances.

Within the framework of the EPF Act, the Government of India has stipulated:

- The EPF Scheme.
- The Employees' Pension Scheme 1995 (EPS).
- The Employees' Deposit-Linked Insurance Scheme 1976 (EDLI Scheme).

Employees must make contributions through their employer to the employees' provident fund.

Every employee employed in or in connection with the work of a factory or other enterprise employing 20 or more employees (other than excluded employees) must become a member of the EPF from the date of joining the factory or enterprise. Excluded employees are employees who are either earning more than INR15,000 per month or who have withdrawn the full amount of their accumulations in the EPF.

Presently under the EPF scheme, the employer and the eligible employees are required to contribute 12% each of the total pay, 8.33% of which is remitted to the pension fund constituted under the EPS. Total pay includes:

- Basic wages.
- Dearness allowance which is a cash payment paid to an employee on account of a rise in the cost of living.
- Retaining allowance which is an allowance payable to an employee during any period when their employer factory or establishment is not working.

The EPF Scheme sets the maximum wage ceiling on which contributions may be made at INR15,000 per month, although an eligible employee may choose to make an application to the relevant authority to contribute at a higher rate. If this is the case, the employer is not obliged to match the employee's contribution and can restrict the contribution to the statutory ceiling threshold (that is, INR15,000 per month).

The EDLI Scheme applies to the employees of all factories and other enterprises to which the EPF Act applies, unless an exemption is granted under the EPF Act. On the death of an employee while in service, a lump sum insurance amount is payable to the nominee or the family members of the deceased employee. Every employer is currently required to contribute 0.5% of the total pay calculated on a maximum wage ceiling of INR15,000 per month towards the EDLI Scheme. The EDLI contribution is remitted from the employer's 12% contribution to the EPF Scheme and not separately.

19. Are the benefits set out in *Standard document, Terms of employment: International: clause 5.3* recognised in your jurisdiction? Does the employer lawfully have the ability to delay participation in the benefits schemes for a period of time after commencement?

Certain employee benefit schemes, such as life insurance schemes, health insurance schemes and personal accident insurance schemes are typically provided to employees under their contractual arrangements with their employer, or under the employee policies formulated by the employer. However, there is no legal requirement to implement these schemes, and the employer can delay participation therein for a period of time after commencement.

In certain states, such as Andhra Pradesh, the employer must obtain insurance from the Life Insurance Corporation of India or any other prescribed insurer in relation to its liability for payment of gratuities under the Gratuity Act. Every employee, including those on probation, will be entitled to the benefits of the insurance policy, although the employee would be paid the amount of the gratuity only after completing four years and 240 days of continuous service in the establishment. Note that the gratuity is a terminal benefit earned by an employee for the services rendered by them and is paid upon retirement or termination of service. The right to receive gratuity and the liability to pay gratuity is a contingent right and liability.

## Annual leave

20. Is there a minimum paid annual leave entitlement for employees in your jurisdiction (see *Practice note, Annual leave: International*)?

## Minimum holiday entitlement

The working conditions of employees, including their leave entitlements, are mostly regulated depending on the nature of the entity by which they are employed.

If the entity is a factory (engaged in manufacturing activity) covered under the Factories Act 1948 (Factories Act), employees who have worked in the factory for 240 days or more in a calendar year must be allowed, in the subsequent calendar year, annual leave with wages at the rate of one day for every 20 days of work performed (in case of an adult). This leave is additional to the public holidays to which workers are entitled.

If the entity is a shop or a commercial establishment, the number of days of annual leave to which employees are entitled would depend on the state-specific shops and establishments legislation (depending on the location of the establishment). The minimum threshold usually ranges from 12 to 20 days. This leave is prorated for the first year of employment. In several states, employees are also entitled to casual leave (that is, leave to attend to personal needs) and sick leave.

At the time of separation, an employee is also entitled to leave encashment for accrued but unused privilege leave, up to the maximum accrual limits set out under the Factories Act or the state-specific shops and establishment statutes (unless the employer contractually provides more beneficial terms).

Privilege leave, also known as earned leave, is earned by an employee in a year in return for rendering services for a certain period of time in the preceding year. These leaves can be accumulated up to a certain number and can also be cashed out in accordance with the applicable law.

