

India knowledgebase

Hiring blueprint

Core employment practices

India's labour laws emphasise social justice and worker welfare. The Constitution allows both central and state governments to legislate on labour issues, ensuring protections against forced labour and promoting fair working conditions. Recently, the government has consolidated 29 statutes into four codes to simplify compliance and improve worker welfare, aligning with the Atmanirbhar Bharat vision.

General overview

India's official currency is the Indian Rupee (INR), and its capital is New Delhi. The official language is Hindi and English and 22 scheduled languages. Contracts between local parties may be in English, Hindi or any of the regional languages. In 2024, India's GDP is 4.105 trillion Dollars.

Hiring practices

To hire employees in India, foreign employers can choose between establishing a legal entity or using an Employer of Record (EOR) service. Setting up a legal entity involves a lengthy registration process, opening a local bank account, and ensuring compliance with complex Indian labour and tax laws, which can incur fines for any missteps. Alternatively, using an EOR like Native Teams simplifies the process by managing payroll, taxes, and compliance on the company's behalf, allowing quick and compliant hiring without needing to establish a local entity.

Onboarding process

After selecting an appropriate EOR partner in India, start the onboarding process by gathering the following information from your new recruits: employee name, date of birth, contact details, address, bank account information, salary to be paid in INR (inclusive of expenses and bonuses), Permanent Account Number (PAN), Tax Deduction and Collection Account Number (TAN), and Employee Provident Fund (EPF) account number. Once you have collected all these details, send them to your EOR service provider in India. The EOR partner will draft localized, compliant employment agreements, including all statutory requirements such as probationary period, termination policies, working hours, benefits, and other essential details.

Working hours

In India, the maximum working week is generally capped at 48 hours, with a daily limit of nine hours, as stipulated by various state-specific Shop & Establishments Acts and the Factories Act. Overtime is required if these limits are exceeded, compensated at twice the normal wage rate or can be mutually decided in an employment agreement. Despite these variations, employees are entitled to breaks and rest periods, typically a minimum 30-minute break after five continuous hours of work. Additionally, one day off per week is mandated, usually Sunday, with compensatory time off or extra pay for those working on their weekly rest day.

Leave entitlements

In India, leave entitlements include annual, sick, maternity, paternity, and public holidays, varying by state and sector. Annual leave accrues at one day for every 21 days worked, up to 45 days, though employer-employee agreements may set a lower threshold. Sick leave accrues at one day per completed month of service, with full salary paid during this period. Maternity leave is available for employees with at least 80 days of service in the past year, providing 26 weeks of paid leave, 8 weeks before childbirth, decreasing to 12 weeks for subsequent children. Paternity leave is granted for 15 days to government workers, with no statutory provision for other sectors. Public holidays vary by region, typically ranging from 10 to 15 days, with additional holidays and paid time off at the employer's discretion.

Notice period

In India, the minimum notice period for regular dismissal is generally at least 30 days or one month. However, this can vary depending on state-specific regulations and the terms outlined in individual employment contracts.

Termination of employment

In India, employment termination can occur through various means:

- Resignation is initiated by the employee, who provides notice as stipulated in their contract.
- Employer-initiated termination may occur due to poor performance, misconduct, redundancy, or policy violations, requiring adherence to due process and natural justice.
- Retrenchment involves terminating employees due to business closures, workforce reductions, or financial constraints, necessitating legal compliance, notice, and compensation.
- Dismissal results from serious misconduct, following a thorough investigation and opportunity for the employee to respond, possibly leading to immediate termination without notice.

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- Layoffs temporarily remove employees from work due to economic downturns, seasonal changes, or restructuring, with adherence to labour laws and potential benefits during the layoff period.
- Constructive dismissal happens when an employer's actions create a hostile environment, compelling the employee to resign, potentially entitling them to compensation if proven.

Severance pay

In India, severance pay is not consistently required for all employees, especially those earning higher wages. However, lower-wage workers might be entitled to mandatory severance pay. All employees should receive payouts for any unused paid time off (PTO) when they resign or are terminated. For those under unlimited PTO plans, employers must compensate unused leave as if it were earned at the minimum required rate. Although employers are not obligated to pay for unused sick or personal leave, many choose to do so as a goodwill gesture. Additionally, employees who have served for more than five years are entitled to a gratuity payment, calculated as 15/26 of their salary for each year of service, with a maximum limit of Rs 1,000,000.

Prevention of sexual harassment at workplace

Employers in India are mandated to create a safe workplace environment for women, as per the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013. Key responsibilities include displaying penalties for harassment, conducting awareness programs, forming Internal Complaints Committees, ensuring witness attendance, and maintaining confidentiality. Employers must also assist complainants in pursuing criminal cases if desired and report harassment incidents, ensuring a zero-tolerance approach to sexual harassment.

Salary disbursement and monthly client invoicing

In India, the salary structure encompasses the basic salary, various allowances, social security contributions, and reimbursements, all of which together form the total cost to the company (CTC). Employers are required to deduct tax at source (TDS) from employees' salaries and remit these amounts to the government treasury on a monthly basis.

Salary payment date: According to Indian labour law, there is no specific deadline for salary payments. However, the Native Team policy requires salaries to be paid by the 5th of the following month.

Salary input: Per Native Teams company policy, monthly inputs must be submitted by the 12th of each month. This deadline may be adjusted slightly depending on business days and public holidays.

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Invoicing deadlines: Invoices are issued on the 15th of each month, in line with Native Teams company policy. This deadline may shift slightly depending on business days and public holidays.

Payslips: Payslips are made available in the employee's account on the Native Teams platform after the salary has been paid.

Minimum wage

India establishes a national minimum wage, currently set at ₹178 per day (approximately US\$2.13) or ₹5,340 per month (US\$63.97) as of April 2024. It's important to note that minimum wage rates can vary by state.

As a company operating in India, adhering to these minimum wage regulations is crucial. However, this national minimum serves as a baseline, and the compensation for highly skilled professionals and senior management personnel typically falls outside this range.

Discrimination and equal treatment

India has a strong legal framework promoting equal opportunity and prohibiting discrimination in employment. The Indian Constitution guarantees equality before the law and prohibits discrimination on grounds such as religion, race, caste, sex, or place of birth. Several laws like the Equal Remuneration Act and the Prohibition of Discrimination Act reinforce these constitutional rights, ensuring equal pay for equal work and prohibiting discrimination based on protected characteristics. The Indian government actively promotes diversity and inclusion initiatives in the workplace. As an employer in India, it's essential to design and implement recruitment, hiring, and compensation practices that comply with these anti-discrimination laws. India's rich cultural tapestry offers access to a diverse talent pool. By fostering a workplace culture that values inclusivity and respects differences, you can attract and retain top talent. Consider providing sensitivity training for your managers and employees to create a work environment free from discrimination and harassment. We, as your Employer of Record (EOR) partner, can provide guidance on developing compliant recruitment and employment practices that adhere to Indian anti-discrimination laws.

Social contributions in india

Employees' Provident Fund (EPF): Employers must set up an EPF account for employees earning less than Rs 15,000 per month. Employees earning above this can join with special permission. All employers with more than 20 employees must offer an EPF, and those with fewer may need to, depending on certain criteria. Contributions are 12% of income for larger companies and 10% for smaller ones, based on salary, dearness allowance, and retaining allowance.

Employees' Pension Scheme (EPS): The EPS is funded by part of the employer's EPF contribution. While employees contribute 12% of their salary to the EPF, 8.33% of the employer's contribution goes to the EPS, capped at Rs 1,250 per month for those earning Rs 15,000 or more. Only employers contribute to the EPS.

Employees' Deposit Linked Insurance Scheme (EDLI): Employers contribute 0.5% of the employee's salary to the EDLI, with no employee contribution required.

Penalties for non-compliance: Failure to contribute to the EPF and EPS can result in fines, interest on unpaid amounts, and additional penalties of 5-25%. Deliberate fraud can lead to prosecution and imprisonment.

Remote work

Remote work has become an increasingly attractive option in India, especially following the COVID-19 pandemic. Previously, most companies strictly prohibited work-from-home arrangements, but the necessity during the pandemic prompted a significant shift. Today, many employers offer more flexibility for remote work. However, some employees face challenges due to living in guest accommodations or with multiple family members. To make remote work appealing, employers should ensure their Indian workforce has the necessary tools and opportunities to establish productive working environments.

Labour laws

Legal framework

At the core of India's labour laws lies the principle of social justice, as mandated by the Constitution. In recent years, amidst India's rapid evolution, these laws are constantly adapting.

India's labour laws have been shaped by various factors including colonial influence, the adoption of the Indian Constitution, and constitutional provisions. Under colonial rule, early labour laws were enacted to safeguard British interests, leading to subsequent legislation modeled on British norms. Post-independence, the Constitution guaranteed socialistic principles and directive principles of state policy, shaping labour laws to prioritize welfare and social justice.

The Constitution's Seventh Schedule delineates legislative powers between central and state governments, with labour issues falling under the Concurrent List (law can either be made by the centre or the state). Constitutional provisions along with Directive Principles, ensure equality, protection of rights, and prohibition of forced labour and child labour. The preamble further emphasizes principles of justice, liberty, and equality, guiding the

legislature in enacting labour laws to promote the welfare of workers and ensure just and humane working conditions.

Over the past 125 years, India's labour laws have evolved from addressing specific issues like industrial employment for orphaned children under the 1850 Apprentice Act to encompassing a wide spectrum of regulations. Subsequent acts such as the Factories Act of 1881 and the Bombay Trade Disputes Act of 1934 laid foundations for labour regulation. Post-independence, laws like the Industrial Disputes Act, 1947, and the Industrial Employment (Standing Orders) Act, 1946, Shops and Establishment Acts (state specific) played pivotal roles in shaping labour relations.

Recently, the Indian government has embarked on a significant reform journey, amalgamating nearly 29 labour laws into four comprehensive codes aimed at simplifying compliance and enhancing worker welfare. What were once fragmented regulations are now undergoing codification, aligning with the vision of Atmanirbhar Bharat.

India's employment laws have historically been governed by a plethora of statutes aimed at regulating various facets of the labour market. From the Trade Unions Act of 1926 to the Minimum Wages Act of 1948, these laws have sought to ensure fair treatment of workers and maintain harmonious employer-employee relations. However, the complexity and fragmentation of these laws have posed challenges for compliance and administration, necessitating reforms to streamline the regulatory landscape.

