



## **A SNAPSHOT OF THE EMPLOYMENT LAW AND PRACTICE IN INDIA**

### **Introduction**

India's employment infrastructure has been subjected to continuous changes during the past three decades. The globalization brought several global employers into India and the shift from manufacturing to a variety of service industries has raised new challenges, understandings and solutions. As part of this process, several Indian employment laws and India's concepts on employment law and practice have also been modified. The industry has like never before realized the importance of talent retention as a key challenge for sustained growth. Although the market anticipates many more desirable changes, unlike in the public sector, management of employment in the private sector has been much easier and streamlined. The below write up addresses some of the regular questions raised by the employers and the practical responses and guidance to those.

#### **1. Hiring procedure for employees in India**

##### ***i. What is the legal framework for recruitment in India?***

There are no specific laws governing the employee hiring process in India. The employee hiring practices in India are dynamic and depend upon the nature of the job and the industry. A standard recruitment process in India involves reviewing of a candidate's resume, rounds of interviews, background check, decision making,

offer letter to the candidate, signing the employment agreement and affixing the Indian stamp duty on it.

##### ***ii. What are the common practices for carrying out background screening in India?***

There are no specific laws applicable to the background screening of employees in India. The increasing incidents of fake certificates and hidden criminal records have forced the Indian employers to adopt stringent background screening practices prior to hiring the employees. The standard background check involves verification of a candidate's identity, educational certificates, past employment history and past criminal records.

Further, there are several background verification service providers operating in India which assist in conducting background checks on candidates.

Additionally, the Indian government has taken several initiatives for the companies to perform background checks on their employees, such as, the National Skills Registry (NSR) which is a database for IT professionals in India. Any IT professional in the country can register under the NSR and provide all the background information necessary for employment verification. Thereafter, the NSR conducts the background check on

these professionals and records it in the database. The IT companies, while hiring such professional, can assess the background data on this database with the professional's authorisation. There are similar initiatives implemented in different industrial sectors in India.

##### ***iii. What are the legal requirements or restrictions for hiring foreign workers in India?***

There are no prohibitions on foreign nationals to work in the Indian companies, and many recent initiatives have simplified the process. However, the foreign nationals desiring to work in India must fulfil certain prescribed conditions to obtain an employment visa. One of the major requirements is that the concerned foreign national must draw a minimum of US\$ 25,000 as salary per annum from the Indian employer. Further, the foreign nationals must comply with the registration requirements with India's Foreign Regional Registration Officer (the "FRRO") based in the respective Indian State.

A foreign employee who visits India for employment for a long term, i.e., more than one hundred eighty (180) days, on an employment visa, must get registered with a concerned FRRO having jurisdiction over the area where the Employee plans to reside. The registration must be done within fourteen (14) days of arrival in India by producing certain

supporting documents, such as passport, visa, photograph, residence proof, etc.

The registration procedure is normally completed in one day itself. However, in some cases, where the FRRO requires enquiry and checks, the time for completion of the registration procedure varies. The registration does not require any fees, but a delayed registration attracts a small penalty.

The Employee also has an option to register beforehand by filing an online application form available at the website

[indianvisaonline.gov.in/frro/](http://indianvisaonline.gov.in/frro/). The application requires details, such as personal details, nationality, contact number and address in India, etc.

***iv. Is there a risk of permanent establishment while sending an overseas entity's employees to India?***

In cases where a foreign entity deposes its employees to India to render service in India, irrespective of whether such employees are designated as seconded employees, such employees can constitute a permanent establishment in India and consequent Indian income tax liability for the foreign entity. The Indian courts have held that activities such as back office support functions, quality control, etc., could not be regarded as stewardship to be exempted from the tax liabilities. Similarly, an overseas company's subsidiary's employees or outsourced service provider's employees can also create a permanent establishment for the overseas company in India, based on the nature of activities carried out by such employees on behalf of the overseas entity. Therefore, the contract between the Indian subsidiaries or outsourced service providers involving employees must be structured carefully to avoid potential Indian tax liabilities.

