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The International Comparative Legal Guide to:

Employment & Labour Law 2016

6th Edition

A practical cross-border insight into employment and labour law

Published by Global Legal Group, with contributions from:

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Published by
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London SE1 3PL, UK
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Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
iStockphoto

Printed by
Ashford Colour Press Ltd
March 2016

ISBN 978-1-910083-86-4
ISSN 2045-9653

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Country Question and Answer Chapters:

EDITORIAL

Welcome to the sixth edition of *The International Comparative Legal Guide to: Employment & Labour Law*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of labour and employment laws and regulations.

It is divided into two main sections:

Two general chapters. These chapters examine issues when structuring international employment arrangements for multi-national companies and global employment standards and corporate social responsibility.

Country question and answer chapters. These provide a broad overview of common issues in labour and employment laws and regulations in 43 jurisdictions.

All chapters are written by leading labour and employment lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors, Elizabeth Slattery and Jo Broadbent of Hogan Lovells International LLP, for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk.

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1 Terms and Conditions of Employment

1.1 What are the main sources of employment law?

Indian employment law stems from the Constitution of India, statutes legislated by the Central Government and State Government, and judicial precedents.

Of the over 40 national level labour laws, the key laws are:

(i) Industrial Disputes Act, 1947 ("**ID Act**"): The ID Act, one of India's most significant employment legislations governing employer-employee relationships, *inter alia*, contains the mechanism for settlement of industrial disputes, provisions with respect to unfair labour practices, layoffs, retrenchment (termination), strikes, lockouts and closure of an establishment.

(ii) Factories Act, 1948 ("**Factories Act**"): The Factories Act contains provisions for ensuring the welfare of workers employed in factories in terms of health, safety, working hours, benefits, leave, overtime pay, etc.

(iii) Industrial Employment (Standing Orders) Act, 1946 ("**SO Act**"): The SO Act prescribes the framework for establishments to formally define and publish the conditions of employment of workmen.

(iv) Child Labour (Prohibition and Regulation) Act, 1986: The statute regulates the engagement of children in certain occupations.

(v) Minimum Wages Act, 1948: The statute empowers the State and Central Governments to notify the minimum wages payable to employees. Minimum wages are determined based on factors including the industry, location and nature of work done.

(vi) Payment of Wages Act, 1936: The statute regulates the payment of wages to employees and contains provisions, *inter alia*, with respect to time and manner of payment of wages and permissible wage deductions.

(vii) Equal Remuneration Act, 1976 ("**ER Act**"): The ER Act mandates payment of equal remuneration to men and women workers and prohibits discrimination against women in connection with employment.

(viii) Employees' Provident Funds and Miscellaneous Provisions Act, 1952: This is one of India's most important security legislations. The statute provides for the institution of a contributory provident fund, pension fund and deposit-linked insurance scheme for employees.

(ix) Employees' State Insurance Act, 1948 ("**ESI Act**"): The ESI Act envisages benefits to employees in case of sickness, maternity and employment injury.

(x) Payment of Bonus Act, 1965: The statute provides for payment of compulsory bonuses to persons employed in certain establishments under defined circumstances.

(xi) Maternity Benefit Act, 1961 ("**MB Act**"): The MB Act envisages provision of maternity leave, maternity bonus and other benefits with respect to childbirth.

(xii) Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("**SH Act**"): The SH Act prescribes a mechanism for prevention and prohibition of workplace sexual harassment and for redressal of grievances pertaining to workplace sexual harassment.

(xiii) Employees' Compensation Act, 1923: The statute provides for payment of compensation to employees or their family in case of accidental death or disability.

(xiv) Contract Labour (Regulation and Abolition) Act, 1970: The statute governs and regulates the employment of contract labour and prescribes the duties of the contractor and the principal employer.

(xv) Payment of Gratuity Act, 1972 ("**Gratuity Act**"): The Gratuity Act provides for the payment of a gratuity to employees upon cessation of employment.

(xvi) Trade Unions Act, 1926 ("**TU Act**"): The TU Act provides for the registration of trade unions and prescribes the rights and duties of registered trade unions.