In response to these challenges, the Indian government embarked on a comprehensive reform agenda to rationalize and consolidate the existing labour laws. This initiative led to the formulation of the Labour Codes, a series of legislative measures aimed at modernizing India's labour regulations and fostering a conducive environment for economic growth. The Labour Codes encompass key areas such as wages, industrial relations, occupational safety, health, and social security, providing a unified framework to address the diverse needs of employers and employees.

One notable aspect of the Labour Codes is their emphasis on transparency, accountability, and inclusivity. By standardizing definitions, procedures, and compliance requirements, the Codes aim to enhance clarity and ease of compliance for stakeholders across the labour spectrum. Moreover, the Codes prioritize the welfare of workers by incorporating provisions for minimum wages, resolution of industrial disputes, and comprehensive social security coverage.

It is noteworthy that the implementation of the Labour Codes is poised to occur after the elections in India, signaling a significant milestone in the country's labour reform agenda. This phased approach allows for thorough deliberation, stakeholder consultation, and preparation to ensure smooth transition and effective enforcement of the Codes. As India gears up to embrace these transformative reforms, the Labour Codes hold the promise of

creating a more dynamic, inclusive, and resilient labour market that fosters sustainable development and prosperity for all.

Employment contract

Types of employment contract

In India, a variety of employment contracts are utilized, tailored to different types of employment arrangements. These contracts play a crucial role in formalizing the terms and conditions of employment between employers and employees.

The type of employment contract used in India depends on the nature of the work and the needs of both the employer and employee. The most commonly used contracts in India are:

1. Full-Time Contract (Indefinite Employment Contract):

Description: Offered to permanent employees, typically for a standard workweek of 40 hours or more (as per the Shops and Establishments Act, 1940, or Contract Labour (Regulation and Abolition) Act, 1970, if applicable).

Benefits: Outlines benefits mandated by law like paid leave, national holidays, and Provident Fund (PF) contribution. Employers may offer additional benefits like health insurance, gratuity, and pension plans.

2. Part-Time Contract:

Description: Offered to employees working less than 40 hours per week, often with flexible schedules.

Benefits: May not include statutory benefits like paid leave or PF contributions unless the contract or company policy specifies otherwise. However, part-time employees are entitled to minimum wages under the Minimum Wages Act, 1948.

3. Zero-Hour Contract:

Description: Provides work based on employer's needs, with no guaranteed minimum hours. Employees are paid only for the hours they work.

Benefits: No statutory benefits are mandated by law for zero-hour workers. However, they are entitled to minimum wages for the hours worked.

4. Casual Contract:

Description: Used for short-term or seasonal work. Employees are paid based on completed work, with no fixed salary or schedule.

Benefits: Similar to zero-hour contracts, casual employees are generally not entitled to statutory benefits. However, minimum wage provisions apply.

The type of employment contract you have determines your rights, responsibilities, and benefits as an employee. Here's a breakdown of the different employment contracts:

A) Types of Employment Contracts Based on Duration

a) Indefinite Employment Contract (Permanent Contract):

- Offers job security with no end date.
- Provides a full range of benefits (paid leave, health insurance, etc.).
- Requires notice for termination.
- Common in many countries except the US (at-will employment is prevalent there).

b) Limited-Term Employment Contract (Fixed-Term Contract):

- Specifies a set duration for employment (e.g., 6 months, 1 year).
- Often used for temporary or project-based work.
- Benefits may be prorated based on contract length.
- May be renewable with agreement from both parties.

c) Zero-Hour Contract:

- Provides work based on the employer's needs, with no guaranteed minimum hours.
- Employees are paid only for the hours they work.
- No statutory benefits are mandated (but minimum wage applies).
- Employees have no obligation to accept offered work.

B) Types of Employment Contracts Based on Talent

a) Self-Employment Contract (Independent Contractor Agreement/Freelance Contract):

- Establishes a business relationship between a contractor and a client.
- Contractor has more control over work method, schedule, and equipment.
- Contractor is responsible for taxes, licenses, and equipment needed for the job.

b) Temporary Employment Contract:

- Used to hire temporary workers through a staffing agency to fill specific needs.
- Ideal for peak seasons, holidays, or temporary vacancies.
- Payment is typically based on hours worked.

c) Internship Employment Contract:

- Outlines the terms of an internship program for students or recent graduates.
- Specifies the duration, job duties, compensation (may or may not be offered), work schedule, supervision, and learning objectives.

d) Apprenticeship Employment Contract:

- Formal agreement between an employer and an apprentice in a training program.
- Details the duration, training plan, compensation, work schedule, supervision, learning objectives, and any certifications earned upon completion.

C) Other Employment Contract Types

a) 1099 Employment Contract:

- Agreement between a hiring entity and an independent contractor.
- Specifies independent contractor status, scope of work, compensation, duration, ownership of work, and termination clauses.

b) Remote Work Employment Contract:

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- Lays out the terms for an employee working remotely.
 - Covers aspects like work arrangement, job duties, schedule, communication, equipment, data security, performance evaluation, and termination.
- c) Union Contracts:
- Offered to unionized workers.
 - Defines job descriptions, roles, leave policies, perks, and benefits.
- d) Executive Employment Contract (Executive Employment Agreement):
- More comprehensive than standard contracts for high-level employees.
 - Specifies terms of employment, compensation, termination, confidentiality, non-compete, intellectual property, dispute resolution, and governance.

Content of an employment contract

The Indian employment contract is essential, defining the obligations of both employer and employee. It's based on principles like offer, acceptance, and consideration. Though diverse, the terms depend on factors such as business type, internal policies and such.

In India, an employment contract acts as a mutual agreement between an employer and an employee, setting out the terms of work and compensation for a specific period. This contract adheres to essential features mandated by Indian contract law, including offer, acceptance, consideration, competent parties, legal object, and free consent.

The contract typically includes details like the names of the parties involved, the job title or position, duties and responsibilities, contract duration, salary or wage, and entitlement to benefits such as health insurance and vacation days.

From an Indian perspective, entering into an employment contract offers numerous advantages. It provides job security by guaranteeing employment for the contract's duration, which is especially reassuring in today's uncertain job market. Moreover, clear terms on compensation and benefits prevent future disputes, and the contract can explicitly outline an employee's rights and protections, such as protection against wrongful termination or entitlement to specific benefits.

However, it's essential to weigh the potential disadvantages before signing. By understanding both the advantages and disadvantages of employment contracts, individuals can make informed decisions about their employment arrangements.

The key components of the Employment Agreement in India are as follow:

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- Title of Position Offered: Clearly defines the role and responsibilities of the employee within the organisation's structure.
- Confidentiality Clause / Non-Disclosure Obligations: Protects sensitive company information by prohibiting its disclosure to unauthorized parties.
- Vacation and Leaves: Details the number of vacation days, any limitations, and provisions for carrying over unused days or receiving severance pay.
- Working Hours: Specifies the normal working hours to ensure compliance with labour laws of India.
- Termination Clause: Specifies the conditions and notice periods required for terminating the employment relationship, protecting the rights of both parties.
- Jurisdiction Clause: Determines the legal jurisdiction and venue for resolving any disputes that may arise under the contract.
- Dispute Resolution / Arbitration Clause: Outlines the procedures and mechanisms for resolving disputes between the employer and the employee outside of court.
- Ownership Clause: Clarifies the ownership rights of intellectual property and creations developed by the employee during the course of employment.
- Remuneration Clause: Specifies the amount and frequency of payment for the services rendered by the employee.
- Reimbursement of Expenses: Ensures that the employee is reimbursed for any necessary expenses incurred in the course of performing their job duties.
- Non-Compete Clause: Prevents employees from engaging in activities that compete with the employer's business interests after leaving the company.
- Non-Solicitation Covenants: Prohibits employees from soliciting clients or coworkers from the company for personal or competitive purposes.

Oral, written, or electronic employment contracts

In India, contract law includes written, oral, quasi, and e-contracts, reflecting diverse methods of contract formation and execution within the legal framework.

Employment contracts form the cornerstone of employer-employee relationships in India, serving as legal blueprints that define rights, obligations, and expectations. In this comprehensive guide, we unravel the intricacies of employment contracts across three distinct dimensions: oral, written, and electronic. By understanding the nuances of each type, both employers and employees can navigate the complexities of employment agreements with confidence and clarity.

Oral Employment Contracts:

Overview: Despite being less prevalent, oral contracts hold legal validity under Indian law.

Features: Agreements formed verbally between the employer and employee without a written document.

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Considerations: Limited enforceability and potential for disputes due to ambiguity.

Usage: Common in informal or short-term employment arrangements but subject to interpretation challenges.

Written Employment Contracts:

Overview: Written contracts provide a formal and structured framework for employment relationships.

Features: Documented agreements detailing terms, conditions, and mutual obligations in writing.

Considerations: Offers clarity, enforceability, and legal protection for both parties.

Usage: Standard practice for permanent, long-term, or specialized employment engagements.

Electronic Employment Contracts:

Overview: With the digital revolution, electronic contracts are emerging as a modern alternative.

Features: Contracts created, signed, and stored electronically using digital platforms or e-signatures.

Considerations: Offers efficiency, accessibility, and security benefits but requires compliance with electronic signature laws.

Usage: Particularly suited for remote work setups, virtual teams, and tech-driven organizations.

Let's delve into the validity of these Contracts and its various nuances.

The Validity of Oral Contracts: India's legal system recognizes the validity of oral contracts, as established by the Indian Contract Act, 1872. This means a verbal agreement between an employer and employee, as long as it fulfills the essential elements of a valid contract (offer, acceptance, consideration, lawful object, and capacity to contract), can be legally binding.

However, oral contracts come with inherent challenges:

- **Proof of Agreement:** Disputes can arise regarding the exact terms agreed upon verbally.
- **Limited Scope:** Complexities of modern work environments are difficult to capture solely in spoken words.
- **Vulnerability to Misinterpretation:** Recollection of details can fade over time, leading to misunderstandings.

Therefore, while oral contracts hold legal weight, it's generally advisable to have a written or electronic record for clarity and future reference.

The Strength of the Written Word: Written employment contracts offer significant advantages and these are as follows:

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Clarity and Specificity: They clearly define job duties, compensation structure, leave policies, termination clauses, and other crucial aspects.