## Public holidays

The number of public holidays available in any given year is different in each state. However, the mandatory national holidays to which employees throughout India are entitled to are 26 January (Republic Day), 15 August (Independence Day) and 2 October (Gandhi Jayanti), as well as any other public holidays as notified by the central/state government from time to time. In some states, the state-specific shops and establishments statute prescribes the public holidays, while in other states the obligation stems from the national and festival holidays legislation.

21. In your jurisdiction, is it permissible for the employer to restrict the employee from carrying over untaken annual leave into the next holiday year (see *Standard document, Terms of employment: International: clause 7.4*)? Can employers take any steps to encourage employees to take their annual leave in the current holiday year?

Under the state-specific shops and establishments legislation, employees are permitted to accumulate their earned leave up to a maximum prescribed limit. For example, in the states of Maharashtra and Tamil Nadu, leave accumulation is permitted up to a maximum of 45 days. The range of prescribed limits on leave accumulation range from 30 to 60 days across various states in India.

The Factories Act also permits accumulation and carry forward of leave up to a maximum limit of 30 days.

An employer may only restrict employees from carrying over untaken leave to the extent permitted by law. *Standard document, Terms of employment: International: clause 7.4* may therefore require revisions.

An employer may impose a soft obligation on employees to encourage them to take leave in the year it is accrued and offer incentives for doing so, but no action can be taken against an employee should they choose to accumulate leave up to the statutorily permitted limit.

22. In your jurisdiction, is it permissible for the employer not to pay the employee for untaken annual leave? Would the employer have to pay the employee in the circumstances set out in *Standard document, Terms of employment: International: clause 7.5*?



Under the Factories Act, employees are entitled to wages in lieu of the quantum of leave to which they were entitled immediately before their discharge, dismissal, superannuation, death or termination of employment. The payment must be made before the expiry of the second working day from the occurrence of the relevant event, unless the cessation of employment is on account of the worker's death or superannuation, in which case the payment must be made before the expiry of two months from the date of the superannuation or death.

Similarly, the shops and establishments statutes of some states, such as Delhi and West Bengal, expressly provide that any employee whose services are terminated by their employer is entitled to wages for the privilege/earned leave due to them at the time of termination.

Employers typically incorporate provisions relating to leave encashment in the employment contract or the employee handbook. The amount of leave encashment is typically calculated on basic wages excluding components such as bonus, overtime, gratuity and other social security contributions to which the employee is entitled.

23. On termination, is it permissible in your jurisdiction for the employer to deduct any excess holiday pay as set out in *Standard document, Terms of employment: International: clause 7.6*?

The PoW Act expressly allows an employer to deduct an employee's salary on account of their absence from duty during the term of employment (subject to certain conditions). However, there is no specific provision regarding deductions from an employee's full and final settlement amount (at the time of termination). The employer may contractually provide for deducting excess leave pay from the employee's full and final settlement amount at the time of cessation of their employment as set out in *Standard document, Terms of employment: International: clause 7.6*.

24. Is any additional payment required to be made to employees in respect of their salary and annual leave?

No.

## Restrictions on working time

25. What restrictions on working hours exist in your jurisdiction (see *Practice note, Working hours: International*)? Can the employer and employee agree to exceed the legal limits?

## Full-time working hours

The Factories Act provides:

- A worker can be employed for a maximum of nine working hours in a day.
- No worker may be made to work for more than five hours without a break of at least 30 minutes. The total period, including working hours and breaks, must not exceed 10.5 hours in a day.
- Workers must not be made to work for more than 48 hours in a week, but they may do so voluntarily, subject to payment of overtime pay by their employer.
- Restrictions on employment of women to work between 7:00 pm and 6:00 am. Some states, such as Maharashtra, allow women to be employed between 7:00 pm and 6:00 am subject to adequate safety and security measures being provided by the employer. The High Court of Madras has found the restriction of women's working hours to be discriminatory and against the fundamental right of equality enshrined under the Constitution of India (*Smt. R. Vasantha v. Union of India and Ors, 2001 (2) L.L.N. 354*). However, the Kerala High Court has upheld the constitutionality of that provision (*Leela vs State of Kerala (2004 (102) FLR 207*). The provision is however valid in most of the states in India and restricts employment of female employees during specified hours.
- Note that the OSH Code provides that there would be no restriction as regards employment of women in night shifts so long as the women have provided their consent to the engagement and there are arrangements made for their safety and security in accordance with the rules of the appropriate government (which are yet to be finalised). As explained previously, the OSH Code is yet to be brought into force.
- Restrictions on double employment of an employee. A worker may not be allowed to work in a factory if they have already been working in any other factory on the same day (except under condition prescribed by the state government).