The state-specific legislations governing shops and commercial establishments ("**S&E Acts**") prescribe basic terms of employment such as work hours, overtime payment, leave entitlement, termination mechanism, etc.

1.2 What types of worker are protected by employment law? How are different types of worker distinguished?

Different statutes protect different categories of employees, and the applicability of the statute and the protection available is to be assessed on a case-by-case basis. Applicability of a statute is contingent on multiple factors including number of employees, nature of work undertaken by the employee, type of industry, location, remuneration of the employees, etc.

The ID Act seeks to protect 'workmen', a term which has been defined to mean persons employed in an industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. An employee employed in a managerial or administrative capacity, or in a supervisory capacity drawing wages exceeding INR 10,000 per month, is excluded from the scope of 'workman'. In certain states, persons holding positions of management are excluded from protections available under S&E Acts.

1.3 Do contracts of employment have to be in writing? If not, do employees have to be provided with specific information in writing?

Certain state-specific S&E Acts require an employer to issue an 'appointment order' containing basic information including employer name and address, employee details, rate of wages, joining date and designation. Most employers issue appointment letters to, or execute employment agreements with, their employees, which set out the terms and conditions of employment.

1.4 Are any terms implied into contracts of employment?

Terms of employment can be implied into a contract of employment by way of custom, usage or practice. Also, certain courts have acknowledged that an employee's duty of good faith towards the employer, confidentiality and non-disclosure obligations may be considered as implied terms of an employment relationship. It is recommended that all important terms of employment be reflected in the employment contract. Also, there are certain procedural requirements to be complied with in case of change of terms of employment.

1.5 Are any minimum employment terms and conditions set down by law that employers have to observe?

Yes. Legislations including the ID Act, Factories Act, SO Act and S&E Acts, prescribe minimum employment terms such as work hours, wages, leave entitlement, notice and termination entitlements, health and safety standards, etc. Employers are mandated to provide the statutorily prescribed minimum entitlements to the employees. The SO Act also prescribes Model Standing Orders containing certain terms and conditions of employment at the workplace.

In addition, industry-specific laws also prescribe certain terms of employment. For example, the terms of employment for employees working in industries such as cinema, docks, building and construction, journalism, motor transport, sales promotion, plantation, etc., are regulated by the industry-specific laws. Certain special laws also apply to migrant workers.

1.6 To what extent are terms and conditions of employment agreed through collective bargaining? Does bargaining usually take place at company or industry level?

In the case of industries in which employees are largely unionised, the terms of employment are negotiated and agreed to through collective bargaining. While most labour unions are formed at the company level, there are also regional and industry-specific unions. It is also pertinent to note that the SO Act requires the employer to consult with the employees or their representatives to finalise the terms of employment contained in the organisation's standing orders.

2 Employee Representation and Industrial Relations

2.1 What are the rules relating to trade union recognition?

Trade unions in India are governed by the TU Act. Certain states have legislations in relation to trade unions, for example the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 and the Kerala Recognition of Trade Unions Act, 2010. While the TU Act provides for the formation, registration and rights of unions, it does not contain provisions with respect to recognition of trade unions.

In addition to the state-specific statutes, the Code of Discipline, formulated at the Indian Labour Conference in May 1958, lays down certain guidelines for recognition of a trade union.

2.2 What rights do trade unions have?

The most important right of a trade union is to negotiate and secure terms of employment acceptable to its members by adopting various forms of collective bargaining. The TU Act sets out the mechanism for registration of trade unions but does not make registration mandatory. As per the TU Act, a registered trade union is deemed to be a body corporate and has the status of a juristic entity which has perpetual succession and a common seal. A registered trade union has the power to acquire and hold property, enter into contracts, sue and be sued in its registered name.

Trade unions are permitted to spend the funds of the union for certain activities including, payment of salaries, allowances and expenses to the office-bearers of the trade union, administration expenses, prosecution or defence of any legal proceedings, provision of educational, social or religious benefits for members, making allowances to members on account of death, old age, sickness, etc.