Enhanced Evidence: A written document serves as concrete proof of the agreement, minimizing disputes.

Peace of Mind: Both employer and employee have a clear reference point for their rights and obligations.

The Shops and Establishments Act, 1958, mandates written contracts for establishments with more than 20 employees. However, it's always a good practice to have a written contract, regardless of company size.

Embracing the Digital Age: The rise of digital communication has paved the way for electronic employment contracts. These contracts are presented and signed electronically, offering a convenient and efficient alternative to paper documents. The Information Technology Act, 2000 and Indian Evidence Act, 1872, recognizes the validity of electronic contracts signed using secure digital signatures. This makes e-contracts a viable option for employers seeking a modern and paperless approach. While e-contracts offer exciting potential, they also present some hurdles to consider:

- **Security:** Ensure a secure platform with robust digital signature mechanisms.
- **Employee Access:** Provide employees with accessible means to review and sign the contract electronically.
- **Data Protection:** Comply with data privacy regulations regarding employee information storage and usage.

Key requirements

Working hours

Understanding work hours in India involves navigating a tapestry of regulations such as ILO convention, Factories Act and respective Shop and Establishment Acts. In India, working hours are regulated by multiple statutes, each specifying different limits and provisions. The Factories Act 1948 sets a standard for daily working hours, capping them at nine hours a day. It mandates a break of at least half an hour within every five hours of work and limits weekly work hours to 48. Overtime compensation is provided if these limits are exceeded.

Under the Mines Act 1952, workers in mines are not required to work for more than 10 hours a day, inclusive of overtime, as outlined in sections 28 and 30. The Minimum Wages Act 1948 mandates that overtime wages be double the normal rate for any hours worked beyond the prescribed limits.

State-specific regulations, governed by the Shop & Establishments Act, vary across India. Daily working hours range from 8 to 10 hours, with a weekly limit of 48 hours. Overtime

hours, if any, are compensated at double the regular rate. Additionally, intervals of at least 30 minutes are mandated after five hours of continuous work.

In India, working hours and leave policies are primarily governed by the Factories Act 1948 at the central level and by relevant Shops & Establishment Acts at the state level.

The recent introduction of new labour codes aims to standardize working hour regulations across industries. Key aspects of this change include:

- Application to all industries, with state governments expected to align their rules with central regulations.
- Definition of 'workers' under the new codes encompasses not only blue-collar workers but also individual contributors in various roles.
- The new codes cap weekly working hours at 48 and daily working hours at 12. They also introduce the possibility of a 4-day work week, with 12-hour shifts each day.
- Maximum overtime hours for workers have increased from 50 to 125 per quarter under the new codes.
- While the 4-day work week offers longer weekends, it may lead to extremely hectic weekdays for employees.
- Overtime work is permitted under state-specific regulations outlined in the Shops & Establishment Acts. Employees are entitled to a 30-minute break during official working hours, with no more than 5 consecutive hours of work without an interval.
- The Factories Act 1948 allows a maximum of one hour of overtime per day, with the total day not exceeding 12 hours including rest intervals. Additional conditions regarding overtime legality are detailed in Section 64(4) of the Act.

Section 66 of the Factories Act, 1948, prohibits the employment of women between the hours of 7:00 pm and 6:00 am, with exceptions possible through authorization from the Chief Inspector. However, if such authorization is granted, women are still prohibited from working between 10:00 pm and 5:00 am.

These changes signify a shift towards more flexible working arrangements while ensuring compliance with labour laws and regulations to protect the rights and well-being of workers across India.

Night work

India regulates night shifts, typically spanning from 7:00 PM to 6:00 AM, with specific legislation tailored to different industries, ensuring comprehensive protection for its workers. Night shift jobs in India have become increasingly prevalent as businesses aim to operate around the clock and cater to global markets. Pay differentials for night shift workers are common, reflecting the recognition of the inconvenience and potential health risks associated with working during nighttime hours. Employers often offer additional

allowances or higher pay rates to acknowledge these challenges, making night shifts more financially attractive than their daytime counterparts.

The pay for night shift jobs in India varies depending on several factors, including the industry, location, and level of expertise. Sectors such as call centers, IT support services, and healthcare facilities heavily rely on night shift workers to maintain 24/7 operations. Consequently, they offer competitive salaries to attract and retain talent, recognizing the critical role these employees play in ensuring uninterrupted service delivery.

Metropolitan cities like Mumbai, Delhi, Bengaluru, and Chennai tend to offer higher salaries for night shift work compared to smaller towns and rural areas. This discrepancy is partly due to the higher cost of living in urban centers and the increasing demand for night shift workers in such locations. Furthermore, the level of expertise and experience of the worker also influences their pay, with skilled professionals commanding higher salaries due to their valuable skill sets and the critical nature of their work during nighttime hours. India prioritizes worker safety during night shifts through various legal frameworks. Here's a breakdown of the key laws, along with additional considerations:

Factories Act, 1948: This act restricts night work for women in factories, prohibiting their employment between 7 pm and 6 am. Exceptions exist with written consent and proper safeguards for the woman's safety, health, and transportation. These safeguards could include:

- Mandatory breaks: Ensuring adequate rest periods during extended night shifts.
- Proper lighting and ventilation: Maintaining a safe and healthy work environment.
- Security arrangements: Providing security measures to ensure the safety of women workers commuting during late hours.
- Transportation facilities: Offering safe and reliable transportation options for night shifts, especially for late-night departures.

The Mines Act, 1952: Similar to the Factories Act, this act prohibits employing women above ground in mines during night hours (7 pm to 6 am). Recent amendments, however, have allowed women to work in underground mines under specific conditions, with safety being paramount.

Shops and Establishments Acts (State-Specific): Individual states enact these acts, which often regulate night work for women. Specific restrictions and exemptions may vary by state. Some states, for example, might:

Set different night work timings: The 7 pm to 6 am restriction might be adjusted based on local contexts and industry needs.

-Specify exemptions for certain sectors: Certain industries, like IT or hospitality, might be granted exemptions with specific safeguards in place.

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Plantation Labour Act, 1951: While not explicitly prohibiting night work for women in plantations, this act mandates rest periods and other provisions to ensure their well-being during night shifts. These provisions could include:

- Limited night work hours: While not a complete ban, the act might limit the number of night work hours women can be assigned.
- Mandatory rest days: Ensuring sufficient rest days after night shifts to promote worker well-being.
- Maternity benefits: Providing additional support for pregnant women and new mothers who might be involved in night work.

Breaks and types of leaves

In India, labour laws are vital for protecting workers' rights in diverse industries. Breaks and leaves, key provisions within these laws, directly influence employee well-being and productivity. In India, where the workforce is diverse and dynamic, the significance of breaks, weekly offs and leaves cannot be overstated.

Rest and Rejuvenation: Breaks, weekly offs and leaves provide essential time for employees to recharge, both physically and mentally. By offering dedicated periods for relaxation and rejuvenation, these breaks promote overall well-being and contribute to a healthier work-life balance. A rested workforce is not only happier but also more productive, ensuring sustained performance in the long run.

Health and Safety: Ensuring the health and safety of employees is a priority under India's labour laws. Provisions within the Shops and Establishments Acts of different states and the Factories Act, 1948, mandate breaks, weekly offs and leaves to mitigate the risk of work-related injuries, accidents, and illnesses. By allowing employees time to recuperate and rest, employers can foster a safer and more conducive work environment.

Productivity and Efficiency: Contrary to common belief, continuous work does not necessarily equate to heightened productivity. Studies consistently show that regular breaks, including weekly offs, leaves significantly enhance efficiency and overall performance. When employees have time away from work, they return with renewed energy and focus, resulting in improved productivity and job satisfaction.

Legal Protections: Under India's labour laws, breaks, weekly offs and leaves are not merely recommendations but a protected right for employees. The Factories Act, 1948, and the Shops and Establishments Acts of various states mandate that workers are entitled to periodic days of rest. Violations of these provisions can lead to legal consequences for

employers, ensuring that employees are not exploited and have the opportunity to balance their personal and professional lives. Understanding the provisions related to breaks and leaves under Indian labour laws is essential for both employers and employees to ensure fair treatment and compliance with legal requirements.

- Breaks during Work Hours: According to the Factories Act, 1948, workers are entitled to a rest interval of at least 30 minutes after every 5 hours of continuous work. This can vary depending on the specific industry and state regulations.
- Weekly Offs: Labour laws typically mandate one day off per week, often Sunday, but this can vary depending on the industry and the employer's policies. Employees working on weekly offs might be entitled to compensatory off or additional pay.
- Annual Leave: The number of annual leave days varies across states and industries. However, it is common for employees to earn a certain number of leave days for every month of work completed. This usually accumulates over time and can be availed for reasons such as vacation, illness, or personal reasons.
- Sick Leave: Employees are usually entitled to a certain number of sick leave days per year, which can vary based on company policy and labour laws.
- Maternity and Paternity Leave: Maternity leave benefits are provided under the Maternity Benefit Act, which grants female employees paid leave for a specified period before and after childbirth. Some companies also offer paternity leave for male employees.
- Special Leave: Some labour laws provide for special leaves such as maternity leave, paternity leave, adoption leave, etc.

Annual leave

Annual leave entitlements are an integral aspect of employment law in India, designed to ensure that employees have the opportunity to take time off from work for personal reasons, vacations, or rest. Let's explore the legal framework governing annual leaves in India:

- The Factories Act, 1948: Under this Act, adult workers who have completed a certain period of continuous service are entitled to annual leave with wages. The specific provisions regarding the duration of leave and eligibility criteria may vary across states.
- Shops and Establishments Acts: Each state in India has its own Shops and Establishments Act, governing workers' conditions in various sectors. These acts detail annual leave entitlements, varying in days and eligibility across states.
- Minimum Leave Entitlement: Minimum leave entitlement mandates that employers provide a certain number of annual leave days for each completed year of service by the employee, although specifics may vary based on laws and industry standards.
- Accrual of Leave: Leave typically accrues over time based on an employee's tenure, with a certain number of days earned per month or year of service. However, accrual rates may vary based on company policies and labour laws.

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- Carryover and Encashment: In India, labour laws often permit employees to carry over unused annual leave to the next year within specified limits. Moreover, employees may also have the choice to encash unused leave days, in accordance with organizational policies and laws.