The state-specific shops and establishments statutes (covering employees engaged in non-manufacturing activities) typically also:

- Prescribe maximum working hours. For example, under the Delhi Shops and Establishments Act 1954 (Delhi S&E Act), every employee is entitled to a rest/meal break of at least 30 minutes spread over a period of 10.5 hours. No employee can be allowed or required to work for a continuous period exceeding five hours (unless an interval for rest is provided).
- Restrict an employer from employing women employees beyond the prescribed hours at night, unless an employer obtains specific permission from the relevant authorities and agrees to comply with certain specific conditions, including providing adequate measures for women's safety and security.

Under the Delhi S&E Act, the aggregate hours worked by a part-time worker employed in more than one establishment should not exceed the maximum number of hours stipulated under the Delhi S&E Act (that is, nine hours on any day or 48 hours in any week).

## Part-time working hours

The laws in India do not generally distinguish between a part-time employee and a full-time employee. The Factories Act restricts double employment of an employee, stating that a worker may not be allowed to work in a factory if they have already been working in any other factory on the same day (except under condition prescribed by the state government).

The Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Rules 2018 provide that a part-time employee must not be employed for more than five hours in a day and must not be eligible for overtime.

Similarly, under the Delhi S&E Act, the aggregate hours worked by a part-time worker employed in more than one establishment should not exceed the maximum number of hours stipulated under the Delhi S&E Act (that is, nine hours on any day or 48 hours in any week).

26. In what circumstances (if any) is mandatory overtime payable to employees in your jurisdiction?  
Can time off in lieu be given instead of overtime pay?

The Factories Act provides that where a worker works in a factory for more than nine hours in any day, or 48 hours in any week, they are entitled to wages at twice their ordinary rate for the overtime hours. A worker may not work more than 50 overtime hours in a quarter.

It may be noted that under the Factories Act, the provisions relating to "compensatory off" (that is, time off to compensate for an employee being made to work on their usual day off) are different from provisions relating to overtime as the statute allows for a compensatory off when a worker is deprived of any of the weekly holidays.

Similar provisions are made under certain state-specific shops and establishments statutes.

For example, the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act 2017 provides that where a worker is required to work beyond nine hours in a day or 48 hours in a week, they are entitled to wages at twice their ordinary rate for the overtime hours. The total number of overtime hours must not exceed 125 hours in a three month period. The provisions relating to overtime are typically not applicable to senior-level employees.

## Illness and injury of employees

27. What rights do employees have to time off in the case of illness or injury (see *Practice note, Sick leave entitlements: International*)? Are they entitled to be paid during this time off?

## Entitlement to time off

Most of the state-specific shops and establishments statutes provide an entitlement to sick leave with wages. For example, under the Karnataka Shops and Commercial Establishments Act 1961 every employee is entitled, during the first 12 months of continuous service and during every subsequent 12 months of such service, to leave with wages for a period not exceeding 12 days on the ground of any sickness or accident. The entitlement in other states ranges from seven to 15 days.

Sick leave generally cannot be carried forward to the next year.

Few states allow employers to demand a medical certificate if an employee has taken sick leave beyond a particular period.

## Entitlement to paid time off

Sick leave under the state-specific shops and establishments statutes is paid.

## Recovery of sick pay from the state

Sick pay cannot be recovered from the state.

The Employees Compensation Act 1923, which applies to certain specified industrial enterprises such as factories, mines, mechanically propelled vehicles factories, construction work and so on, provides for payment of compensation by the employer to employees and their dependents in case of injury and accident (including certain occupational diseases) arising out of and in the course of their employment and resulting in disability or death. The amount of compensation to be paid is primarily contingent on two factors: the nature of the injury, and the wage and age of the employee.

28. Under the laws of your jurisdiction, is the employer required to continue making payments to the employee's pension or retirement scheme during any period of incapacity (see *Standard document, Terms of employment: International: clause 8.4*)?