2.3 Are there any rules governing a trade union's right to take industrial action?

The ID Act and applicable state-specific legislations pertaining to trade unions contain provisions governing a union's right to take industrial action. The ID Act prohibits unions and employees from engaging in industrial action such as strikes during the pendency of (i) conciliation proceedings before the Board of Conciliation and seven days after conclusion of the proceedings, (ii) proceedings before a Labour Court, Tribunal or National Tribunal and two months after the conclusion of the proceedings, or (iii) arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings. Also, strikes are prohibited while a settlement or award is in operation in respect of any of the matters covered by the settlement or award.

The ID Act also sets out trade union actions amounting to unfair labour practices.

2.4 Are employers required to set up works councils? If so, what are the main rights and responsibilities of such bodies? How are works council representatives chosen/ appointed?

An industrial establishment employing 100 or more workmen is mandated to set up a 'Works Committee'. The Works Committee is to consist of representatives of the employer and workmen engaged in the establishment. The number of representatives of workmen on the Works Committee should not be less than the number of representatives of the employer.

The representatives of the workmen on the Works Committee are to be elected in the manner prescribed under the rules framed under the statute and in consultation with the relevant trade union.

The main responsibility of the Works Committee is to promote measures for security and amity between employers and workmen, to comment upon matters of their common interest/concern, and to mediate any material difference of opinion in respect of such matters.

In addition, there are also certain requirements to set up a Grievance Redressal Committee and Internal Complaints Committee as per the ID Act and SH Act respectively.

2.5 In what circumstances will a works council have co-determination rights, so that an employer is unable to proceed until it has obtained works council agreement to proposals?

The ID Act has envisaged the Works Committee as an initial mediation mechanism. Unless otherwise reflected in the collective bargaining agreements, the committee does not have any co-determination rights.

2.6 How do the rights of trade unions and works councils interact?

There is no statutory requirement for interaction between the Works Committee and the trade union.

2.7 Are employees entitled to representation at board level?

Employees are not entitled to representation at the board level. The Companies Act, 2013 mandates every public limited company having a paid-up capital of INR 100,000,000 or more to appoint a managing director, who is to be in the full-time employment of the company.

3 Discrimination

3.1 Are employees protected against discrimination? If so, on what grounds is discrimination prohibited?

The Constitution of India ("**Constitution**") guarantees equality before law and prohibits discrimination of citizens on grounds of religion, race, caste, sex or place of birth. The Constitution also envisages equality of opportunity for all citizens in matters relating to employment or appointment to any office under the 'State'. 'State' has been defined to include the Government and Parliament of India and the Government and the Legislature of each of the Indian states and all local or other authorities in India or under the control of the Government of India.

The ER Act provides for the payment of equal remuneration to male and female workers for the same or similar work. The statute also prohibits discrimination against women in recruitment or in any condition of service such as promotions, training or transfer. The ID Act also categorises acts of favouritism or partiality to one set of workers regardless of merit as an unfair labour practice.

The MB Act restricts the employer from terminating employment during maternity leave. Certain laws also require employers in select categories to provide equal opportunities to disabled persons.

3.2 What types of discrimination are unlawful and in what circumstances?

The Constitution prohibits discrimination on grounds of religion, race, caste, sex or place of birth. The ER Act prohibits discrimination of women in connection with employment.

3.3 Are there any defences to a discrimination claim?

As such, there are no standard defences to a discrimination claim. The defences available to an employer may include health and safety requirements and affirmative action.

3.4 How do employees enforce their discrimination rights? Can employers settle claims before or after they are initiated?

Ordinarily, anti-discrimination policies are contained in the policy manual/employee handbook. Certain organisations also have ethics helplines and grievance redressal committees to hear and resolve complaints pertaining to discrimination. Discrimination on grounds protected by law are often categorised as misconduct, punishable with disciplinary action.

Yes, employers can settle claims before or after they have been initiated by the employees.

3.5 What remedies are available to employees in successful discrimination claims?

In the event of a successful claim of discrimination, where employment has been terminated on that basis, the employee may be entitled to reinstatement of employment.

Violation of the ER Act, i.e, discriminating against women in connection with recruitment and employment, is punishable with a fine of up to INR 20,000 and/or with imprisonment for a term of a minimum of three months but which may extend to one year.