- Legal Protections: Employers must adhere to labour laws regarding annual leave entitlements. Failure to do so may result in legal consequences, such as penalties and fines. Duration of annual leave: As per the Shops and Establishments Act, the duration of annual leave shall vary from state to state. For example the minimum duration of annual leave days as provided under the Delhi Shops and Establishment Act are 15 days whereas that provided in the Karnataka Shops and Establishments Act is 18 days. Thus depending upon the state the duration of annual leaves may vary.

Use of annual leave: The guidelines regarding the use of annual leave also vary from state to state. For example, the Delhi Shops and Establishment Act provides that after completion of 12 continuous months of work, the Employee shall be eligible an annual leave of not less than 15 days whereas the Karnataka Shops and Establishments Act provide that every employee shall be eligible for 1 day of annual leave for every 20 days of work performed by such an employee.

Transferring annual leave to the next calendar year: If a worker/ employee does not in any one calendar year take the whole of the leave allowed to him/her as the case may be, any leave not taken by him/her shall be added to leave to be allowed to him/her in the succeeding calendar year. For both Delhi and Karnataka, the number of carry forward days must not exceed 45 days.

Compensation for unused vacation: An Employee is either eligible to carry forward the annual leave days to the following year or obtain a compensation from the Employer pertaining to the unused annual leave days in accordance with the provisions of the relevant State's Shops and Establishments Act.

Public holidays

Employment laws in India address national holidays to ensure fair treatment and adherence to cultural and national observances.

The official holidays for 2025 for India are listed below:

- Wednesday, 1 January – New Year's Day
- Sunday, 26 January – Republic Day
- Wednesday, 26 February – Maha Shivaratri
- Friday, 14 March – Holi
- Monday, 31 March – Id-ul-Fitr (Ramzan Id)

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- Thursday, 10 April – Mahavir Jayanti
- Friday, 18 April – Good Friday
- Monday, 12 May – Buddha Purnima
- Saturday, 7 June – Id-ul-Zuha (Bakrid)
- Sunday, 6 July – Muharram
- Friday, 15 August – Independence Day
- Saturday, 16 August – Janmashtami
- Friday, 5 September – Milad-un-Nabi (Id-e-Milad)
- Thursday, 2 October – Mahatma Gandhi's Birthday
- Thursday, 2 October – Dussehra
- Monday, 20 October – Diwali (Deepavali)
- Wednesday, 5 November – Guru Nanak's Birthday
- Thursday, 25 December – Christmas Day

Note that some holidays, such as Id-ul-Fitr and Id-ul-Zuha, are determined by the lunar calendar and may vary depending on the sighting of the moon.

Employees working on national holidays are entitled to receive double wages for the day, and in certain states, provisions for claiming compensatory leave exist. While the regulation of national holidays falls under Central Legislation, some states have introduced measures allowing workers who work on these holidays to claim compensatory leave or receive double wages.

The Factories Act, 1948, a cornerstone of Indian labour legislation, mandates paid holidays on Republic Day (January 26th), Independence Day (August 15th), and Gandhi Jayanti (October 2nd) for all factory workers also. This acknowledgment of national significance underscores the Act's commitment to worker welfare and national observances.

Similarly, the National and Festival Holidays Act ensures paid leave for these national holidays and other festivals, with variations across states reflecting India's cultural diversity. Employees working on public holidays are entitled to double wages or compensatory leave, as per state regulations.

Under the Shops and Establishments Act, guidelines are established to regulate working conditions, hours, and employee welfare in shops and commercial establishments. This Act emphasizes fair treatment and includes provisions for employee welfare committees, working hour regulations, and adequate facilities.

Moreover, the Industrial Disputes Act empowers employees to address conflicts related to public holidays and other grievances in the industrial sector.

In essence, Indian workers enjoy entitlements to public holidays outlined by various labour laws. Employers are obliged to inform employees about these holidays and provide

appropriate compensation for work performed on such occasions. Understanding and adhering to these laws is crucial for both employers and employees to ensure rights and obligations are upheld.

Salary

The key aspects related to salary laws in India are as follows:

Minimum Wage Laws: India has enacted minimum wage laws at both central and state levels. These laws specify the minimum remuneration that employers must pay to employees, considering factors such as skill level, industry, and location.

Payment of Wages Act: The Payment of Wages Act, 1936, governs the payment of wages to employees, ensuring timely payment and protecting against unauthorized deductions.

Equal Remuneration Act: The Equal Remuneration Act, 1976, prohibits gender-based pay discrimination and mandates equal pay for equal work.

Bonus Act: The Payment of Bonus Act, 1965, mandates the payment of annual bonuses to eligible employees based on profits and productivity.

Gratuity Act: The Payment of Gratuity Act, 1972, provides gratuity to employees upon retirement, resignation, or death, given they meet service criteria.

Taxation Laws: Income tax laws govern the taxation of salaries and wages, requiring employers to deduct TDS based on applicable rates.

The Minimum Wages Act, 1948 governs the fixation of minimum wages in India, with rates set by both the central and state governments. Minimum wages are established considering factors like skill level, industry, and location, and may vary for different sectors and occupations, including trainees and piece-rate workers. The Act allows for basic wages, cost of living allowances, and other concessions to be included in the minimum wage.

Under the Act, both central and state governments can notify scheduled employments and fix or revise minimum wage rates accordingly. These rates are reviewed periodically, typically every five years, and are determined based on factors like food requirements, housing, and other essentials.

Compliance with minimum wage laws is ensured through labour inspections, with fines and imprisonment imposed for non-compliance. Employees can file complaints for unpaid or underpaid wages within six months, and penalties are stipulated for violators.

The recently proposed to be enacted Code on Wages, 2019 consolidates various wage-related laws, including the Minimum Wages Act. It defines an employee as any person employed for wages, with provisions for minimum wages and bonus payments. However, platform workers, considered independent contractors, fall outside the scope of the Code and are governed by the Indian Contract Act, 1872.

Overall, the Minimum Wages Act and the Code on Wages aim to ensure fair remuneration for workers, with provisions for regular review and enforcement mechanisms to uphold employee rights.

Currently, India sets a national minimum wage, currently established at ₹843 per day (approximately US\$9.66) or ₹21,917 per month (US\$251.17) as of 2025. However, it is important to note that minimum wage rates may vary by state, as individual states have the authority to set their own minimum wage standards.

Sick leave

Sick leave is an essential aspect of employment law in India, aimed at providing employees with the necessary time off to recover from illness or injury without facing financial repercussions. Sick leave, also known as medical leave or sickness absence, is a paid leave provided by companies to employees who are unwell or ill. It is separate from paid vacation time and is mandated by law for employers to offer to their workers.

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The specifics of sick leave policies may vary depending on the company's location and local laws. Employers must determine factors such as the number of sick days allowed, the amount of compensation provided for these days, and eligibility criteria when creating their sick leave policy.

Distinctions are often made between short-term and long-term illnesses in sick leave policies, with different procedures in place for each. These policies play a crucial role in ensuring employee well-being and compliance with legal requirements.

Sick leave regulations in India are primarily governed by the State's Shops and Establishment Act, with additional laws applicable to specific industries or roles.

According to the Indian Shops and Establishment Act, sick leave policies typically include:

- A provision for 0.5 to a maximum of seven paid sick days.
- Employers may request a medical certificate for sick leave exceeding three days.
- Sick leave can be combined with earned leave.
- Unused sick days do not carry over or get paid out and expire at the end of the calendar year.

Additional regulations for paid sick leave exist in specific laws:

- The Apprentices Act, 1961 allows interns or apprentices to take up to 15 days of medical leave annually, extendable up to 40 days for accumulated leave.
- The Plantation Labour Act, 1951 governs sick leave for plantation industry employees, granting leave based on company policies.
- The Working Journalist and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 stipulate one month of medical leave for every 18 months of service, paid at half wages.
- Under the Sales Promotion Employees (Conditions of Service) Act, 1976, employees are entitled to sick leave equivalent to one-eighteenth of their service period, paid at half wages.

Employees may request sick leave for various valid reasons, including:

- Contagious illnesses: Preventing the spread of infections like flu, colds, chickenpox, and conjunctivitis by staying home from work.
- Medical appointments: Attending doctor check-ups, dental cleanings, eye exams, physical therapy sessions, and counseling during work hours.
- Temporary injuries and illnesses: Dealing with conditions like sprains, migraines, bronchitis, and kidney stones that affect the ability to work.
- Surgeries and recovery: Taking time off for procedures such as hernia repair, laparoscopy, tonsillectomy, and subsequent recovery periods.
- Hospitalizations: Needing time off for hospital stays, emergency treatments, and medical testing like endoscopy or colonoscopy.

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- Pregnancy-related needs: Including prenatal care, childbirth recovery, lactation support, and managing pregnancy-related illnesses.
- Chronic medical conditions: Dealing with ongoing health issues like autoimmune disorders, mental health conditions, and irritable bowel syndrome.
- Medical procedures: Requiring preparatory time off work, such as bowel preparation for colonoscopies.
- Treatment side effects: Managing impairments caused by treatments like chemotherapy or physical therapy.

Paternity leave

While India has made strides in maternity benefits, the landscape of paternity leave is still evolving. As of now, there is no specific nationwide legislation mandating paternity leave in India. The primary legislation governing parental leave is the Maternity Benefits Act, 1961, which provides comprehensive benefits to expecting and adoptive mothers. However, the absence of dedicated paternity leave provisions underscores the need for reform to address the evolving needs of modern families.

Despite the lack of statutory provisions, some progressive companies in India have taken proactive steps to introduce paternity leave as part of their employee benefits package. These initiatives aim to support fathers in actively participating in caregiving responsibilities, bonding with their newborns, and promoting gender equality in the workplace. Paternity leave durations typically range from a few days to a couple of weeks, depending on the company's policies and industry norms.