**2. Employment contracts in India**

***i. Does the Indian law mandate the employment agreements to be in writing? Are there any technical requirements for its execution?***

It is not mandatory under Indian law to execute contracts, or to provide offer letters to candidates. However, many employers prefer to first sign offer letters to obtain the candidates' acceptance of the employment and the preliminary terms. An offer letter can be a basic document containing the company's offer to the candidate, a brief job description, compensation, probation, etc.

The employment agreement will have to be stamped in India prior to signing, i.e., a nominal government levy will have to be paid on the agreement prior to execution.

***ii. What are the mandatory provisions included in an employment agreement?***

The employers execute exhaustive employment agreements with the terms such as, name of the parties (the employer and the employee); nature of work and job title; work place; salary or wages; term of employment; rights of the employers and employees; obligations of the employers and employees; termination of the employment; confidentiality clause; non-compete and non-solicitation clause; etc.

***iii. Whether non-compete clauses are enforceable in India?***

The Indian Contract Act, 1872 (the "Contract Act") governs restrictive covenants. Section 27 of the Contract Act holds void any agreement which restrains the exercise of a lawful profession, business or trade of any nature. However, an exception (although not applicable in the context of employment) is that a party which sells its goodwill to another can agree with the buyer that it will not carry on a similar business within a

specified territory, provided that such limits appear reasonable to the court.

The Contract Act's provisions are silent on the enforceability of a non-compete clause in an agreement. Therefore, the law on enforceability of non-competes in India has developed through case law jurisprudence, and considering the changing economic scenario and the change in bargaining positions for both the employers and the employees.

In a recent case, the Delhi High Court has ruled that "a reading of the exception to Section 27 also demonstrates that even on a person who sells goodwill of the business only reasonable restrictions can be imposed and not complete pervasive restrictions." (*LE Passage to India Tours & Travels Pvt. Ltd v. Deepak Bhatnagar*, MANU / DE / 0357 / 2014)

Indian courts, in many cases, have favoured the employers and have upheld the non-compete covenants against the employees in cases involving facts and circumstances such as: the information regarding the special processes and the special machinery imparted to and acquired by the employee during the period of training and thereafter might be divulged; that the information and knowledge disclosed to the employee during this period was different from the general knowledge and experience that the employee might have gained while in the service of the respondent company; a trade secret is some protected and confidential information which the employee has acquired in the course of employment and which should not reach others in the interest of the employer; and an agreement to serve a person exclusively for a definite term is a lawful agreement.

Further, it is a settled legal position in India that a non-compete operating beyond the term of an agreement, is regarded as a covenant

in restraint of trade and therefore, unenforceable.

As regards the restrictive covenants within the term of the agreement between the employer and the employee, the Indian courts have ruled in certain cases that such covenants can be enforced against the employees. Please note that the courts have not expressly laid down a principle of law that any kind of a negative covenant operating during the term of the agreement will always be enforceable.

#### ***iv. Whether non-solicit clauses are enforceable in India?***

There is no specific law applicable. Normally, a well drafted non-solicit clause will be enforceable because an employee's obligation not to solicit other employees is not regarded as a restraint of trade. The Indian courts have considered the enforceability of non-compete clauses in many cases.

In a recent case between two companies who had entered into an agreement with a non-solicitation clause, the Delhi High Court had held that notwithstanding the non-solicitation clause, the employees of both companies cannot be restrained from seeking employment directly with those companies as the non-solicitation clause specified that the employees can respond to general advertising of job positions in either companies. The court observed that the agreement's non-solicitation clause only restricted the employers from soliciting each other's employees, but, it did not restrict the employees. The court also held that in case of a restraint order against the non-solicitation breach, the employees in question will lose the jobs. Therefore, the court held that the appropriate remedy can only be damages and a restraint order against future solicitation.

### **3. Employee handbook**

#### ***Is it mandatory to have an employee handbook in India? Can***

#### ***a foreign parent company's employee handbook used in India for Indian employees?***

There is no specific law on employee handbooks in India. However, it is highly recommended for the Indian employers to frame an employee handbook to clearly inform their employees regarding their corporate policies and rules governing the employees in accordance with the Indian laws, such as anti-discrimination and sexual harassment policy, leave policy, health and safety policy, privacy policy, equipment policy, staff security policy, expense claim policy, exit interview policy, etc.