Unfair labour practices under the ID Act are punishable with imprisonment for a term of up to six months and/or a fine of up to INR 1,000.

3.6 Do "atypical" workers (such as those working part-time, on a fixed-term contract or as a temporary agency worker) have any additional protection?

No. 'Atypical' workers do not have any additional protection against workplace discrimination.

4 Maternity and Family Leave Rights

4.1 How long does maternity leave last?

As per the MB Act, a female employee is entitled to paid maternity leave of 12 weeks, of which a maximum of six weeks can be availed prior to the date of expected delivery.

In the event of miscarriage or medical termination of pregnancy, a female employee is entitled to leave with wages for a period of six weeks immediately following the day of her miscarriage. The MB Act also provides for paid leave if the employee undergoes a tubectomy or in case of any illness arising out of pregnancy, delivery, or premature child birth.

The government has proposed to increase the maternity leave period to 26 weeks. The law may also be extended to commissioning and adopting mothers.

4.2 What rights, including rights to pay and benefits, does a woman have during maternity leave?

A female employee is entitled to salary and benefits during maternity leave. She is also entitled to a medical bonus of INR 3,500. The employer cannot require the employee to do any work during the maternity leave.

During pregnancy, a female employee also has the right to request that she not be required to do any work of an arduous nature or which involves long hours of standing, is in any way likely to interfere with her pregnancy or the normal development of the foetus, or is likely to cause her miscarriage or otherwise to adversely affect her health.

It is unlawful to discharge or dismiss a female employee on account of being on maternity leave or to issue a notice of discharge or dismissal expiring during the period of maternity leave. It is also unlawful to vary the terms of employment to her disadvantage during the period of maternity leave.

4.3 What rights does a woman have upon her return to work from maternity leave?

The MB Act requires an employer to provide two breaks during the day, in addition to the regular interval for rest, for nursing the child until the child attains the age of 15 months. The Factories Act and certain state-specific S&E Acts also mandate the employer to provide crèches at the workplace.

4.4 Do fathers have the right to take paternity leave?

Indian employment laws do not provide for paternity leave. However, as good HR practice, some organisations allow their employees paternity leave.

4.5 Are there any other parental leave rights that employers have to observe?

Indian employment laws do not prescribe any other parental leave rights.

4.6 Are employees entitled to work flexibly if they have responsibility for caring for dependants?

No. Indian employment laws do not specify any such work flexibility. A flexible work schedule is generally at the employer's discretion and would be subject to terms prescribed by the employer.

5 Business Sales

5.1 On a business sale (either a share sale or asset transfer) do employees automatically transfer to the buyer?

The ID Act provides for notice and compensation payable to employees when an undertaking is transferred and stipulates that where the ownership or management of an undertaking is transferred to a new employer, either by law or contract, every workman who has been in continuous service for at least one year in that undertaking immediately before such transfer, is entitled to notice and severance compensation from the previous employer as if the workman had been terminated. The previous employer is exempt from providing such notice and compensation if: (i) the service of the workman has not been interrupted by the transfer; (ii) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable immediately before the transfer; and (iii) in the event of retrenchment of the workman, the new employer is legally liable to pay compensation as if the workman had been in service with the new employer from the time that he was in original employment with the old employer.

5.2 What employee rights transfer on a business sale? How does a business sale affect collective agreements?

Please refer to question 5.1 above. In the event the transferee entity has agreed to provide the employees service credit and the terms of employment are not less favourable than those with the transferor entity, benefits that are linked to the duration of employment, such as severance compensation, shall be transferred.

The terms of the collective bargaining agreement, if any, may also govern the transfer of employment and employee rights.

5.3 Are there any information and consultation rights on a business sale? How long does the process typically take and what are the sanctions for failing to inform and consult?

The law does not envisage any consultation requirements on a business sale. That said, consultation requirements, if any, may arise based on the terms of the collective bargaining agreements.

5.4 Can employees be dismissed in connection with a business sale?

Employment can only be terminated for a reasonable cause or on grounds of misconduct. Elimination of a job role pursuant to a business sale leading to redundancy could be considered as a reasonable ground for termination of employment.