While there is no federal law mandating paternity leave, some states in India have introduced their own regulations concerning parental leave. For example, the State of Maharashtra recently amended its Shops and Establishments Act to provide for paternity leave of up to 15 days for male employees in certain sectors. These state-level initiatives represent important progress towards recognizing the importance of paternity leave in supporting working fathers. Benefits of Paternity Leave:

- 1) Evolving Dynamics: In contemporary times, with both parents often pursuing careers and frequent relocations becoming the norm, nuclear families have become prevalent. Men are increasingly acknowledging the challenges faced by women and are eager to take on parenting responsibilities, even in non-nuclear family setups. Paternity leave facilitates this transition by enabling fathers to actively engage in the upbringing of their newborns.
- 2) Shared Responsibilities: The arrival of a newborn brings forth a plethora of tasks that demand attention. Mothers often bear the brunt of these responsibilities, leading to stress and exhaustion. It is essential for fathers to step in and share the caregiving duties. Paternity leave allows men to actively participate in childcare, alleviating the burden on their partners.

3) Promoting Gender Equality: The concept of equality transcending gender has gained traction in contemporary society. Encouraging men to take paternity leave and actively engage in childcare fosters a culture of gender equality. This shift towards shared parenting responsibilities challenges traditional gender norms and promotes inclusivity.

4) Strengthening Family Bonds: Paternity leave offers fathers the opportunity to forge deeper bonds with their newborns and spend quality time with their families. This invaluable time spent together not only strengthens familial ties but also lays the foundation for a strong parent-child relationship.

5) Enhancing Work-Life Balance: Witnessing the milestones of their child's early development and being actively involved in their upbringing restores a sense of balance in life. Paternity leave allows fathers to prioritize family commitments while maintaining a fulfilling professional life, thus restoring equilibrium between work and personal life.

6) Boosting Employee Morale: Employers stand to benefit from a motivated and engaged workforce when employees return from paternity leave. By supporting paternity leave initiatives, employers demonstrate their commitment to employee well-being and foster a positive work culture conducive to productivity and morale.

Maternity leave

Maternity leave laws in India are governed primarily by the Maternity Benefit Act, 1961, which aims to provide maternity benefits to women employees in both the public and private sectors. Motherhood is a transformative journey, and Indian law acknowledges the importance of providing new mothers with time to recover and bond with their newborns. Let's dive into the law pertaining to this:

A) Governing Law: The Maternity Benefit Act, 1961 (MBA) is the cornerstone for maternity leave entitlements in India. It applies to all establishments (factories, shops, offices) employing ten or more employees.

B) Leave Entitlement:

- Duration: New mothers are entitled to a minimum of 26 weeks (182 days) of paid maternity leave. This can be availed before and after childbirth.
- Flexibility: Women have the option to utilise a maximum of 8 weeks of leave before their expected delivery date.

C) Eligibility:

- Employment Period: A woman must have worked for the establishment for at least 180 days in the twelve months preceding the expected delivery date.
- Applicability: While primarily meant for biological mothers, the act extends benefits to:
 - Adoptive Mothers: Women adopting a child below three months old can avail the full 26 weeks of leave.
 - Commissioning Mothers: Women who opt for surrogacy can also claim maternity leave benefits.

D) Benefits During Leave:

- Leave with Pay: Employers are legally obligated to pay the woman employee her average daily wage for the entire leave period.
- Medical Expenses: Certain states offer additional provisions for covering medical expenses related to childbirth under the maternity benefit scheme. However, this varies by state.
- Leave Extension: While the law mandates 26 weeks, some companies may offer even longer maternity leave periods as part of their employee benefits package.

Notice Period: It's advisable for expecting mothers to inform their employers about the pregnancy and expected delivery date well in advance. This allows for smooth leave planning and potential adjustments to workload.

Job Security: Employers cannot terminate a woman's employment or disadvantage her for availing maternity leave. The MBA protects new mothers from job loss during this sensitive period.

Birth vs Adoption: The full 26 weeks of leave apply to both biological mothers giving birth and adoptive mothers welcoming a child below three months old.

Miscarriage: In the unfortunate event of a miscarriage or medical termination of pregnancy, female employees are entitled to six weeks of paid leave immediately following the occurrence. Additionally, the Maternity Benefit Act provides for paid leave in situations where an employee undergoes a tubectomy or experiences any illness related to pregnancy, delivery, or premature childbirth. These provisions aim to support the physical and emotional well-being of female employees during challenging times and ensure they receive necessary care and support without financial burden.

State Variations: Some states may have additional provisions or slight variations in the implementation of the MBA. It's recommended to consult the specific Shops and Establishments Act of your state for the latest information.

Nursing Breaks: Employers are required to provide nursing breaks to women employees for breastfeeding their infants. These breaks should be provided for a maximum duration of two times during the working day, until the child attains the age of fifteen months.

Amendments: In 2017, the Maternity Benefit (Amendment) Act was passed, extending the duration of maternity leave from 12 weeks to 26 weeks for women in the organized sector. This amendment aimed to promote the health and well-being of mothers and their newborns and encourage greater female workforce participation.

Employer Obligations: Employers are required to comply with the provisions of the Maternity Benefit Act and ensure that women employees are provided with their

entitlements without discrimination or prejudice. Failure to adhere to these provisions may result in legal consequences and penalties for the employer.

Termination

Methods of employment termination

Employee termination in India can occur through various mechanisms, each with its own legal implications and procedures. There are several types of terminations prevalent in India and these are as follows:

A) Resignation:

- Resignation is a voluntary termination initiated by the employee.
- The employee provides notice as per the terms of their employment contract or as per statutory requirements.
- Employers typically accept the resignation and process the employee's exit formalities accordingly.

B) Termination by the Employer:

- Termination by the employer can occur for various reasons, including poor performance, misconduct, redundancy, or violation of company policies.
- Employers must follow due process and adhere to the principles of natural justice when terminating an employee.
- Depending on the reason for termination, employers may be required to provide notice or pay in lieu of notice.

C) Retrenchment:

- Retrenchment refers to the termination of employees for reasons such as the closure of a business, reduction in workforce, or financial constraints.
- Employers must comply with the legal requirements specified under labour laws, including providing notice, paying retrenchment compensation, and following a fair selection criteria.

D) Dismissal:

- Dismissal typically occurs due to serious misconduct or breach of employment terms by the employee.
- Employers must conduct a thorough investigation into the alleged misconduct and provide the employee with an opportunity to respond before dismissing them.

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- Dismissal may result in immediate termination without notice or compensation, depending on the severity of the misconduct.

E) Layoff:

- Layoff involves temporarily removing employees from work due to factors such as economic downturns, seasonal fluctuations, or organizational restructuring.
- Employers must comply with applicable labour laws and collective bargaining agreements when implementing layoffs.
- Employees may be entitled to certain benefits during the period of layoff, such as compensation or re-employment rights.

F) Constructive Dismissal:

- Constructive dismissal occurs when an employer creates a hostile work environment or breaches the terms of employment to the extent that the employee feels compelled to resign.
 - Employees who resign due to constructive dismissal may be entitled to compensation or other remedies if they can prove their case.
1. The Industrial Disputes Act (IDA), 1947:
 - Notice period of 30–90 days mandatory for termination.
 - Government approval required for termination in establishments with more than 100 workers.

2. The Industrial Employment (Standing Orders) Act (IESA), 1946:

- Employers must get service conditions certified to avoid disputes.
- Standing orders include termination procedures, misconduct definition, and suspension allowance.

3. Industrial Relation Code (upcoming)

- Establishments with 300 workers can lay off, retrench, or close without government permission.

4. The Factory Act, 1948

- Unavailed leave not considered in notice period calculation.
- Payment against balance leave to be made before next working day post termination.

5. The Maternity Benefit Act, 1961

- Prohibits termination of female employees on maternity leave.

State-Specific Labour Laws:

Delhi:

- Notice period of 30 days for termination after 3 months of work.
- Employee must be given opportunity to explain charges.

Maharashtra:

- 30-day notice for over 1 year of service; 14 days for less than 1 year.

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- No compensation for termination due to mischief.

Karnataka & Tamil Nadu:

- One-month notice for over 6 months of service.
- No compensation for termination due to mischief.

Andhra Pradesh:

- No notice period if worked for at least six months.

West Bengal:

- 30-day notice period, applicable to organizations without gratuity eligibility.

Rajasthan:

- Notice period of 30 days for less than 6 months of service.

These laws ensure fair and lawful termination practices, protecting the rights of both employers and employees across India.

Ordinary dismissal by the employer

Both the employee and the employer can ordinarily terminate the employment contract with notice period in India. Both the employee and the employer must have a valid reason for termination of the employment contract, and the employee may challenge the validity of the dismissal in court.

The employee can ordinarily terminate the employment contract with a resignation letter, but has the obligation to complete the notice period prescribed by law or determined by the employment contract.

The employer may ordinarily terminate the employment contract if there is a justifiable reason to do so. The grounds for legal termination of employment in India are:

- Breach of contract by the employee
- Serious misconduct by the employee
- Redundancy; and
- Unethical behaviour by the employee.

The dismissal must be in writing, with an explanation (if given by the employer), and must be delivered to the person being dismissed. If an employee is terminated without cause, they are entitled to receive severance pay.

Given the structure of Indian labour laws, there is no standard process to terminate an employee in India. An employee may be terminated according to terms laid out in the individual labour contract signed between the employee and the employer.

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In the case that there is no labour contract, or the labour contract does not define a method of termination, then the employer has to follow the specific state's law.

In general, under Indian law:

First step in dismissing an employee is that the employer should have a valid reason for termination that is documented in the employee's file.

Second, the employer should give the employee advance notice of the termination and provide an opportunity for the employee to appeal the decision. The notice should give the employee a reasonable opportunity to explain their side of the story. If the employer is satisfied with the explanation given by the employee, no further action needs to be taken. However, if the employer is not satisfied, they may proceed with termination.

The next step is to issue a formal termination letter to the employee. This letter should specify the last date of employment and other relevant details such as payment of outstanding salary, etc.

Finally, the employer should ensure that all severance pay and benefits are paid out in accordance with Indian law.

Notice period and challenging the dismissal

In the dynamic landscape of employment in India, the termination of an employee is a significant event that requires careful consideration and adherence to legal regulations.

Notice Period:

General Rule: In the absence of a specific employment contract clause, the notice period for termination of employment in India is governed by two main laws:

- The Industrial Disputes Act, 1947 (IDA): Applies to establishments with 100 or more employees on any day in the preceding 12 months. Under the IDA, employers must give one month's notice or pay one month's wages in lieu of notice when terminating the employment of a "workman" (as defined by the act).
- The Shops and Establishments Acts (S&E Acts): Enacted by each state, these acts regulate working conditions in shops and commercial establishments. Specific rules may vary slightly by state, but typically mandate a notice period of one month for termination of employees who have been employed for at least three months.
- Employment Contract: Your employment contract might supersede the general rules and specify a different notice period (longer or shorter). Always refer to your contract for the most accurate information.