The employer must make contributions to the employees' provident fund even during periods of incapacity of their employees, provided that the employer is paying salary/wages to the employee during such periods.

29. In your jurisdiction, is the employer able to require the employee to undergo a medical examination as set out in *Standard document, Terms of employment: International: clause 8.5*?

The employer may contractually require the employee to undergo a medical examination, as long as the medical examination is conducted in accordance with the applicable laws. *Standard document, Terms of employment: International: clause 8.5* should therefore be amended to reflect this requirement.

Where the employer has a factory, the medical examination would be prescribed under the relevant state factories rules. For example, under the Maharashtra Factories Rules 1963, all workers in a factory must be medically examined once a year by a certifying surgeon appointed or recognised by the government. In other states such as Tamil Nadu, Delhi, Karnataka and Gujarat, the medical examination is required where the workers are employed in a hazardous process (as defined under the relevant factories rules applicable in the respective states).

According to a recently introduced statute (*Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Protection and Control) Act 2017*), no HIV test can be conducted on a person without their informed consent. It also prohibits HIV testing as a pre-requisite for obtaining employment.

## Termination of employment

30. In your jurisdiction, what needs to be included in the employment terms regarding termination (see *Standard document, Terms of employment: International: clause 9*)?

## Notice given by employers

Certain labour laws prescribe a minimum notice period in the event of termination.

The model standing orders under the IESO Act provide that notice in writing must be given to terminate the employment of a permanent workman. The IESO Act lays down different compulsory notice periods for termination of services of a workman, based on their category. No notice is required to terminate a temporary workman or fixed-term employee, where the employment is being terminated as a result of non-renewal of the contract.

The prescribed notice period is one month's notice for monthly-rated workmen, and two weeks' notice for the other workmen. The model standing orders become applicable where the employer of an industrial establishment does not have its own standing orders certified by the competent local authority.

The IDA also mandates an employer to provide at least one month's notice before terminating an employee falling in the workman category (unless the parties have contractually agreed to a longer notice). However, where termination is being effectuated by an industrial establishment (factories, mines and plantations), employing at least 100/300 workmen (the threshold number depending on the state where the establishment is situated), an employer is

mandated to provide the concerned workman with three months' notice or salary in lieu thereof, prior to terminating their services.

Most state-specific shops and establishments statutes provide for a notice period. For example, under the Delhi Shops and Establishments Act 1954, an employer must provide one month's notice to an employee who has been in its continuous employment for not less than three months (unless the contract stipulates a longer notice period).

## Notice given by employees

The notice period requirement is the same for employers and employees.

## Procedural requirements for dismissal

If an employer wishes to terminate an employee on account of misconduct, it must adhere to the principles of natural justice and provide a reasonable opportunity to the employee to put forward their case.

If the services of a workman are retrenched (that is, the termination is made on grounds other than misconduct), the employer must serve notice in a prescribed form to the appropriate government agency (depending on the location of the establishment) or such authority as specified by notification in the Official Gazette.

Retrenchment compensation must be paid to every workman (who has completed continuous service of not less than one year), which shall be equal to 15 days' average pay for each completed year of continuous service or any part thereof in excess of six months. For the purpose of calculating the retrenchment compensation, "wages" includes all allowances, value of house accommodation, commission, travelling concession and so on, but excludes any bonus, contribution to pension fund and provident fund, and any gratuity payment.

31. In your jurisdiction is the employer able to make a payment in lieu of notice on termination where it is clearly stated in the agreement as set out in *Standard document, Terms of employment: International: clause 9.2*?

An employer may dispense with the notice period by making payment of wages in lieu of notice. The pay to be given to the employee in lieu of the notice period will not be equal to the basic wages alone, as is provided for in *Standard document, Terms of employment: International: clause 9.2*. Instead, it would typically be equal to all remuneration payable to the employee, less the allowances expressly excluded from the definition of wages under the relevant statute (that is, the IESO Act or the state-specific shops and establishments statute).

32. In what circumstances can the employer terminate the employee's employment immediately without notice in your jurisdiction?