5.5 Are employers free to change terms and conditions of employment in connection with a business sale?

So as to avail of the exemption from payment of severance dues at the time of transfer, the terms of employment with the transferee entity should not be less favourable than the terms of employment with the transferor entity.

The law allows an employer to change the terms of employment as long as the employer notifies the impacted employees, in the prescribed manner, 21 days prior to implementing the change. A copy of the notification is also to be submitted to the government (including the labour department).

6 Termination of Employment

6.1 Do employees have to be given notice of termination of their employment? How is the notice period determined?

In case of termination of employment for reasons other than misconduct, employees have to be provided prior notice of termination or wages *in lieu* thereof. The minimum notice period is

stipulated under the ID Act and applicable S&E Act and is ordinarily one month. A longer period of notice can be prescribed under the employment contract.

6.2 Can employers require employees to serve a period of "garden leave" during their notice period when the employee remains employed but does not have to attend for work?

Yes. Employers can require employees to be on "garden leave" during the term of employment. It is recommended that such a right be included in the employment contract or HR policies.

6.3 What protection do employees have against dismissal? In what circumstances is an employee treated as being dismissed? Is consent from a third party required before an employer can dismiss?

Indian employment law does not recognise an "at-will" employment. Employment may be terminated only for a reasonable cause or on account of employee misconduct. Employee rights pertaining to termination of employment are contained under the ID Act, state-specific S&E Acts, standing orders, and the employment contract.

The ID Act stipulates that a workman who has been in continuous service for at least one year (defined to mean 240 days) may be terminated only if the workman has been: (i) given at least one month's notice in writing indicating the reasons for retrenchment (terminology used in the ID Act for termination of employment) and the period of notice has expired, or the workman has been paid wages *in lieu* of such notice; and (ii) paid retrenchment compensation (severance) equivalent to 15 days' average pay for every completed year of continuous service or any part thereof in excess of six months. If the termination of employment is in an 'industrial establishment', defined under the ID Act to be a factory, mine or plantation employing at least 100 workmen, the employer has an obligation to provide a minimum notice of three months or wages *in lieu* thereof. The above requirements are in addition to notifying or obtaining prior government approval for termination, as the case may be.

The ID Act also prescribes the last-in-first-out process to be followed at the time of retrenching employees, i.e., where any workman belonging to a particular category of workmen in the establishment is to be terminated, except: (i) in case of any agreement between the employer and the workman in that behalf; or (ii) for reasons to be recorded by the employer in writing, the employer should ordinarily retrench the workman who was the last person to be employed in that category. Further, where workmen are retrenched and the employer proposes to recruit, the employer is required to provide an opportunity to the retrenched workmen to offer themselves for re-employment and such workmen are to be given a preference over others.

Employment can be terminated on grounds of misconduct, with immediate effect, without providing any notice or wages *in lieu* of notice. The act of misconduct is to be established in a disciplinary enquiry to be held by the employer in accordance with the principles of natural justice.

A factory, mine or plantation employing at least 100 workmen shall need to obtain prior government approval to terminate employment. Such requirement is irrespective of the terms of the employment contract.

6.4 Are there any categories of employees who enjoy special protection against dismissal?

Female employees are protected from dismissal during the term of their maternity leave. Employees receiving sickness benefit, maternity benefit or disablement benefit under the ESI Act are protected from dismissal during the period that they are receiving the benefit.

6.5 When will an employer be entitled to dismiss for: 1) reasons related to the individual employee; or 2) business related reasons? Are employees entitled to compensation on dismissal and if so how is compensation calculated?

An employer can terminate employment for reasons related to the individual employee, such as, poor performance, breach of employment terms, misconduct, etc. Employment may also be terminated for business-related factors such as redundancy on account of mechanisation, job elimination pursuant to outsourcing, business restructuring, etc. In case of litigation, it would be critical for the employer to be able to justify the reasons for termination, since termination of employment is generally considered as the last resort.