Challenging a Dismissal:

- Unfair Termination: If you believe your termination was unfair or without proper cause, you can challenge it through legal means. The process typically involves:
- Internal Grievance Redressal Mechanism: Many companies have an internal grievance redressal mechanism where employees can first raise their concerns.
- Labour Court/Tribunal: If the internal mechanism fails to resolve the dispute, you can approach the Labour Court or Tribunal with jurisdiction over your workplace. These courts adjudicate disputes between employers and employees. The Industrial Relations Code (IRC), 2020, is a significant piece of pending legislation that aims to streamline various labour laws in India. While not yet in effect (as of May 6, 2024), it's crucial to understand its potential impact on notice period and challenging dismissal.

Notice Period Under the IRC:

The IRC proposes a standardized notice period for termination of employment, applicable to all establishments irrespective of size (unlike the current system based on IDA and S&E Acts). Here's a breakdown of the proposed provisions:

- Employee Notice Period: Employees will be required to provide a minimum notice period of one month or pay wages in lieu of notice.
- Employer Notice Period: Employers will be obligated to provide a minimum notice period based on the duration of the employee's service:
 - Less than 1 year: One month's notice
 - 1 year to 5 years: Three months' notice
 - More than 5 years: Two weeks' notice for every completed year of service, subject to a maximum of 12 months' notice.

Impact on Existing Notice Periods:

- Potential Increase: For employees currently under shorter notice periods as per their contracts or applicable S&E Acts, the IRC's provisions could lead to an increase in the required notice period.
- Potential Decrease: For employers who offer longer notice periods as a company policy, the IRC might allow them to reduce the notice period (subject to a minimum of one month).

Challenging Dismissal Under the IRC:

The IRC introduces a concept of "industrial disputes" encompassing termination of employment by the employer. This could potentially streamline the process of challenging dismissal compared to the current system under the IDA and various S&E Acts. Here are some key proposals:

- Single Forum: The IRC proposes establishing a single forum (industrial relations officer) to adjudicate disputes related to termination, potentially simplifying the process compared to the current system involving Labour Courts and Tribunals.
- Time Limits: The IRC proposes stricter time limits for filing disputes related to termination, potentially expediting the resolution process.

- Settlement Mechanism: The IRC emphasizes promoting settlements between employers and employees, potentially offering faster resolution compared to lengthy court battles.

Important Considerations:

- Implementation Timeline: The exact date for the IRC's implementation remains unclear.
- Existing Contracts: The IRC might provide transitional provisions for existing employment contracts with different notice period clauses.

Rights and obligations of unemployed persons

In India, the rights and obligations of unemployed individuals are governed by various legal provisions and welfare schemes aimed at providing support, assistance, and opportunities for those seeking employment. Unemployment in India is a multifaceted issue that affects millions of individuals across the country. While being unemployed can be challenging, especially concerning financial stability and social well-being, various rights and support systems exist to assist those in need. Here's a brief overview of the basic rights and obligations of unemployed persons in India:

1. Access to Unemployment Benefits:

- Eligible individuals can receive financial assistance under government schemes, intended to alleviate financial hardship during unemployment.
- Benefit duration, eligibility criteria, and application procedures vary based on specific programs.

2. Job-Seeking Assistance:

- Government agencies and employment exchanges provide job-seeking aid, including access to job listings, career counseling, and skill development programs.
- Workshops and training sessions help individuals enhance employability through resume writing, interview skills, and job search strategies.

3) Retraining and Skill Development:

- Initiatives offer retraining opportunities through skill development programs, vocational training, and apprenticeships.
- These programs equip individuals with skills relevant to emerging job roles and industries, often provided free or subsidized.

4) Rights to Dignity and Non-Discrimination:

- Unemployed individuals are entitled to dignity and protection against discrimination based on gender, caste, religion, disability, or age.
- Legal avenues exist for redressal against discrimination or unfair treatment in workplaces or broader society.

5) Obligations to Seek Employment:

- While accessing support, individuals have a responsibility to actively seek employment opportunities.
- Registering with employment exchanges, participating in job-seeking activities, and updating skills are essential for reintegration into the workforce.
- Avoiding fraudulent activities or willful neglect of job-seeking efforts is crucial to maintain eligibility for benefits and support services. Unemployment policies and regulations in India encompass a broad spectrum of measures aimed at addressing the complex challenges faced by individuals without employment. This section delves deeper into the legal framework, policy initiatives, and systemic interventions relevant to the rights and obligations of unemployed persons in India. From legislative provisions to innovative programs, here's a detailed exploration of the aspects of unemployment in India:

1. Legislative Framework:

- The Constitution of India guarantees certain fundamental rights relevant to employment and livelihood, including the right to equality, freedom of occupation, and protection against exploitation.
- Various labour laws and statutes govern aspects of employment, including recruitment, conditions of work, wages, and social security.
- The Unemployment Allowance Scheme, introduced under the National Rural Employment Guarantee Act (NREGA), provides for the payment of unemployment allowances to eligible individuals in rural areas who are registered and actively seeking work but cannot find employment.

2. Government Initiatives and Welfare Programs:

- The Ministry of Labour and Employment and other government departments spearhead initiatives to address unemployment through skill development, job creation, and social protection schemes.
- The Pradhan Mantri Kaushal Vikas Yojana (PMKVY), Skill India Mission, and Make in India campaign are flagship programs aimed at enhancing the employability of youth and promoting entrepreneurship.
- Social security schemes such as the Employees' Provident Fund (EPF), Employees' State Insurance (ESI), and National Pension System (NPS) provide financial protection and welfare benefits to employees in the organized sector.

3. Employment Generation and Economic Growth:

- Sustainable economic growth and job creation are critical components of addressing unemployment at the macroeconomic level.
- Government policies focus on fostering conducive business environments, promoting entrepreneurship, and attracting investments to stimulate job creation across sectors.
- Initiatives such as Startup India, Standup India, and Digital India aim to harness innovation, technology, and entrepreneurship to generate employment opportunities and drive economic growth.

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4. Social Safety Nets and Poverty Alleviation:

- Social safety net programs and poverty alleviation schemes play a vital role in mitigating the impact of unemployment on vulnerable populations.
- The Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) provides for the guarantee of at least 100 days of wage employment in a financial year to every rural household whose adult members volunteer to do unskilled manual work.
- Welfare schemes such as the National Social Assistance Program (NSAP), Pradhan Mantri Awas Yojana (PMAY), and Jan Dhan Yojana aim to provide financial assistance, housing, and social security to marginalized communities.

5. Skill Development and Education:

- Investing in education and skill development is crucial for enhancing the employability of the workforce and addressing structural unemployment challenges.
- The National Skill Development Corporation (NSDC) and its affiliated training partners offer skill development programs aligned with industry needs and job market demands.
- Vocational education and training (VET) initiatives, apprenticeship programs, and technical education reforms aim to bridge the gap between education and employment, empowering individuals with relevant skills and competencies.

Severance pay

In India, severance pay is governed by various labour laws and regulations, and it serves as a financial cushion for employees during the transition period after leaving their job. Severance pay is a financial compensation provided to an employee by the employer upon termination of employment. It's intended to offer some financial security during the job search period.

There's no single law mandating severance pay in India. However, you might be eligible for it under certain circumstances:

- **Contractual Agreement:** If your employment contract explicitly mentions severance pay and its terms, you're entitled to it as per the contract.
- **Company Policy:** Some companies offer severance pay as part of their employee benefits package, irrespective of the reason for termination.
- **Termination Due to Closure/Downsizing:** If your company is closing down or undergoing significant downsizing, they might offer severance packages to departing employees.

Severance packages typically comprise several components, including:

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- Lump Sum Payment: This entails a one-time financial payout to the employee following termination. The amount is typically calculated based on factors such as the employee's salary, tenure with the company, and organizational policies.
- Continuation of Benefits: Some severance packages extend benefits beyond termination, such as ongoing health insurance coverage, retirement benefits, or other perks. This ensures that employees maintain essential benefits for a specified period, easing the transition until they secure new employment or alternative coverage.
- Outplacement Services: Employers may offer outplacement assistance to support terminated employees in their job search endeavors. These services often include career counseling, job search support, resume writing assistance, and access to job placement resources. By providing such resources, employers aim to facilitate a smoother transition for displaced workers into new roles.
- Non-Disclosure and Non-Compete Agreements: In certain cases, employers may require terminated employees to sign agreements prohibiting them from disclosing confidential company information or engaging in competitive activities for a specified duration post-termination. These agreements aim to protect the company's interests and safeguard sensitive information from being exploited by former employees. The amount of severance pay is determined with regard to the length of the previous continuous employment relationship with that employer, and may not be contracted.

Severance pay is offered to employees who retire, are laid off, or reach the end of the contractual agreements.

- One month's salary must be paid to employees who have worked for a year or more.
- For mass termination in protected sectors, three months of wages must be offered to employees.
- The Payment of Gratuity Act entitles employees to gratuity payment after five years of continuous service.
- The Industrial Disputes Act of 1972, also states that retrenched (involuntarily dismissed) workmen must be given 15 days of severance pay for each year of service that they have completed.

Factors Affecting Severance Pay:

- Reason for Termination: The reason for your termination can influence your eligibility and the amount of severance pay. - Termination due to misconduct might disqualify you from receiving it.
- Company Policy: The specific terms of your company's severance pay policy will determine the amount and calculation method (e.g., based on salary and years of service).
- Negotiation: Depending on the circumstances, you might have some room for negotiation regarding the severance package, particularly if your termination wasn't due to misconduct.

Alternatives to Severance Pay:

- Notice Pay: If your employer terminates your employment by giving you a notice period (as mandated by law or your contract), they must pay your salary for the notice period. This can act as a form of financial buffer.
- Payment in Lieu of Unutilized Leave: Any accrued and unutilized leave (like vacation or sick leave) might be encashed and paid to you upon termination.

Currently, there's no central law mandating severance pay in India. The government has proposed a new code, the Industrial Relations Code (IRC), 2020, which includes provisions for severance pay. However, the IRC is not yet implemented (as of May 6, 2024).

