

HR Law Hotline

January 21, 2008

EMPLOYMENT LAW: HIRE & FIRE YOUR EMPLOYEES AT WILL

Recent news articles suggest that the Indian Ministry of Labour and Employment ("**Ministry**") is considering reforming some of the onerous Indian labour laws in order to allow for an 'at-will' employment policy, as a result of which the employer may be able to terminate the employee's employment without the requirement to establish a cause. Such a reform would basically require an amendment to the existing retrenchment (termination) provisions under the Industrial Disputes Act, 1947 ("**IDA**") and the state-specific labour laws, as may be necessary. The Ministry's proposal though is expected to have strong resistance from trade unions and leftist parties, in view of the fact that such a move is regarded as being anti labour.

PROPOSED REFORMS:

The current provisions of the IDA *inter alia* require the employer to issue a termination notice indicating the reasons for termination of a workman's (as defined in the IDA) employment. Some of the state-specific shops and establishments enactments, including the Karnataka Shops and Commercial Establishments Act, 1961, the Andhra Pradesh Shops and Establishments Act, 1988 and the Tamil Nadu Shops and Establishments Act, 1947, currently require the employer to terminate an employee's employment only with a "reasonable cause", although such requirement is not necessary in case of termination as a result of the employee's misconduct. The IDA also contains provision for the requirement of obtaining prior permission of the government in case of termination of workmen in certain industrial establishments such as factories, mines and plantations employing at least 100 workmen.

Sensing that such provisions have been restricting the ability of employers to employ larger number of employees in the organisation, the Ministry has been working on a formula to allow employers to terminate the employee's employment after suitably compensating them. The current proposal includes payment of an additional compensation by the employer to the employee, to be calculated at the rate of 45 to 90 days of the employee's salary. The Ministry is working with some of the industry bodies to finalise the structure for such compensation.

IMPLICATIONS:

The concept of at-will employment, which has been adopted successfully in several countries, does not currently exist under Indian labour law. The proposal of the Ministry, to the extent it eventually results into law, is expected to significantly enhance business confidence, not only amongst Indian companies, but also with foreign companies who are currently using or are proposing to use India as an offshoring center. Besides increasing industrial productivity, such a proposal is also expected to help reduce the high levels of employees currently in the so-called 'unorganized' sector, as the employers would be more forthcoming to directly employ them as regular full-time employees. However, it is necessary that before enacting any such proposals, utmost care should be taken to protect the employees' interests in order to ensure that the employees are not put at any disadvantage as a result of immediate loss of employment. Further, it is also necessary to add caveats so that such a policy is not abused by the employers by creating discrimination issues in the workplace or is not in contravention of public policy.

Source: *The Economic Times*, January 13, 2008

- Radhika Iyer, Sangeeta Rana & Vikram Shroff

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