Yes, an employer can terminate the services of an employee without notice in the event of gross misconduct. Two factors are important here:

- It is imperative that the employee is given an opportunity to respond to the allegations in writing.
- The employer must clearly set out the circumstances which constitute misconduct. For an employer which is an industrial business covered under the IESO Act, the circumstances are set out under the model standing orders. These include wilful disobedience to any lawful and reasonable order of a superior, habitual absence/late attendance/negligence/breach of law, sexual harassment and so on. However, the circumstances stipulated under IESO are not exhaustive and an employer can include various others which would constitute misconduct under its policies.

## Policies and procedures

33. Is it a legal requirement in your jurisdiction for employers to follow a disciplinary procedure? Should the employment terms set out the procedure or can reference be made to the employer's policy as set out in *Standard document, Terms of employment: International: clause 12*?

In cases of misconduct, the employer must hold a disciplinary inquiry and follow the principles of natural justice before inflicting any punishment (including termination). The requirement comes from a number of judicial precedents on the issue of wrongful termination of the services of an employee.

For industrial establishments covered by the IESO Act, the model standing orders prescribe the procedure for conducting a disciplinary inquiry. Establishments not covered by the IESO typically follow the disciplinary mechanism set out in their company policies or service rules.

The employment terms need not specify the disciplinary procedure, since the principles of natural justice would automatically apply to any disciplinary inquiry. However, it is advisable to set out a disciplinary mechanism in the company policies and to make reference to them in the employment contract.

## Data protection

34. Are there any requirements protecting employee privacy or personal data that need to be addressed in the employment agreement? If so, what are they? Is *Standard document, Terms of employment: International: clause 11.1* sufficient to address the legal requirements?

The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules 2011 (SPDI Rules) provide safeguards to employees regarding access to or use of their sensitive personal data by their employer.

"Sensitive personal data or information" is defined to mean information relating to an individual's passwords, physical, physiological and mental health conditions, bank account details, medical records, biometric information and so on.

Before a body corporate collects sensitive personal data or information relating to a person, it must obtain their consent in writing through a letter, fax or email clearly indicating the purpose of collecting the information (*SPDI Rules*). The body corporate must also ensure that the person has reasonable knowledge that the information is being collected and of who the intended recipients of the information are.

Further, the consent of the provider of information is required before disclosing it to third parties, unless the disclosure has been agreed to in the contract between the body corporate to whom the information is provided and the provider of information, or where the disclosure is necessary for compliance with a legal obligation (*SPDI Rules*). In any case, the third party is forbidden from further disclosure of the information.

*Standard document, Terms of employment: International: clause 11.1* is sufficient to address these legal requirements.

35. In your jurisdiction, are employers able to monitor and record the electronic communication equipment used by employees as set out in *Standard document, Terms of employment: International: clause 11.2*?

The position regarding monitoring and recording of employer-owned electronic communication equipment used by employees is not completely clear. It is recommended that the employee's consent to the monitoring be obtained at the time of their appointment, as is done in the *Standard document, Terms of employment: International: clause 11.2*. In the interests of further caution, it is advisable that the employer establishes a policy setting out their right to carry out the monitoring and detailing the process it will follow in doing so.

## Anti-bribery and corruption



36. What national and international anti-bribery and corruption legislation may apply to the employment relationship in your jurisdiction (see *Standard Clause, Anti-bribery and corruption (employment): International*)?

India is a signatory to the United Nations Convention Against Corruption, which it ratified on 9 May 2011.

The Prevention of Corruption Act 1988 (POCA) is the main legislation relating to corruption and matters connected to it. It extends to the whole of India and applies to all Indian citizens irrespective of their geographical location. The POCA stipulates punishments for public servants who obtain or attempt to obtain an undue advantage with an intention to perform a public duty improperly or dishonestly, or to forbear to perform such duty.

Through the Prevention of Corruption (Amendment) Act 2018, Parliament has introduced significant changes to the POCA. By virtue of the amendments, the POCA now makes giving an undue advantage to a public servant a punishable offence. If a commercial organisation commits any offence under the POCA with the intention of obtaining or retaining business, or of obtaining or retaining an advantage in the conduct of its business, this will be punishable with a fine. The term "commercial organisation" is defined to mean not just a company or partnership incorporated in India and carrying on business in India or outside India, but also a body or partnership incorporated or formed outside India but carrying on business in India.

## Intellectual property (IP)

37. If an employee creates IP rights in the course of their employment, in the absence of a provision in the employment agreement, who owns those IP rights?

