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India

India: New Rules Will Encourage Fixed-Term Contracts

BY MADHUR SINGH

India's labor ministry has introduced new rules to encourage fixed-term contracts, but labor lawyers say the rules merely give statutory recognition to the already existing situation.

Given India's overlapping federal and state labor legislation, the rules will not apply to all businesses in all parts of the country, but covered businesses will find it more attractive to hire workers directly on fixed-term contracts than to hire them indirectly through contractors. Hiring through contractors has been an increasingly popular option for employers but consistently opposed by unions for depriving workers of fair wages and employment-related social security benefits. Contractor hiring has also resulted in frequent litigation over "sham" contracts—when a worker is effectively performing the job of a permanent hire, but the employer disguises the employment relationship as a contract that is renewed year after year, denying the worker better pay and working conditions.

With fixed-term contracts, the government aims to ensure contract hires equal pay for equal work, as well as many of the benefits that permanent employees enjoy, while affording businesses adequate elbow room to deal with seasonal or other variations in labor requirements.

"While this option [of fixed-term contracts] existed even prior to the amendment, a statutory recognition may encourage more employers to explore this option," Swarnima, Labor & Employment Counsel at the law firm Trilegal, who goes by the single name, told Bloomberg Law in an email March 23.

Key Provisions Announced March 16, the Industrial Employment (Standing Orders) Central (Amendment) Rules, 2018, allow fixed-term contracts in all establishments covered by the Industrial Employment (Standing Orders) Act, 1946. Typically, industrial establishments with 100 or more "workmen" are covered. ("Workmen" is defined to include all unskilled and skilled workers and supervisors earning more than 10,000 rupees (\$154) per month.)

The rules mandate that:

- fixed-term contract workers will work the same hours and get the same wages, allowances, and other benefits as permanent workers;

- fixed-term workers will be eligible for all statutory benefits available to a permanent worker proportionate to their period of service;

- if a contract expires and is not renewed, a fixed-term worker will not be entitled to any notice or pay in lieu of notice; and

- employers may not transfer existing workers from a permanent to a fixed-term position.

Limited Applicability The Industrial Employment (Standing Orders) Act, 1946, is a federal statute, but both federal and state governments have the power to make rules to implement it. The federal Industrial Employment (Standing Orders) Central Rules apply to "industrial establishments" as defined under the Payment of Wages Act, 1936, including factories, mines, plantations, and similar enterprises. Some states have extended coverage of the Payment of Wages Act to shops and commercial establishments.

"Given the fact that several states have framed state-specific rules under the Standing Orders Act, the provisions of the Central Standing Order Rules should not in my view have a direct impact upon industrial establishments that are governed by the state rules unless the state rules are amended in line with the Central Standing Order Rules," Preetha S., employment lawyer at Nishith Desai Associates, told Bloomberg Law in an email March 22. "Accordingly, the applicability of the Standing Orders Act to a particular establishment needs to be determined on a case-by-case basis depending on the nature and location of the establishment."

"[A]s a first step, it is important to assess the nature of the establishment (factory, commercial establishment, mine, etc.), the state where it is present, and the number of workmen employed to determine the applicability of the Standing Orders Act to that establishment," Swarnima said, adding that "in our experience, the most frequently asked question with respect to the Standing Orders Act is around its applicability."

By and large, the new rules will apply to enterprises run by the central government or located in states that do not have their own Industrial Employment (Standing Order) Rules.

Most of India's industrialized states—including Andhra Pradesh, Gujarat, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Punjab, Rajasthan, Tamil Nadu, and Uttar Pradesh—have their own standing orders, so the new rules will not apply there, Vikram Shroff, head of HR Laws at Nishith Desai Associates, told Bloomberg Law by phone March 23.

Impact on the Ground Some existing laws already contain provisions regarding fixed-term contracts. The Industrial Disputes Act of 1947, for instance, provides that an employee engaged on a fixed-term basis is not entitled to notice or severance pay upon expiration of the fixed-term contract. Similarly, some state-specific Shops and Establishments Acts contain provisions for employees (as opposed to “workmen”) engaged on a contract basis.

“In the Indian context, fixed-term employment is not a new concept,” Preetha S. said, adding that “the guiding principles for employers for engaging fixed-term employees remain the same.”

“We do not believe the amendment brings in significant changes,” Swarnima said, adding that while the new rules largely reiterate the existing legal position, they do “provide a formal recognition to fixed-term em-

ployment across sectors by including a specific statutory definition.”

This statutory recognition may encourage more employers to use fixed-term contracts when they need workers seasonally, for specific durations, or on an ad-hoc basis, Swarnima said. Fixed-term contracts would avoid disputes and litigation and eliminate the requirement for federal government approval to terminate employees.

Given their limited applicability, however, the rules may not significantly increase job creation, Shroff said.

To contact the reporter on this story: Madhur Singh in Chandigarh, India, at correspondents@bna.com

To contact the editor responsible for this story: Rick Vollmar at rvollmar@bna.com

For more information on Indian HR law and regulation, see the India primer.