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THE HYBRID WORK MODEL & LABOR LAW CONSIDERATIONS IN INDIA FOR COMMERCIAL ESTABLISHMENTS

With the hybrid work model providing the “best of both worlds” advantages, strategizing workspaces has become the need of the hour...







ANSHUL PRAKASH
Partner



ABHIMANYU PAL
Principal Associate



The COVID-19 pandemic has transformed the traditional notion of workspace across the globe. With the “work from home” model being embraced out of necessity than choice in the first half of 2020, recent findings, and surveys¹ indicate that this model of work is here to stay, albeit in combination with return to the traditional office space in some measure. The combination of the abovementioned modes of operation has led to the growth of the “hybrid work” model, which is also being referred to as the “next great disruption”.²

In view of the peculiarities and specific requirements associated with this new work model, we shall discuss some aspects as regards the workplace and employee policies which may be revisited by employers.

Pandemic-induced office makeovers

The foremost area of concern that may need to be revisited is the preparedness of an organization for the return of its employees back to office in terms of extant infrastructure. To ensure healthy and sustainable workspaces, organizations are revamping their offices by doubling the workspace allocated per person with fluid workstations to ensure conformity with physical distancing norms without compromising on inclusivity and collaboration. Large investments are also being undertaken in voice-operated technologies, advanced sensors and devices to reduce touch in elevators and other common spaces.³ Certain other common practices including installation of air filters, thermal screening at entrances, maintenance of visitor records, and more frequent cleaning and sanitation schedules are also being undertaken in the interest of the health and safety of the workforce.⁴

Hybrid working and employment policies

In addition to the adjustments to office interiors, other employment-related aspects as set out below, would need attention of businesses against the backdrop of implementing the hybrid work model.

(a) Modifications in employment contracts / policies

Employment contracts/policies typically contain clauses setting out the conditions of employment, roles, duties, and functions of an employee, and the location from which employees would be required to operate to render services they are entrusted with. With the hybrid work model, employment agreements / policies may need to be modified to include appropriate provisions recording remote working or the flexible working arrangement adopted by the organization for the specific role for which an employee has been appointed.

(b) Data privacy and confidentiality

The enhanced reliance on cloud and data driven technologies and systems due to the hybrid work model has heightened the importance of having

1 www.forbes.com/sites/joemckendrick/2021/08/31/remote-and-hybrid-work-is-here-to-stay-and-thats-why-quality-of-worklife-matters/?sh=8f9725d70919.
2 <https://www.microsoft.com/en-us/worklab/work-trend-index/hybrid-work>.
3 <https://www.financialexpress.com/money/how-workplace-in-india-will-change-in-post-covid-19-world/2012546/>.
4 <https://www.businessinsider.in/advertising/ad-agencies/article/how-are-indian-organisations-and-agencies-redesigning-their-office-spaces-for-a-post-covid-world/articleshow/81277517.cms>.

“ *The human resources policies of organizations pertaining to grievance redressal, disciplinary procedures, as well as other internal policies would have to be suitably amended to cover situations that may emanate from the hybrid model* ”

robust data privacy and security provisions along with stricter confidentiality obligations imposed on employees. These could be either included in the employment agreements or employee policies, or be incorporated in separate undertakings obtained from employees, basis the reliance on data and per the requirements of the job profile or function. Concerns in this regard may also be addressed by formulating or revising data protection policies to cover and address issues related to cyber security breaches associated with home networks. Further, employers may also undertake training sessions to educate employees as to what constitutes sensitive data and breach of confidentiality, etc. to protect the interests of their organization.

(c) Working hours policy

With the adoption of a hybrid work model, the specification pertaining to number of hours expected to be worked by employees, both in terms of physical office presence and virtually, would need to be set out in the work hours' policy or employment agreements. The practices or policies outlining the manner of recording entrance timings and logged hours along with the distributional arrangement between both modes expected from employees, would have to be modified and set out. This would aid in computation of overtime payments that certain employees are eligible to receive as per the state specific shops and establishments legislations applicable to commercial establishments, as well as revisions in compensation, if any.

(d) Human resource or personnel policies

The human resources policies of organizations pertaining to grievance redressal, disciplinary procedures, as well as other internal policies would have to be suitably amended to cover situations that may emanate from the hybrid model. Lucid delineations as regards the concept of 'workplace' would aid in outlining the employers' obligations and liabilities arising there from. In fact, organizations may also consider formulating a distinct 'work from home' or 'flexible working' policy which extends and amends the application of such internal policies, as necessary.

(e) Anti-sexual harassment policy

As per the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 ("POSH Act"), all workplaces employing ten or more employees are required to frame an anti-sexual harassment policy to deal with complaints by women against sexual harassment at workplace. The POSH Act defines 'workplace' in a broad manner to include any place visited by the aggrieved woman arising out of or in course of their employment, in addition to the physical workplace.



DIVYA KUMAR
Associate

While the notional extension of the definition of 'workplace' may lead one to infer that acts of sexual harassment occurring through an online medium in remote working conditions would get covered, the same may be expressly incorporated in the anti-sexual harassment policy to avoid any ambiguity. In this regard, employers may also consider training their employees as to their rights, responsibilities, and prudent conduct in the virtual mode, through regular sessions and workshops.

(f) Reassessment of remuneration structure or provision of additional allowances

Depending on the working model adopted by employers, revisions may be made in the employees' remuneration structure. In this regard, employers would be

required to comply with the applicable requirements under the Industrial Disputes Act 1947 and provide adequate and due notice regarding such change in the service conditions of eligible employees. In the same vein, employers would also have to ensure maintenance of parity in service conditions, benefits, and terms of payment for all employees of the same category.

Employers may also revise allowances that employees are entitled to, basis the requirements of the working model adopted. For instance, allowances as regards the recurring expenditure incurred by employees on broadband internet connections and electricity in the hybrid work model may be disbursed. Further, allowances such as the conveyance or travel allowance

may be altered and adjusted basis the work model adopted. Employers may also consider providing reimbursements of costs associated with setting up a workspace at employees' residential premises including inter alia costs towards furniture and workstations. These may be reimbursed either through allowances or provided for at discounted rates by employers tying up with vendors for the same.

(g) Heightened importance of employee well-being

The COVID-19 pandemic has immensely heightened the importance of medical insurance coverage of employees (if not already being provided for either through a policy or through coverage under the Employees' State Insurance Act 1948). In the same vein and in the interest of the employees' overall well-being, organizations are also providing for assistance programs to deal with stress, anxiety, and mental health issues.

Conclusion

With the hybrid work model providing the "best of both worlds" advantages, strategizing workspaces has become the need of the hour. To sail through this transition, some aspects of common concern have been highlighted above. While such modifications and amendments would be contingent on the form of hybrid work adopted, the aforementioned aspects may serve as a starting point for organizations' assessment of their preparedness to deal with the novel requirements of this new mode of operation.

Author: Anshul Prakash

Designation: Partner

Anshul Prakash is a Partner with the Partner at the Firm's Mumbai office. He specializes in employment and labor laws and heads the Firm's Employment, Labour and Benefits (ELB) Practice Group. He has advised various prominent domestic and international clients on issues related to employment and labour laws.

Author: Abhimanyu Pal

Designation: Principal Associate

Abhimanyu Pal is a Principal Associate in the Employment, Labour and Benefits (ELB) Practice in the Mumbai office.

Author: Divya Kumar

Designation: Associate

Divya Kumar is an Associate in the Employment, Labour and Benefits (ELB) Practice in the Mumbai office.

**ABOUT
THE
AUTHOR**



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