Further, a foreign parent company's employee handbook cannot be used for Indian employees because the provisions contained in it may not be in accordance with the Indian law.

### **4. Working hours of employees in India**

#### ***i. What are the laws regulating the working hours of employees in India?***

Most of the private sector employment governed under different Indian States' Shops and Establishments Acts (the "Shops Acts") mandate that an employee should not be required to work for more than eight (8) hours in any day and forty-eight (48) hours in any week. Similarly, an employee can be required to work continuously for only a maximum of five (5) hours in a day. The rest interval prescribed is one (1) hour for each continuous five (5) hours of work done. However, the Shops Acts' work hours do not apply to the employees in managerial roles. Overtime work is an employee's work for more than eight (8) hours in any day or forty-eight (48) hours in any week. In case of additional working hours, an employee will be entitled to wages at the rate of twice the ordinary rate of their normal wages.

#### ***ii. What are the laws regulating the working hours of women employees in India?***

The Factories Act, 1948 (the "Factories Act") imposes restrictions on employment of women to work in a factory between 7.00 a.m. to 6.00 p.m. The Factories Act applies to those premises which carry out manufacturing processes, and therefore, excludes other establishments from its ambit. The State-specific Shops and Establishments Acts (the "Shops Acts") prescribe that no woman employee must be allowed to work in any establishment before 6.00 a.m. and after 8/8.30 p.m. The Shops Acts apply on commercial establishments, i.e., an establishment which carries on any trade, business, and profession.

However, the State Governments are empowered under the Shops Acts to exempt any class of establishment from the aforesaid provision. For example, the Telangana Government has released a Government Order in 2016 focusing on "Expansion of IT and ITES Units" (the "G.O."). The G.O. exempts the IT industry from inspections arising from the Shops Act. Further, the G.O. permits the women to work in the night shifts for IT/ITES units/companies.

#### ***iii. Is it mandatory to provide for a travel policy for women employees working for a night shift? What are the measures commonly framed under such travel policies?***

Certain Indian State Governments, by official notifications, have made it mandatory for the employers to provide a safe travel arrangement to the women employees working beyond 8 pm. For instance, the Telangana Government, vide Government Order Ms. No. 01 Women, Children, Disabled & Senior Citizens (Schemes) Department dated 2 September 2014, has constituted a Committee on Effective Law Enforcement for Women's Safety (the "Committee")

to suggest measures for effective implementation of security of women in the State. The Committee released a Report suggesting various measures for women safety in the State. The Report prescribes that, under the Shops Act, an organization must ensure that a woman employee working beyond 8 p.m. must be safely dropped at her home along with proper security and using transport provided by the organization. Other State Governments have also issued such circulars on women employees' safety during night shifts in the IT/BPO sectors.

Following are some of the common safety measures/policies framed by the IT/BPO companies in India for women employees working beyond 8 p.m.:

- The employers should provide cab services to the women employees;
- The employers should ensure thorough background checks on the drivers and security guards accompanying the women employees. The employers must share its driver's information with the local police;
- The employers must install GPRS tracking devices in the cabs and monitor during the travel. The cabs must also have CCTVs installed and monitored. The employer's travel centre must have immediate accessibility with the local police;
- The employers must try to hire female cab drivers for women employees;
- In case of male cab drivers, the employers have to ensure that a woman employee is not the last one to be dropped. Women employees who are the last to be dropped must be provided with helpline numbers of the internal security officer/transport centre to contact in case the driver misbehaves, etc.

## **5. Minimum wage structure for employees in India**

## ***What are the minimum wages for employees in India?***

India's Central/State governments fix and revise minimum rate of wages from time to time for government employees under the Minimum Wages Act, 1948 (the "Wages Act"). The Wages Act is not applicable to the employees in the private sector.