The employer will be the first owner of the copyright in work made in the course of its author's employment under a contract (*section 17, Copyright Act 1957*).

## Restraint of trade

38. Is it possible to restrict an employee's activities during employment (as set out in *Standard document, Terms of employment: International: clause 2(g)* and *clause 2(h)*) and after termination? If so, in what circumstances can this be done?

## Restriction of activities

It is permissible for an employer to restrict an employee's activities during the term of their employment for the purpose of ensuring due performance of their assigned duties and responsibilities.

## Post-employment restrictive covenants

Every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, will, to that extent, be void (*section 27, Indian Contract Act 1872*). Over the past several years, courts have treated these covenants unfavourably. The Bombay High Court recently observed that a negative covenant is considered an inequitable, onerous and oppressive term and, therefore, that an employee seeking better employment opportunities would not be restrained on the basis that they have confidential information which, if disclosed, may adversely affect the interests of the employer (*Tapas Kanti Mandal v Cosmo Films Limited [2019 (1) MhLJ 386]*). Accordingly, no payment is due to the former employee in relation to a post-employment restrictive covenant.

It has also been held that an employer can include a non-solicitation clause in its contracts of employment. Such a clause would enable it to seek remedies in the form of damages and injunctions against an outgoing employee who solicits business, clients, vendors or employees of the employer. Subject to commercial needs, these conditions are typically imposed for a period ranging between one and two years following termination.

## Variation of contract

39. In your jurisdiction, is an employer able to change the non-essential terms of employment by giving at least 30 days' notice as set out in *Standard document, Terms of employment: International: clause 15.2*?

Yes, it is permissible for an employer to change the non-essential terms of the contract of employment by giving 30 days' notice to the employee about the proposed change as set out in *Standard document, Terms of employment: International: clause 15.2*.

## Survival of obligations

40. Does *Standard document, Terms of employment: International: clause 16* have any effect in your jurisdiction (that is, the survival of obligations to enable the provision of the confidentiality clause (see *Standard document, Terms of employment: International: clause 10*) and any restrictive covenants that may be included in the agreement to continue after termination of the agreement)?

Employment contracts in India can have a survival clause (such as *Standard document, Terms of employment: International: clause 16*) to ensure that certain provisions (such as one relating to confidentiality) continue to operate post the operation of the employment contract.

It may be noted that courts in India have held that while an employer cannot protect itself from competition by an ex-employee or their new employer, it can protect its trade secrets or confidential information (see *Superintendence Company of India (P) Limited v Krishan Murgai [AIR 1980 SC 1717]*).

## Governing law and jurisdiction

41. Does the law in your jurisdiction dictate which governing law and jurisdiction will apply to the employment agreement (see *Standard document, Terms of employment: International: clause 18*)?

Indian law does not specify the governing law applicable to an employment agreement. However, as per the principles of private international law, the governing law is generally the place of employment of the concerned person.

The Code of Civil Procedure 1908 (CPC) lays down the law on the jurisdiction of courts in India. A suit related to an employment agreement must be instituted in a court within the local limits of whose jurisdiction either:

- The defendant actually and voluntarily resides, or carries on business, or personally works for gain.
- The cause of action, wholly or in part, arises.

(Section 20, CPC.)

The courts have held that while the parties can contractually agree to confer exclusive jurisdiction on one of the courts which have jurisdiction (under the CPC), they cannot confer such jurisdiction where none exists. However, this rule does not apply when the parties agree to submit to the exclusive or non-exclusive jurisdiction of a foreign court.

## Scope of employment regulation

42. Do the main laws that regulate the employment relationship apply to:

- Foreign nationals working in your jurisdiction?
- Nationals of your jurisdiction working abroad?

## Laws applicable to foreign nationals

All labour laws such as the EPF Act, the ESI Act or the IDA will apply to foreign nationals employed in India. However, where the foreign national belongs, either as a citizen or as a resident, to a country with which India has entered into a social security agreement, and the foreign national is contributing to the social security programme of such country, the Indian provident fund legislation will not apply (*EPF Act*, read with *EPF Scheme*).

## Laws applicable to nationals working abroad

The Indian labour laws do not apply to an Indian national working in a foreign entity abroad.