Payments to be made by an employer in case of termination of employment include:

(a) Severance: Retrenchment compensation equivalent to 15 days' average pay for every completed year of continuous service or any part thereof in excess of six months. Only a 'workman' who has been in continuous employment with the employer for more than one year is entitled to retrenchment compensation.

(b) Gratuity: This is to be paid in accordance with the Gratuity Act, which entitles an employee who has rendered continuous service of at least five years to gratuity, upon cessation of employment. Gratuity is calculated at the rate of 15 days' wages for every completed year of service or part thereof in excess of six months, subject to a limit of INR 1,000,000. The Gratuity Act applies to establishments employing at least 10 employees.

(c) Accrued leave encashment: The employee shall be entitled to payment of wages for accrued and un-availed leave days up to the date of termination of employment.

The employer ordinarily has the option of paying wages *in lieu* of the termination notice.

6.6 Are there any specific procedures that an employer has to follow in relation to individual dismissals?

Please see our response to question 6.3 above.

6.7 What claims can an employee bring if he or she is dismissed? What are the remedies for a successful claim?

An employee can bring claims of unfair dismissal or wrongful termination of employment. In certain situations, an employee can also allege unfair labour practice on the part of the employer.

The remedies for a successful claim typically include reinstatement of the employee with payment of back wages. Alternatively, the courts may award damages for illegal or wrongful termination.

6.8 Can employers settle claims before or after they are initiated?

Yes, employers can settle claims both before and after initiation.

6.9 Does an employer have any additional obligations if it is dismissing a number of employees at the same time?

The statutes do not prescribe any additional obligations in case of termination of a number of employees at the same time.

6.10 How do employees enforce their rights in relation to mass dismissals and what are the consequences if an employer fails to comply with its obligations?

Collective bargaining is the most popular mechanism adopted by employees to enforce their rights in connection with mass dismissals. Aggrieved employees can raise an industrial dispute under the ID Act or approach the appropriate forum prescribed under the state-specific S&E Act. Non-compliance with the statutory requirements could result in the termination being treated as invalid and the employee being reinstated with payment of back wages. Also, wrongful terminations are, under certain circumstances, considered unfair labour practice under the IDA, which is punishable with imprisonment for a term of up to six months and/or with a fine of up to INR 1,000.

7 Protecting Business Interests Following Termination

7.1 What types of restrictive covenants are recognised?

The Constitution allows Indian citizens the freedom to exercise any trade, business or profession. The Indian Contract Act, 1872 stipulates that an agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. A restrictive covenant, in the nature of a non-compete, extending beyond the term of service is void, irrespective of reasonability of such restriction, except in cases involving sale of goodwill. Accordingly, courts have determined that a post-termination non-compete restriction is void and unenforceable. Covenants with respect to non-solicitation after employment ends, or in cases of unauthorised disclosure of confidential information, may be enforced.

7.2 When are restrictive covenants enforceable and for what period?

The law does not prescribe any specific timeline for restrictive covenants to be enforced after employment termination.

7.3 Do employees have to be provided with financial compensation in return for covenants?

There is no statutory requirement to provide financial compensation in return for covenants. These covenants are ordinarily included in the employment contract.

7.4 How are restrictive covenants enforced?

Employers can enforce restrictive covenants by seeking injunctions or damages in a court of law.

8 Data Protection and Employee Privacy

8.1 How do employee data protection rights affect the employment relationship? Can an employer transfer employee data freely to other countries?

The Information Technology Act, 2000 along with the Reasonable Practices and Procedures and Sensitive Personal Data or Information Rules, 2011 ("**Data Protection Rules**") contain provisions for protecting the personal data of an individual.

In the event the employer is negligent in implementing and maintaining "reasonable security practices and procedures" in relation to any sensitive personal data or information ("**SPDI**"), and such negligence causes wrongful loss or wrongful gain to any person, the entity can be made liable to pay damages by way of compensation to the affected person. SPDI may include the employee's passwords, financial information, physical, physiological and mental health conditions, sexual orientation, medical records and history and biometric information. The employer is required to obtain the employee's consent and follow the mechanisms prescribed under the Data Protection Rules, while collecting, storing, using or disclosing employee SPDI.