## **6. Leave benefits for employees in India**

### ***i. What is the leave structure for employees in India?***

#### **Annual Leave**

Annual leave in private sector is governed by different Shops Acts. For example, the Bombay Shops Act, 1948 prescribes that, an employee, who has worked for 240 days in a year will be entitled to 21 days' paid leave for that year. Further, every employee, who has been in employment for 3 months in any year will be entitled to a minimum of 5 days' leave for every 60 days worked. This leave can be accumulated for a maximum period of 42 days only.

#### **Child care**

The Child Care Leave (CCL) Rules, 2016 are only applicable to the women employees working in the government employment. The CCL is granted for a maximum of two (2) years (i.e. 730 days) during their entire service, for taking care of their minor children (i.e., up to 18 years of age).

#### **Disability leave**

The Employees' State Insurance Act, 1948 prescribes that an employee, in private or a public sector who sustains temporary disability, is entitled to minimum three (3) days of paid leave. Whereas, an employee, who sustains permanent disability, is entitled to periodical payment (at the periodical rates as prescribed by the Central Government).

## **Maternity leave**

The Maternity Benefit Act, 1961 ("Maternity Act") applies to establishments with ten (10) or more employees. A woman employee will not be entitled to maternity benefit unless she has worked in an establishment for at least eighty (80) days in the twelve (12) months immediately preceding the date of her expected delivery. The Maternity Benefits (Amendment) Act, 2016 (the "Maternity Act") grants maternity leave up to a maximum of twenty six (26) weeks, and prescribes a maximum of twelve (12) weeks for women with two (2) or more children or adopts a child below the age of three (3) months.

### ***ii. What are the monetary and non-monetary benefits provided to the employees in India?***

Apart from the employees' salary, some Indian companies also provide other monetary and non-monetary benefits to their employees to keep them retained and motivated, which also increases their and the organisation's efficiency. The monetary benefits, other than the salary include travel or conveyance allowance, house allowance, medical allowance, bonus, etc.

The non-monetary benefits include work hours policy, insurance policy, leave policy (no. of days for casual leave, sick leave, maternity leave, etc.), retirement benefits, etc.

## **7. Discrimination and sexual harassment laws in India**

### ***i. What are the laws protecting the employees in India against discrimination?***

Article 15 of the Indian Constitution of India (the "Constitution"), mandates that the States should not discriminate against any citizen on the grounds only of sex, or other such grounds. This is a fundamental right guaranteed to the Indian citizens and will normally be enforceable only against India's

central (federal) government, state governments, local administrative authorities controlled by the Government of India.

Further, the Equal Remuneration Act, 1976 (the “Remuneration Act”), a central (federal) legislation, mandates payment of equal remuneration to male and female employees and to prevent discrimination on the ground of sex, against women in employment. Under the Remuneration Act, the employer must pay equal remuneration to male and female employees for “same work or work of a similar nature”.

Additionally, there should not be any discrimination against women while recruiting employees for the same work or work of a similar nature, or in case of promotions, training or transfer.

### ***ii. What are the Indian laws applicable on sexual harassment at workplace?***

As a measure to address the increasing instances of workplace harassment for women, India had enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (the “Sexual Harassment Act”) on the basis of the Convention on the Elimination of all Forms of Discrimination against Women, which prescribe a safe, secure and enabling working environment in a workplace, free from all forms of sexual harassment to every woman, irrespective of her age or employment status. The Sexual Harassment Act prescribes a procedure for redressal of sexual harassment complaints at workplace. The Sexual Harassment Act requires every employer, in private or public establishment with at least ten (10) employees, to set up an Internal Complaints Committee (ICC) to address the issue of sexual harassment, and requires every Indian State Government to appoint a District Officer to receive complaints from the ICC.

## **8. Data privacy of employees in India**

### ***i. What are the applicable laws for employee data privacy and employee monitoring in India?***

India does not have specific laws to deal with the protection of employee data or employee privacy. In India, personal and confidential information is protected under the Information Technology Act, 2000 (the “IT Act”) and the IT Rules. The IT Act, *inter alia*, addresses the data security concerns and provides for civil and criminal liability for breach of personal data, information, computer database theft, privacy violation, etc.

The Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011 (“Data Protection Rules”) govern the collection and processing of personal information in India.

The employers in India have all the liabilities which a data controller and processor has under the IT Act and the Data Protection Rules, while collecting the sensitive personal data or information of their employees for various purposes including recruitment process, employee evaluation process, etc.

The Data Protection Rules’ applicable key mandates in the context of employee information will be to ensure a privacy policy, employee’s consent for data collection, to collect any necessary information explaining the purpose, not to disclose, not to retain after the purpose completed, etc.

Additionally, the Supreme Court of India has declared the right to privacy as a fundamental right under the Indian Constitution in its recent landmark judgment of *Justice K.S Puttaswamy (Retd.) v. Union of India and Ors* WP (C) 494 of 2012, which is subjected to reasonable restrictions and is currently enforced only against the State or its

instrumentalities. The Supreme Court in the aforesaid case has directed the Indian government to frame a data protection regime for India to enforce the right to data privacy against the private entities as well.

As regards employee monitoring of employee communications, there are no specific laws in India as yet. In today’s world of increasing cyber-crimes, cyber terrorism, theft of a company’s confidential information, etc., employee monitoring and surveillance is necessary. The employers are entitled to monitor an employee’s e-mails sent on or received from its office computer. However, as the right of privacy is now a fundamental right in India, the monitoring of employee communications and employee surveillance must be handled carefully. For instance, an employee must be informed regarding the nature and extent of such monitoring and surveillance of their office computers/devices. Until the enforcement of any specific law in India, it is recommended to balance between the employee’s privacy and the employer’s legitimate need to safeguard the company’s interest.

## **9. Employee developed intellectual property**

### ***Who owns the intellectual property in the work product created by an employee?***

The Intellectual Property (the “IP”) ownership in India varies under different IP laws. Under India’s Copyright Act, 1957, any work product, including source code of software, if developed by an employee, the employer will be the first owner of the copyright in such work product, in the absence of any contract to the contrary. Therefore, the employer will own its employee developed copyright.

However, this will not apply in case of an independent contractor developed copyright. As regards patents, the inventor will be the first

owner, irrespective of whether it is an employee or contractor.

Therefore, the employers and the employees must execute a specific deed of assignment to assign any employee developed IP. Further, in case of an independent contractor, the employer will not be the first owner of any IP rights in the work product. As a result, to own the independent contractor developed IP rights, the employer must obtain specific deeds of assignment of all the IP rights (including copyright, patents and design rights).

## **10. Contract employment in India**

### ***What are the laws applicable on contract employment in India?***

India's Contract Labour (Regulation & Abolition) Act, 1970, (the "CLRA") regulates the employment of contract labour. Under the CLRA, the contractor must provide to the contract labour, certain basic facilities at the workplace.

Further, it will be the contractor's responsibility to pay wages and other statutory benefits to its contract labour. Further, if the contractor fails to provide amenities or timely wages to the contract labour, the principle employer will be liable to provide such amenities and wages to the labour and recover the cost and expenses incurred, from the contractor. Therefore, there is no major risk of joint employment liability in India. The contractor is primarily responsible for the contract labour and the principal employer's liability arises only if the contractor fails to perform his statutory duties. However, based on the facts and circumstances of cases if a court of law decides that the contract workers can be regarded as the principal employer's employees, the principal employer can be held liable.

In the circumstances to avoid such situation, the companies engaging contract labour must carry out a due diligence on the contractor to

ascertain whether the contractor has valid licences and registrations, and must also execute a well drafted agreement with the contractor recording the contractor's obligations.

Further, in addition to the factors such as the duration of employment, terms and conditions of the contract, etc., the Indian courts have often used the control test to ascertain the principal employer's liability towards the contract workers.

The Supreme Court of India has classified control in different ways such as "economic control" and "supervisory control". The court has ruled in several cases that if the principal employer's control is of a supervisory nature, and does not control the disciplinary action or dismissal of the contract workers, such control cannot determine that the workmen were under the principal employer's control.