Additional items

Probationary period

In India, the probation period is a common practice in employment contracts, allowing both the employer and the employee to assess mutual suitability for the job role. A probation period marks the initial phase of employment for new hires, functioning as a trial period during which organizations evaluate various aspects of the employee's fit within the company. Here's a structured breakdown of the probation period and its implications:

- Introduction and Orientation: At the onset of employment, new hires undergo orientation, where they acquaint themselves with the organisation's culture, policies, and job specifics.
- Training: New employees receive comprehensive training to hone their technical and soft skills, essential for their designated roles.
- Goal-setting: Managers collaborate with new hires to establish clear performance expectations and objectives for the upcoming assessment period.
- Transition to Role: Following training, employees seamlessly transition into their day-to-day responsibilities, integrating into the workflow.
- Performance Evaluation: Upon the conclusion of the probationary timeline, managers conduct thorough performance assessments. Factors such as job-specific competency, teamwork, adaptability, attendance, and cultural alignment are considered.

Post-Probation Period Outcomes:

- Confirmation: Exceptional performance during probation often results in permanent employment status, accompanied by potential salary adjustments and access to full employee benefits.
- Extension of Probation: In cases where improvement is deemed feasible but requires additional training or time, employers may opt to extend the probation period. This extension facilitates skill enhancement and potential role diversification.

- Termination: If the performance assessment reveals a significant misalignment between the employee's capabilities and organizational requirements, termination may be the outcome. This decision is made to ensure that the company's operational needs are met effectively.

As of 2024, probationary periods for employees in India are governed by various legal statutes and recent guidelines, shaping the rights and obligations of both employers and employees during this transitional phase. Here's a detailed overview of the probation period rules in India:

- Duration of Probation: The Supreme Court, under the Industrial Employment Standing Orders Act of 1946, has stipulated that the probation period should not exceed two months. However, exceptions allow employers to extend probation for up to four months in special circumstances. It's noteworthy that certain states permit longer probation periods, extending up to 240 days or eight months.

- Termination Clause: Employers hold the authority to terminate probationary employees without prior notice in cases of misconduct or fraudulent activities. Such terminations fall outside the purview of the Industrial Disputes Act, Section 7(2), which governs dismissals and retrenchments.

- Confirmation Process: A probationary employee cannot attain permanent status until the company issues official confirmation of their employment. This step signifies the successful completion of the probationary period and the employee's readiness for permanent employment.

- Legal Compliance and Benefits: Compliance with the Industrial Employment Act of 1946 is mandatory for both employers and employees during the probationary period. This entails adherence to the prescribed duration of probation, termination protocols, and confirmation procedures. Importantly, both parties are entitled to certain benefits during this period. Employees are expected to demonstrate their skills and capabilities while employers utilise this time to assess employee performance, provide necessary training, and plan for future development.

- Judicial Precedents: Over the years, numerous judicial cases have shaped the legal landscape surrounding probationary employment in India. These cases have addressed issues such as the duration of probation, termination rights, and the entitlement of benefits during this period. Employers and employees alike must stay informed about recent judicial decisions to ensure compliance with evolving legal standards.

Intellectual property rights

Understanding IPR in the context of employment is crucial for both employers and employees in India as these rights govern ownership, usage, and protection of creations and innovations developed during employment.

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Exploring the realm of employee intellectual property (IP) rights within the Indian context unveils a nuanced landscape shaped by legal frameworks, contractual agreements, and industry practices. Here's a comprehensive breakdown of key considerations:

A) Employee Contributions to IP: Employees often play a pivotal role in the creation and development of intellectual property during their employment tenure. This may encompass inventions, designs, software code, artistic works, and other innovative outputs.

B) Legal Framework:

a. The Patents Act, 1970: This legislation governs the ownership, protection, and rights associated with patentable inventions in India. It delineates the criteria for patent eligibility, patent filing procedures, and the rights of patent holders.

b. Copyright Act, 1957: The Copyright Act addresses issues pertaining to the ownership, licensing, and protection of original literary, artistic, musical, and dramatic works. It outlines the rights of copyright holders and provides mechanisms for enforcing copyright protection.

c. Trade Secrets and Confidentiality: While India lacks specific legislation dedicated to trade secrets, protection is often afforded under common law principles and contractual agreements. Employers may utilise non-disclosure agreements (NDAs) to safeguard proprietary information and confidential business practices.

C) Employment Agreements:

a. Clear Provisions: Employment contracts should contain explicit provisions regarding the ownership and use of intellectual property generated during the course of employment. These provisions clarify the rights and obligations of both parties and help mitigate disputes over IP ownership.

b. Scope of Employment: Defining the scope of employment is crucial for delineating the parameters within which employees are authorized to create intellectual property on behalf of the employer. This includes specifying the nature of tasks, projects, and responsibilities entrusted to the employee.

D) Assignment and Transfer of IP Rights:

a. Express Assignment: Employment agreements should include clauses mandating the assignment of intellectual property rights to the employer for creations developed during the term of employment. This ensures that the employer retains ownership and control over valuable IP assets.

b. Compensation Arrangements: Employers may provide compensation or consideration to employees in exchange for the assignment of IP rights. The terms of compensation should be clearly articulated in the employment agreement to avoid ambiguity or disputes.

By comprehensively addressing these aspects within the framework of employment relationships, employers and employees can navigate the complexities of employee intellectual property rights in India while fostering innovation and protecting valuable IP assets. Here's a detailed breakdown of additional considerations pertaining to intellectual property rights (IPR) in the workplace:

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A) Inventions and Patents:

- Invention Assignment Clauses: Explicitly state the assignment of rights for inventions and patentable innovations in employment contracts.
- Notification Requirements: Establish procedures for employees to notify the employer about potentially patentable inventions.

B) Copyrightable Works:

- Scope of Copyright: Define the scope of copyrightable works created during employment, such as software code, artistic works, or written materials.
- License Provisions: Specify any license granted to employees for the use of copyrightable works in the course of their employment.

C) Trade Secrets and Confidential Information:

- Non-Disclosure Agreements (NDAs): Implement NDAs to protect trade secrets and confidential information.
- Restrictive Covenants: Include restrictive covenants to prevent employees from disclosing or using confidential information post-employment.

D) Employee Education and Awareness:

- Training Programs: Conduct training programs to educate employees about intellectual property rights, confidentiality, and compliance.
- Clear Policies: Establish clear policies on the use of company resources and the disclosure of potentially patentable inventions.

E) Collaboration Agreements:

- Collaborative Projects: Define ownership and rights in collaborative projects involving multiple employees.
- Joint Ownership: Specify arrangements for joint ownership and benefits sharing in cases of jointly created IP.

F) Dispute Resolution Mechanism:

- Internal Procedures: Establish mechanisms for resolving IP-related disputes internally.
- Mediation or Arbitration: Include clauses for mediation or arbitration in employment agreements to resolve disputes amicably.

G) Periodic Review of Agreements:

- Updates: Regularly review and update employment agreements to align with business practices and legal requirements.
- Employee Acknowledgment: Require employees to acknowledge updated agreements to confirm understanding and acceptance of IP terms.

H) Collaboration and Recognition:

- Recognition Programs: Implement initiatives to recognize and reward employees for contributions to intellectual property and innovation.
- Encourage Collaboration: Foster a culture of collaboration to motivate employees to contribute to innovation while respecting IP rights.

Employee data privacy

In India's ever-evolving employment legal framework, employee privacy rights stand out as a crucial yet underserved aspect owing to a distinct absence of specific regulations safeguarding employee privacy. In India, the legal framework concerning employee data protection and privacy is evolving, albeit with certain limitations. While no specific legislation comprehensively addresses data privacy in the employment sector, landmark court cases, such as *Kharak Singh v State of UP* and *People's Union of Civil Liberties v Union of India*, have recognised the right to privacy as intrinsic to the broader constitutional guarantee of the right to life and personal liberty.

The Information Technology (IT) Act of 2000 represents a significant step towards regulating data protection. Notably, Section 43A of the IT Act provides safeguards for sensitive personal data or information (SPDI), while Section 72A protects personal information from unauthorized disclosure. Recent amendments and rules under the IT Act further delineate compliance requirements for entities handling SPDI, imposing obligations on employers collecting and storing employee data.

Employers must ensure compliance with these regulations and maintain robust security measures to safeguard employee SPDI. Failure to do so can result in liability, with aggrieved employees entitled to compensation upto INR 5,00,00,000/-. Adjudication of such claims falls under the purview of designated officers under the IT Act for claims up to a certain limit, while higher claims are adjudicated by civil courts. Thus, while the legal landscape regarding employee data protection in India is gradually evolving, employers must remain vigilant in adhering to regulatory requirements to mitigate risks and uphold employee privacy rights. The Information Technology (IT) Act in India outlines specific parameters and compliance requirements for employers handling sensitive personal data or information (SPDI) of employees. These regulations include:

- **Necessity and Duration:** SPDI should only be collected when necessary, with a clear purpose and a defined retention period.
- **Consent:** Employers must obtain specific written consent from employees before collecting SPDI, outlining the purpose, intended recipients, and the option to opt out.
- **Privacy Policy:** Employers are required to have a well-documented privacy policy, accessible to employees, outlining data collection, usage, and protection measures.
- **Access and Correction:** Employees should have the right to access and rectify inaccuracies in their SPDI.
- **Transfer:** SPDI can only be transferred with explicit employee consent, ensuring that the recipient maintains similar data protection standards.
- **Security Practices:** Employers must implement and maintain reasonable security practices and procedures to safeguard SPDI, following prescribed standards.

In light of these requirements, organizations must develop robust policies and audit mechanisms for employee data protection. This includes analyzing documentation for new recruits to ensure compliance, obtaining consent from existing employees for future SPDI use, and conducting data audits during employee exits.

For multinational companies operating in India, compliance with Indian data protection laws presents unique challenges, especially concerning cross-border data transfer. It is crucial to navigate the intricacies of Indian regulations while ensuring alignment with global data protection standards.

Moreover, while the IT Act addresses SPDI collection, employers must also consider broader privacy concerns and potential liabilities under common law. Proactive adherence to data protection regulations, even when not explicitly required, is advisable to mitigate legal risks and uphold employee privacy rights.

