

Tips for Onboarding and Training Employees In India

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Indian employment laws do not prescribe specific requirements for employee onboarding. But, a robust onboarding and training process is essential for both employee engagement and organizational success.

As the process evolves, it is no longer solely an HR function, particularly with stricter compliance requirements for senior executives of listed entities and sector-specific regulations for key employees.


This article explores key practical considerations relevant to in-house counsel in ensuring onboarding and training programs are legally compliant, mitigate risks, and align with business goals.

Background checks and related compliances

While Indian law is not explicit about employers' rights or legal requirements related to conducting background checks, it has become standard practice in many industries.

Listed entities and organisations in certain sectors are specifically required to conduct background checks on their key employees. Employers typically verify educational qualifications, prior work experience, and criminal records during the hiring process.

Key Points for In-House Counsel:



Obtain Consent: Employers must obtain explicit consent from candidates or employees before

conducting background checks if the check involves sensitive personal information (such as medical history or financial details). Verifying educational qualifications, prior work experience, and criminal records can be done with prior intimation, as these are not considered sensitive.

- **Contractual Clauses:** Ensure that employment contracts or onboarding documents clearly grant the employer the right to conduct background checks both before and during employment.
- **Scope of Background Checks:** The scope of background checks should be relevant to the job role. For example, checks related to criminal records, educational qualifications, and prior employment should be limited to what is necessary for the specific position.

Health examinations

Employers may require a health examination as a pre-condition for onboarding, as part of the organisation's occupational health and safety framework.

The cost of the examination is typically borne by the employer. Health examinations may also be required pursuant to certain employment legislation, such as the Employees' State Insurance Act 1948 or the Factories Act 1948, which may require periodic health checks for employees in certain sectors.

Key Points for In-House Counsel:

- **Informed Consent:** Ensure that employees provide explicit, informed consent for health examination. Employers should state the purpose, usage, storage and protection of health data as per data privacy laws.
- **Assess Relevance:** Assess whether health examinations are relevant to the specific job role and ensure it is not excessively invasive. For example, physical fitness assessments may be necessary for



roles requiring heavy lifting, but a routine health check is typically unnecessary for desk-based roles.

- **Timing and frequency:** Health checks may be conducted as a pre-employment requirement or periodically during employment. Clear health examination clauses should be included in employment contracts or offer letters, specifying when health examinations may be required (e.g., pre-employment, annual check-ups, or post-incident evaluations).
- **Fair use of health data:** Avoid using health data to unfairly disadvantage or discriminate against candidates/employees based on medical conditions or disabilities, except where legally justified (e.g., for safety reasons).

Information that can and cannot be asked of the candidates

When conducting interviews or requesting information from candidates during the hiring process, employers must comply with legal standards, respect cultural sensitivities in India, and respect candidates' privacy.

Employers may ask new hires about their qualifications, employment history, job-related skills, criminal antecedents and eligibility to work.

Employers should exercise caution when requesting personal data related to gender identity (non-binary, transgender, etc.), race/ ethnicity, LGBTQ+ status, marital and pregnancy status, disability, credit or financial history, religious or political beliefs, and lifestyle choices.

Key points for in-house counsel:

- **Informed Consent:** Employers do not have the right to ask employees to share personal and sensitive personal information. Employees can always refuse to share such information. Accordingly, when collecting personal information, it is recommended to have a “prefer not to say” option.

- **Culturally sensitive information:** Seeking information related to race and/ or ethnicity is uncommon in India but is lawful. Details of sexual orientation, religion and caste are both legally and culturally sensitive in India and not commonly asked.
- **Compliances:** As per Indian data privacy laws, when collecting sensitive personal data and information (SPDI) from employees/candidates, the following should be ensured:
 - i. the organisation has a robust privacy policy in place;
 - ii. employee's/applicant's consent is obtained before disclosing/transferring the SPDI to a third party;
 - iii. the third party to whom the SPDI is transferred adheres to the same or better data protection standards as required under the Indian data privacy laws;
 - iv. employees and applicants are informed that they have the right to review and update the SPDI or withdraw their consent regarding usage of the information at any time.

Dealing with post-employment restrictions that may become applicable to the candidates once they exit from their previous organisation

Post-employment restrictions, such as non-compete, non-solicitation, confidentiality clauses and employment bonds, can affect candidates transitioning from one organization to another.

In-house counsel should be aware of these restrictions (through background checks or disclosures from the candidate) and take necessary and pragmatic steps to ensure both the candidate's and the company's interests are protected.

Key points for in-house counsel:

Assess enforceability: Not all post-employment restrictions are enforceable. Post-employment non-


solicitation and confidentiality obligations are enforceable in India. However, post-employment non-compete clauses are unenforceable and void in India. The only circumstance in which a non-compete restriction can be enforced is in contracts for the sale of goodwill where the seller agrees to refrain from carrying on a similar business within the specified reasonable local limits. That said, in-house counsel should be vigilant, as previous employers may initiate proceedings against the employee/organisation for data theft/breach of confidentiality obligations as a result of the employee taking up employment with the new organization, attempting to indirectly enforce the non-compete restriction.

- **Buying out the restrictions:** If a candidate is bound by an extended notice period or employment bond/lock-in, employers may agree to buy out such restrictions, allowing the candidate to join earlier than the restriction period permits.
- **Contractual Clauses:** If there is any risk of legal challenges related to post-employment restrictions, appropriate representations and warranties backed by indemnities should be included in the employment contracts, to protect the organisation in case they are sued by an employee's previous employer for breaching a post-employment restriction.

Training of employees and recovery of training expenses

Training employees is a critical investment for any organization, but it also comes with associated costs. Accordingly, employers may seek to recover training expenses if an employee leaves the organization shortly after receiving significant training or development typically through training contracts or lock-in bonds.

Key points for in-house counsel:



Assess enforceability: In India, post-employment restrictive covenants such as employment bonds are

held to be in restraint of trade and are void and unenforceable as employees cannot be restrained from leaving the services of the employer.

- **Recovery of training costs:** However, if employment bonds provide for recovery of training costs due to a breach by the employee, Indian courts have allowed for recovery of training costs only if the employer can demonstrate the existence of legal injury as a result of a breach of a restrictive covenant by the former employee. If the amount sought to be recovered consists of damages as well as a penalty, the courts allow for recovery only of the actual training costs, on a pro-rata basis subject to the duration of service rendered by the employee after receiving training.

Threshold for probationary period and transitioning out of probationary period

There is no statutory requirement in India for employees to serve a probationary period. However, it is common practice for establishments in India to require employees to serve a probationary period to assess their suitability for a role.

The usual probationary period for employees in India is 3 to 6 months, and employers may increase or decrease this period depending on the employee's performance.

Key/senior-level employees are typically not subjected to a probationary period in India.

To transition out of the probationary period, employers may issue a letter to the concerned employee informing them if their employment is confirmed based on management's assessment of his or her performance and conduct during the probationary period.

Conclusion

Although Indian employment laws do not mandate specific onboarding requirements, various obligations and practices, including background checks, health examinations, and

post-employment restrictions, require careful attention from in-house counsel.

By ensuring that onboarding and training practices are aligned with both business objectives and legal standards, companies can enhance employee productivity, safeguard their interests, and mitigate potential legal risks.

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