An employer can transfer SPDI to a body corporate or person located in any other country provided that such body corporate or person ensures the same level of data protection as provided for under the Data Protection Rules. The transfer may be allowed only if it is necessary for the performance of a lawful contract between the body corporate or any person on its behalf and provider of information or where the employee has consented to data transfer.

8.2 Do employees have a right to obtain copies of any personal information that is held by their employer?

An employer is required to obtain employee consent prior to collection of SPDI. Employees have the right to withdraw such consent at any point in time and require that the SPDI be returned or destroyed. Employees shall also have the right to review the information provided and ensure that any personal information, SPDI or other information found to be inaccurate or deficient is corrected.

8.3 Are employers entitled to carry out pre-employment checks on prospective employees (such as criminal record checks)?

There is no restriction upon the employer to carry out pre-employment checks. In case the employer collects employee's SPDI, the requirements of the Data Protection Rules need to be complied with.

8.4 Are employers entitled to monitor an employee's emails, telephone calls or use of an employer's computer system?

Indian law does not envisage any restriction on the employer's right to monitor employee emails, telephone calls or use of computer systems. As a best practice, surveillance rights and procedures are ordinarily built into the employee handbook/policy manual, to mitigate any privacy claims.

8.5 Can an employer control an employee's use of social media in or outside the workplace?

The laws are silent on the employer's ability to control an employee's use of social media in or outside the workplace. That said, social media policies are gaining popularity and are being included as a part of employee handbooks/policy manuals.

9 Court Practice and Procedure

9.1 Which courts or tribunals have jurisdiction to hear employment-related complaints and what is their composition?

The ID Act prescribes the procedure to be adopted in case of a 'workman' and provides for both internal and external mechanisms for dispute resolution. The authorities for resolving industrial disputes under the IDA are: (i) Grievance Redressal Committee; (ii) Works Committee; (iii) Conciliation Officers; (iv) Board of Conciliation; (v) Courts of Inquiry; (vi) Labour Courts; and (vii) Industrial Tribunals and/or National Tribunals.

Non-workmen can approach the civil court or the appropriate authorities prescribed under the state-specific S&E Acts, as applicable.

9.2 What procedure applies to employment-related complaints? Is conciliation mandatory before a complaint can proceed? Does an employee have to pay a fee to submit a claim?

As per the ID Act, the dispute should be raised with the appropriate government, which is then referred to the labour department. The labour department further refers the matter to a Conciliation Officer or a Board of Conciliation for settlement of the dispute. If the matter has been referred to the Conciliation Officer and no settlement has been arrived at within 14 days of commencement of the conciliation proceedings, then a report is made to the appropriate government, which then refers the matter to the Board of Conciliation or any of the Labour Courts.

Conciliation is mandatory before a complaint can proceed. In the event that a settlement cannot be reached by the parties, the appropriate government then refers the matter to a Labour Court.

A 'workman' under the ID Act does not have to pay any fee to submit a claim. Non-workmen would be required to pay court fees as per applicable laws at the time of initiating litigation.

9.3 How long do employment-related complaints typically take to be decided?

Practically, settlement of industrial disputes does not happen in a time-bound manner and the dispute resolution process may be fairly time-consuming, depending on the facts and circumstances of the case.

9.4 Is it possible to appeal against a first instance decision and if so how long do such appeals usually take?

Yes. It is possible to appeal against a first instance decision. As mentioned above, litigation timelines are contingent on the facts and circumstances of the case and are therefore difficult to estimate or predict.

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The HR Law (Employment and Labour) team advises on complex regulatory and legal aspects of employment and labour law. The team is actively involved in drafting and/or reviewing employment agreements, structuring and advising on secondment and expat arrangements, employee stock options and other incentive schemes, transfer of employees, restrictive covenants, reductions in force and severance arrangements. The HR Law practice also regularly advises clients on employment issues arising at the time of corporate restructuring, including outsourcing arrangements, mergers and acquisitions. The practice has been ranked in Tier 1 by *Chambers & Partners* and the *Indian Business Law Journal* and members of the team have been recognised by organisations such as the Practical Law Company and Society for Human Resources Management (SHRM).

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