## Language

43. Does the agreement need to be in a language other than English to be valid and enforceable (see *Standard document, Terms of employment: International: clause 20*)?

The parties to a contract of employment may choose any language for the contract.

## Execution

44. How does this agreement need to be executed to ensure it is valid and enforceable? Does it need to be registered with any authority in your jurisdiction?

## Execution formalities

There are no execution formalities specific to employment agreements in India. Depending on the state where an employment agreement is executed, it is advisable that the employment agreement is inked on a non-judicial stamp paper of appropriate value. A non-judicial stamp paper must be procured from the relevant state revenue department. The value of this is determined based on the state where the document is executed and the clauses forming part of the agreement.

## Registration formalities

There are no registration requirements as far as employment agreements are concerned.

## Counterparts

45. In your jurisdiction, are the parties able to sign the agreement separately as set out in *Standard document, Terms of employment: International: clause 19*?

Yes.

## Proposals for reform

46. Are there any proposals to reform any employment/labour laws in your jurisdiction?

The labour law in India requires reforms to resolve long-standing issues and to adapt to the needs of changing labour markets and business models. For example, at present, the law relating to social security for the unorganised sector is largely implemented in the form of schemes floated by the government, which tend to overlap each other without clearly identifying the target group. There is also increasing demand for gender-neutral laws. This may require Parliament to amend statutes such as the MB Act and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013.

The year 2021 is likely to introduce a new labour law regime that would see as many as 29 central labour laws being consolidated into four labour codes: Code on Wages 2019, Code on Social Security 2020, Industrial Relations Code 2020 and OSH Code. The first few months of 2021 may witness the central government continuing to work with states to build an appropriate implementation framework in the form of rules and schemes, and this may soon be followed by the central government enforcing some or all of the provisions of the four codes along with applicable central rules and schemes. A tentative timeline as projected by the central government for implementation of the four codes was April 2021. However, on account of certain factors including the second wave of the COVID-19 pandemic in India, the implementation process is delayed, and the central government is yet to confirm the tentative date for the purpose of bringing the codes into effect.

The consolidation exercise does bring with it certain changes in the existing labour law regime. With digitization of procedures relating to registration and intimations as well as deemed registrations, there may be a positive impact on the ease of commencing business as well as the ease of doing business, areas where India has a long way to go in the international landscape. Similarly, the substitution of inspector raj (that is, a system characterised by routine

inspections and prosecution) with a facilitation process, whereby an employer would be given an opportunity to rectify any non-compliance, heralds a change in the approach of the government to one where roving inquiries and unwarranted harassment at the hands of local officials could be limited. Similarly, higher thresholds for the application of stringent requirements relating to termination of employment, closure and lay-off would ensure that government's intervention in crucial business decisions is limited to establishments with a larger workforce.

Having said that, employers may have to gear up for a re-examination of their work arrangements. Fixed-term employments will see an important change in that employees engaged for a specified duration will also enjoy tenure based benefits similar to permanent workforce (albeit on a pro-rated basis). Engagement of contract labour in an establishment's core activities would be barred except in certain situations. Employees engaged for sales promotion and inter-state migrant workers will have certain additional entitlements. On the cost front, employers may see some impact on their expenses towards social security contributions, gratuity and severance compensation as these computations may have to be calculated on at least 50% of the total remuneration paid to an employee besides formulation of additional schemes and funds for gig workers and re-skilling fund for regular workers.

Overall, several matters have been left to the central and state governments to prescribe by way of rules and schemes. The year 2021 and the following years will, therefore, constitute an interesting period.

## General

47. Are there any clauses in the *Standard document, Terms of employment: International* that would not be legally enforceable or not standard practice in your jurisdiction?

While most clauses in *Standard document, Terms of employment: International* are typically found in employment contracts in India, the following clauses may have to be revisited from the Indian law standpoint:

- Payment of bonus (*clause 4.2(a)*) (see *Question 17*).
- Leave accumulation (*clause 7.4*) (see *Question 21*).
- Medical examination of employees (*clause 8.5*) (see *Question 29*).

48. Are there any other clauses that would be usual to see in an employment agreement and/or that are standard practice in your jurisdiction?

No. The clauses set out in *Standard document, Terms of employment: International* have comprehensively covered the standard clauses found in employment contracts executed in India.

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