In a landmark case, where the contract workers in the canteen claimed that they were the principal employer's employees, the Supreme Court had ruled that "*the management has kept with it the right to test, interview or otherwise assess or determine the quality of the workers with regard to their level of skills, knowledge, proficiency, capability, etc., so as to ensure that the workers are competent and qualified and suitable for efficient performance of the work covered under the contract. This control has been kept by the management to keep a check over the quality of service provided to its employees. It has nothing to do with either the appointment or taking disciplinary action or dismissal or removal from service of the workmen working in the canteen. Only because the management exercises such control does not mean that the employees working in the canteen are the employees of the management.*" (Haldia Refinery Canteen Employees Union and Ors. v. Indian Oil Corporation Ltd. and Ors. (2005) 5 SCC 51)

In a recent case of NALCO, the court had observed that "*the control test and the organization test, therefore, are not the only factors which can be said to be decisive. With a view to elicit the answer, the Court is required to consider several factors which would have a bearing on the result: (a) who is the appointing authority; (b) who is the paymaster; (c) who can dismiss; (d) how long alternative service lasts; (e) the extent of control and supervision; (f) the nature of the job e.g. whether it is professional or skilled work; (g) nature of establishment; (h) the right to reject.*" (National Aluminum Co. Ltd. v. Ananta Kishore Rout and Ors. (2014) 6 SCC 756)

In view of the foregoing, the Indian courts apply the control test or the employer-employee relationship test on a case to case basis depending on the facts and circumstances of each case. The courts also impose very strict liabilities on the owners / contractors to ensure that the contract workers employed do not suffer in any manner.

## **11. Permanency of temporary workers**

### ***Can temporary workers claim permanency?***

The ID Act's provision which mandates a temporary workman in continuous 240 days of service in a year, to be regarded as a permanent employee, has been the subject matter of several litigation.

However, the settled legal position is that a temporary employee will not get permanency merely because of working for 240 days. Further, even in case of non-compliant termination of such employees or retrenchment, courts have been refusing to order reinstatement, and providing orders for only back wages.

## **12. Trade unions in India**

### ***i. What are the laws applicable on trade unions in India?***

The Trade Unions Act, 1926 (the “Trade Unions Act”) and the ID Act governs the trade unions’ formation and functions in India. Additionally, there are also certain State-specific rules and principles for the recognition of trade unions.

***ii. What are the rights enjoyed by the trade unions in India?***

The Trade Unions Act, the ID Act and the State specific regulations allow trade unions to do collective bargaining in respect of workmen’s terms and conditions of employment, welfare activities, banking and medical facilities, etc.

**13. Termination of employment in India**

***i. What are the causes to terminate employees in India? Is it mandatory to issue a notice of termination?***

As regards cause for termination in the private sector, most of the Shops Acts stipulate that an employee with six (6) months’ or more service cannot be terminated without a reasonable cause and a one (1) month’s prior notice or payment in lieu thereof. The notice or payment in lieu of notice can be dispensed with for termination on the ground of misconduct with proof thereof based on an enquiry. Reasonable cause for termination is not defined under the Shops Acts. However, the reasonable causes are generally understood to include misconduct, unauthorized and regular absenteeism, late coming, fraudulent conduct at work, etc. A dismissal on the ground of misconduct or poor performance at work must be clearly documented and established.

***ii. What is the procedure for lay-off and retrenchment in India? Is an employee entitled to severance on termination?***

Please note that termination of employees and the severance payment requirements are governed

under India’s federal and State specific employment legislations.

The Industrial Disputes Act, 1947 (the “ID Act”), India’s Central (federal) labour legislation applies to closure of an industrial establishment and termination of workmen. The applicable provisions and compliance requirements for closure under the ID Act vary depending on the number of workmen working in the establishment.

The closure of an industrial undertaking with at least hundred (100) workmen must obtain government’s permission at least ninety (90) days prior to the date of closure. The application for permission must specify all the reasons for the closure.

