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Employee Bereavement: Understanding legal and practical nuances in processing employment payments

The article examines how Indian employment laws, including those relating to social security and retirement benefits, interplay with succession laws to determine the eligibility for and entitlement to employment dues in an unfortunate case of an employee's demise. It first discusses the provisions around nomination and how different employment laws have unique requirements in this regard. It also discusses how personal laws come into



picture, particularly when such nomination is absent or invalid.



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Highlights

- Make note of the nomination requirements under the applicable employment laws to ensure that they are valid.
- Before entertaining competing claims for employment payments from a deceased employee's family members, understand the interplay of nomination under employment laws and eligibility for payments under succession laws.



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In an unfortunate event of bereavement of an employee, it becomes imperative that the process of settling employee dues is carried out seamlessly so that the sensitivity of the circumstances is respected without the employer being subjected to unwarranted claims from various family



members. In this regard, responsible personnel in human resources

function must ensure that the granular nuances around nomination for employee payments are well understood while also being mindful of the eligibility of heirs to such payments under the applicable laws of succession.

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Nomination under employment laws

Nomination entails a process through which an employee designates certain person(s) as beneficiaries or recipients of employee payments in the unfortunate event of his or her death. Such process is typically carried out at the commencement of employment, and it enables the designated person(s) to receive monies which the deceased employee earned in the form of statutory entitlements or benefits during his or her service tenure with the employer (such as accumulated social security amounts, gratuity, undisbursed wages, etc). However, nomination does not confer any special beneficial interest on the nominees, and they can merely claim the amount the same among the eligible family members or heirs as per the law.

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In our experience, employers often obtain nominations as per their own forms, including e-nomination on their employee intranet portals. However, to confirm the authenticity, validity, and enforceability of nominations, some labour laws also require attestation of nominations by witnesses. This is particularly so in the case of nominations under the Payment of Gratuity Act, 1972. In this regard, not having the nomination form attested can render it invalid or incomplete, resulting in contentious claims over the outstanding payment and delays in disbursement.

Similarly, to ensure that the nomination adequately factors in a change in personal circumstances of the employee such as their marriage, the relevant labour laws, in particular the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, mandate the nomination to be updated post such event, and a failure to do so can render the original nomination invalid. This makes it key for employers to ensure that employees are advised on the statutorily mandated processes for nomination so that the organisation does not have to deal with a nomination at the time of employee bereavement that has no legal force.



Absence of a valid nomination

In a situation entailing absence of a valid nomination, it is important to first examine whether the applicable employment law warrants the payment to be deposited with the competent authority under such law instead of making a direct payment to the family members. For instance, if there are unpaid wages for a substantial period and no legal heir has approached the organization to claim such wages, it may be important for the employer to deposit the unpaid wages with the jurisdictional labour welfare fund authority instead of disbursing the amounts to a family member approaching the organization after a substantial duration. For example, in Maharashtra, the labour welfare fund law requires that any unpaid wages due for a period exceeding three years must be treated as ‘unpaid accumulations’ and should be deposited with the labour welfare fund authority.

Interplay with succession



Where there is no valid nomination under applicable employment laws nor there is a requirement to deposit the employment dues with a

government authority, the first course of action for an employer is to determine who the eligible family members are for the purpose of receipt of the payment. For instance, the Employees' Provident Funds Scheme, 1952 has a specific definition of 'family' (in the case of male employee, family means his wife, his children, his dependent parents and his deceased son's widow and children), and the absence of a valid nomination would mean that the social security accumulations would be disbursed to such family members in equal shares.

On the other hand, in respect of gratuity, the Payment of Gratuity Act, 1972 provides that in the absence of a valid nomination, the amount shall be payable to the eligible legal heirs as per the applicable succession laws. As such, if the deceased employee was a Hindu, the amount would be distributed equally amongst the Class-I heirs as specified under the Hindu Succession Act, 1956, to the exclusion of all other heirs.

Importance of a succession certificate

It is possible that in the event of bereavement of an employee characterised by absence of a valid nomination, there are multiple eligible legal heirs who approach the organization to claim receipt of employment dues. While an organisation could verify such claims, what often helps is insisting upon the requirement of a succession certificate under the Indian Succession Act, 1925.

A person in whose favour a succession certificate is granted becomes a trustee for the purpose of distributing the amount to the deceased individual's heirs. Therefore, while a claimant possessing a succession certificate cannot claim sole right to a payment, the disbursement of an employment payment to such claimant can discharge the organisation's

responsibility and place the responsibility on the claimant to distribute the amount to the eligible legal heirs.

Conclusion

Organisations can make post-bereavement processes for settlement of employee dues easier for themselves and the family members of the deceased employee if the documentation in respect of nomination is in order. If nomination is not valid despite the best efforts, an organisation should obtain proper counsel to understand whether the outstanding payments should be paid to a governmental authority or to the family members of the deceased (and in the latter case, identification of the eligible family members).

The authors, Anshul Prakash (Partner), Deeksha Malik (Principal Associate) and Archika Dudhwewala (Senior Associate) are Advocates at Khaitan & Co, Mumbai. Their views are personal and do not constitute legal advice of Khaitan & Co.

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