Additionally, the rise of technology and communication tools has amplified concerns around employee surveillance. While not explicitly covered under the IT Act, employers must balance their legitimate interests in monitoring employee activities with respect for privacy rights. The Supreme Court's stance on privacy underscores the importance of lawful and proportionate surveillance practices to avoid legal repercussions and foster a conducive work environment.

Restrictive covenants

Prohibition of competition

In India, non-compete clauses are recognised and enforceable under certain conditions. However, they must adhere to the principles of reasonableness and public policy. Here's a closer look at the prohibition of competition in employment contracts in India:

- Reasonableness: Non-compete clauses must be reasonable in terms of duration, geographical scope, and the nature of the restriction. Courts in India assess the reasonableness of these clauses based on factors such as the seniority of the employee, the nature of the business, and the potential impact on the employee's livelihood.
- Protection of Legitimate Interests: Non-compete clauses are enforceable in India if they aim to protect the legitimate interests of the employer, such as trade secrets, confidential information, or client relationships. The restriction should be necessary to safeguard these interests and should not unduly restrict the employee's ability to earn a livelihood.
- Consideration: To be enforceable, non-compete clauses must be supported by adequate consideration, meaning that the employee receives something of value in exchange for agreeing to the restriction. This could include initial employment, promotion, additional compensation, or access to proprietary information.

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- Duration and Geographic Scope: The duration and geographical scope of non-compete clauses should be reasonable and proportionate to the legitimate interests being protected. Courts may strike down clauses that are overly broad or extend for an unreasonably long period.
- Exceptions: Certain professions or situations may warrant exceptions to non-compete clauses. For example, doctors, lawyers, or other professionals may need to continue practicing in the same geographical area to serve their clients' interests. Courts may also consider the public interest and the employee's right to earn a livelihood when evaluating the enforceability of non-compete clauses.
- Enforcement: If an employee breaches a non-compete clause, the employer can seek injunctive relief or damages through civil litigation. Courts will assess the validity and enforceability of the clause based on the specific circumstances of the case.

Non-compete clauses, prevalent in Indian employment contracts, restrict employees from engaging in similar business activities during or after their employment period to protect their employers' interests. However, their enforceability is subject to legal scrutiny.

Under the Indian Contract Act of 1872, Section 27 deems agreements restraining individuals from practicing their lawful professions as void. The Constitution of India, under Article 19(g), grants citizens the right to practice any profession, subject to reasonable restrictions in the public interest. Consequently, courts have been cautious in upholding non-compete clauses to ensure fairness and uphold fundamental rights.

Pre-termination non-compete clauses are valid during employment but void after termination, as upheld by various court rulings. The Supreme Court, in *Percept D'Mark (India) Pvt. Ltd. v. Zaheer Khan and Anr.*, observed that according to Section 27 of the Contract Act:

- Any restrictive covenant exceeding the contract's duration is invalid and cannot be enforced.
- The restraint of trade doctrine is not applicable while the employment contract is in force but becomes relevant upon contract termination.
- As established in *Gujarat Bottling v. Coca Cola*, this doctrine extends beyond employment contracts and applies to all types of contracts.

Post-termination non-compete clauses, while common, face legal challenges. In *Superintendence Company of India (P) Ltd. v. Sh. Krishan Murgai*, the Supreme Court deemed contracts restraining trade prima facie void. Delhi High Court, in *Foods Ltd. and Others v. Bharat Coca-cola Holdings Pvt. Ltd. & others*, declared post-termination restraints unenforceable, citing violation of Section 27.

However, exceptions exist. In *Niranjan Shankar Golikari v. The Century Spinning and Mfg. Co. Ltd.*, the Supreme Court allowed certain non-compete clauses, provided they were

reasonable. Yet, Bombay High Court, in *Tapas Kanti Mandal v. Cosmos Films Ltd*, adopted a stringent stance, deeming all post-employment restraints unenforceable.

Ultimately, courts prioritize fairness and legality in evaluating non-compete clauses. While certain restrictions may be upheld, they must align with constitutional and contractual principles, ensuring a balance between employer interests and employee rights.

Remote working

Remote working policy

In India, while there are no specific laws dedicated solely to remote working, several legal aspects and regulations come into play, influencing remote work policies and practices. The relevant considerations governing the remote work in India are as follows:

A) Labour Laws and Regulations:

- The Shops and Establishments Act: This state-specific legislation regulates the operation of commercial establishments, including provisions related to working hours, overtime, and conditions of work. Employers need to ensure that remote workers adhere to the provisions outlined in this act.
- Minimum Wages Act: Employers must comply with minimum wage requirements, irrespective of whether employees work remotely or on-site.
- The Industrial Disputes Act: This legislation governs the resolution of disputes between employers and employees. Employers need to ensure that remote workers' rights are protected under this act.

B) Data Protection and Privacy:

- The Information Technology Act, 2000: While this act primarily focuses on data protection and cybersecurity, it is relevant to remote working due to the increased reliance on digital technologies. Employers need to implement appropriate security measures to protect sensitive data and ensure compliance with data protection regulations.
- Personal Data Protection Bill (PDPB): Although not yet enacted into law, the PDPB is expected to introduce comprehensive data protection requirements, impacting how organizations handle employee data, including remote workers' information.

C) Health and Safety:

- Occupational Safety and Health Standards: Employers have a duty to ensure the health and safety of their employees, whether they work remotely or in a physical workplace. While specific regulations may vary across industries, employers must provide a safe working environment and address any health and safety concerns related to remote work.

D) Employment Contracts and Policies:

- Remote Work Agreements: Employers should establish clear remote work policies and incorporate them into employment contracts or agreements. These policies should outline expectations regarding work hours, communication channels, performance evaluation, and data security protocols.
- Employee Benefits and Entitlements: Remote workers are entitled to the same benefits and entitlements as their on-site counterparts, including leave, insurance, and other perks. Employers need to ensure that remote work arrangements do not result in any discrimination or inequality in benefits provision.

The rise of remote work in India demands clear guidelines to ensure productivity and employee well-being. Here's a roadmap to create an effective remote work policy for a company:

1. Define Work Methods and Responsibilities:

- Identify Suitable Roles: Determine which positions are well-suited for remote work based on task manageability and achievability of goals outside the office.
- Managerial Oversight: Assign clear reporting structures for remote employees, ensuring effective communication and supervision.
- Inclusivity: Promote a policy that fosters inclusivity, ensuring all eligible employees have a fair chance to benefit from remote work arrangements.

2. Equip Your Remote Workforce:

- Resource Allocation: Define the resources needed for remote work, such as laptops, video conferencing software, or cybersecurity measures (like virtual private networks) for handling sensitive data.
- Equipment Considerations: Decide whether the company will provide equipment or expect employees to use their own. Clearly communicate the resource allocation plan to avoid confusion.

3. Establish Clear Work Rules:

- Communication and Availability: Set expectations regarding work hours, communication frequency, and online presence during core working times.
- Flexibility: Outline policies on flexible work schedules, allowing employees to adjust their workday as needed while ensuring core tasks are completed.

4. Foster Collaboration and Socialization:

- Collaboration Tools: Specify preferred tools for remote team communication and project management to ensure smooth collaboration and project flow.
- Virtual Team Building: Encourage virtual social interaction through online forums or events to build camaraderie and maintain a positive company culture.

5. Address Legal Requirements:

- Employee Rights: Include information about employee rights under Indian labour laws, such as overtime pay regulations and data privacy guidelines (as per evolving regulations like the Personal Data Protection Bill, 2021).
- Data Security Training: Provide adequate training to remote employees on handling sensitive data securely and complying with relevant data privacy regulations.

6. Benefits and Compensation:

- Compensation Structure: Clearly outline employee compensation plans, considering potential variations based on location (as living costs can differ across cities).
- Remote Work Benefits: Specify any company-provided benefits specific to remote work, such as reimbursements for internet usage or a stipend for home office equipment.

Responsibilities within a remote work arrangement

The surge in remote work in India has revolutionized work dynamics, providing flexibility and ease but this freedom entails responsibilities for employees to uphold productivity and foster a balanced work-life equation. Core Responsibilities:

- Meeting Deadlines and Targets: Just like in an office setting, meeting deadlines and achieving assigned targets remains a primary responsibility while working remotely. Effective time management and clear communication with your manager are crucial.
- Maintaining Availability: While remote work offers flexibility, you're still expected to be available during core working hours (as defined by your company) for meetings, calls, and project updates.
- Data Security and Confidentiality: Safeguarding company data is paramount. This includes using secure internet connections, strong passwords, and adhering to company policies regarding data handling.
- Professional Communication: Effective communication is essential despite the physical distance. Maintain regular communication with colleagues and managers, keep them informed about your progress, and utilise appropriate communication channels.

A) Building a Dedicated Workspace:

- Ergonomics: Creating a dedicated workspace that promotes good posture can prevent health issues associated with prolonged sitting. Invest in an ergonomic chair and ensure proper monitor and keyboard placement.
- Distraction-Free Environment: Minimize distractions by establishing a quiet workspace away from household activities or noise. Inform family members about your work hours to manage expectations.
- Maintaining Professionalism: Dress professionally during video calls and meetings to maintain a work-ready demeanor. This fosters a sense of professionalism and creates a positive remote work image.

B) Time Management and Productivity:

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- Setting a Schedule: Create a daily schedule that aligns with your core working hours and breaks. This helps maintain a sense of routine and structure.
- Utilizing Time Management Tools: Explore time management apps or techniques like the Pomodoro Technique to enhance focus and optimise working hours.
- Avoiding Burnout: Working remotely can blur the lines between work and personal life. Schedule breaks, step away from your desk, and prioritize activities that promote well-being to prevent burnout.

C) General Well Being:

- Cybersecurity Awareness: With the increasing prevalence of cyber threats, staying updated on cybersecurity best practices is crucial. Utilise strong passwords, enable two-factor authentication, and be cautious about opening suspicious emails or clicking on unknown links.
- Data Privacy Regulations: India has evolving data privacy regulations like the Personal Data Protection Bill, 2021 (yet to be implemented). Familiarize yourself with any company policies or guidelines related to data privacy to ensure compliance while working remotely.
- Right to Disconnect: While there's no legal right to disconnect in India yet, some companies might have internal policies promoting this concept. It's essential to maintain boundaries between work and personal life for overall well-being.