The State specific employment law, the Shops Acts, have more or less similar provisions with respect to termination. For example, in Mumbai, an employer can terminate an employee who has worked for the employer for a continuous period of at least one (1) year by providing a thirty (30) days’ prior written notice or salary in lieu of notice. In case an employee has worked for less than one (1) year but for more than three (3) months, a fourteen (14) days’ written notice or salary in lieu of notice will be required.

The ID Act prescribes provisions for retrenchment of workmen. However, managerial or administrative employees, employees in a supervisory capacity with wages exceeding Rs.6500 (US\$135 approximately) per month are exempted from the ID Act provisions.

The ID Act prescribes that a one (1) month’s notice or payment in lieu of notice must be given to such workman, who has been in continuous service for at least one (1) year, along with compensation which is equal to fifteen (15) days’ average pay for every completed

year of service, or any part thereof in excess of six (6) months.

The following are the limitations on termination of employment agreements in India:

**Notice period:** Under the Indian law, generally, in the private sector one (1) month’s notice period must be provided before an employment termination, unless otherwise provided under the employment contract.

**Severance payments:** Termination benefits, such as leave encashment, gratuity payment, or any other such amount is payable on an employment termination.

**Natural justice principles on misconduct:** An employee is entitled to get opportunity to be heard in accordance with the natural justice principles, if the employee gets terminated on the basis of misconduct.

***iii. Are separate termination agreements enforceable in India? What are the laws applicable on releases of claims under separation agreements in India?***

It is recommended that the resigned/terminated employees execute separation and release agreements with the employer. This will help to quote the background of termination, the settlement arrived between the parties, the consideration paid for the termination/resignation. Such a document will help the employer in case of a future dispute that an employer may initiate. A standard separation and release agreement includes provisions such as the terms of settlement, release of claims by the employee, acknowledgement that the employee has received the final severance consideration, employee’s indemnity, representations not to defame the employer, etc. The separation agreement must ideally be executed simultaneous with the severance payment.

The Indian law does not prescribe any statutory requirements for releases of claims on employment termination.

#### **14. Employee retention strategies**

##### ***What are the commonly used employee retention policies in India?***

India does not have any country employee retention practices. The employers try to balance between encouraging the employees and extracting maximum contributions from them. It is recommended that the employers must understand the employees' sentiments, interests, cultural background and provide adequate training to develop the skills required for the employment. The Indian employers have adopted some strategies, such as flexible working hours, work from home, additional compensation for employees for completing particular work targets, and adequate training and consulting to purpose the employees for the work challenges.

#### **15. Employment dispute resolution in India**

##### ***i. What are the available judicial fora for resolving employment disputes in India?***

There are specialized forums at the Central (federal) level and also State specific ones. The following are the employment forums under the Industrial Disputes Act for resolving industrial disputes in India:

- Board of Conciliation;
- Courts of Inquiry;
- Labour Courts;
- Industrial Tribunals;
- National Industrial Tribunals;
- Labour Commission; etc.

The Industrial Disputes Act prescribes that the awards of a Labour Court, Industrial Tribunal or National Industrial Tribunal must be final and binding, and does not prescribe any provision for appeal or

revision before any higher court. However, the orders from these forums can be challenged in the High Court or the Supreme Court by way of a writ petition under Article 32 and 226 of the Indian Constitution.

##### ***ii. What are the alternate dispute resolution methods available for employees in India?***

Senior management mediation talks or arbitration are the alternate methods normally followed. The Indian law applicable to arbitration agreements is the Arbitration and Conciliation Act, 1996 (the "Arbitration Act"). Further, the Arbitration Act prescribes that the arbitration agreements must specify the procedure of appointment of arbitrators and conduct of arbitral proceedings, etc. Foreign arbitral awards are also enforceable in India, and arbitration is an increasing choice of dispute resolution mechanism in employment contracts as well. The mediation agreements between the parties are also enforceable in India. In absence of such agreements, the Code of Civil Procedure requires that the courts may first direct the parties to opt for alternative dispute resolution, such as arbitration, conciliation, mediation, etc.

**ANA Law Group** is a full-service law firm based in Mumbai, India.

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