Comparative Guide

Labour and Employment

Indonesia & India

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Indonesia

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Labour and Employment Comparative Guide

A. General Legal Framework of Labour and Employment Law

1. **What are the main statutory sources of labour and employment law in your jurisdiction?**

In Indonesia, labour and employment or manpower is governed under Law No. 13 of 2003 on Manpower, as lastly partially amended by Law No. 11 of 2020 on Job Creation (collectively, the "**Manpower Law**"), which works as the main “umbrella law” for manpower related regulations.

In addition to the above, there are other implementing regulations issued by the government and Ministry of Manpower ("**MoM**”), which essentially act as the implementing regulations to Manpower Law. They include Government Regulation No. 35 of 2021 on Fixed-Term Contract, Outsourcing, Work and Resting Hours, and Termination of Employment (“**GR 35/2021**”), Government Regulation No. 36 of 2021 on Wages **(“GR 36/2021”)**, and Government Regulation No. 37 of 2021 on Implementation of the Job Loss Security Program **(GR 37/2021)**.

2. **Is there a contractual system that operates in parallel, or in addition to, the statutory sources?**

In addition to Manpower Law and its implementing regulations, employers and employees need to comply with the prevailing provisions under the employment agreement, company regulations, or collective labour agreements.

B. Employment Contracts

3. **Are employment contracts commonly used at all levels? If “yes”, what types of contracts are used and how are they created?**

Yes. Employment contracts are commonly used at all levels of employment. However, directors and commissioners are not generally considered as employees of a company, but rather, as a part of the “management” of the company, unless otherwise stated or governed in the employment agreement.

As a reference, there are two types of employment contract in Indonesia, based on the period of the employment relations. They are as follows:

(a) **Fixed-term (definite) Employment Contract** (*Perjanjian Kerja Waktu Tertentu* or “**PKWT**”) is an employment agreement between a worker and his/her employer, valid for a definite period of time or for certain jobs. A PKWT is made in writing.

A PKWT must, at least, contain the following information:

i. name, address, and type of business of the company;

ii. name, gender, age, and address of the worker/labour;
iii. position or type of work;
iv. place of work;
v. amount and method of payment of wages;
vi. rights and obligations of the employers and workers/labours following the provisions of the legislation and/or working conditions stipulated in the company regulations or collective labour agreements;
vii. start and period of validity of PKWT;
viii. place and date of PKWT; and
ix. signatures of the parties in PKWT.

(*Article 13 of GR 35/2021*)

(b) **Indefinite-term (permanent) employment** (*Perjanjian Kerja Waktu Tidak Tertentu* or "**PKWTT**") is an agreement between an employee and an employer in a permanent employment relationship. Article 63 of Manpower Law allows the employer to hire employees verbally or in writing. However, the employer is obliged to make a letter of appointment for the relevant employee.

The letter of appointment shall, at least, contain the following information:

i. name and address of the employee;
ii. employment start date;
iii. type of work; and
iv. amount of wage/salary.

4. **Are there any requirements for a written employment contract? must they include specific information?**

Please refer to our response to question 3 above.

5. **Does a verbal employment relations recognized under your jurisdiction? If "yes", what are the requirements and restrictions of such verbal employment relations?**

Yes. Manpower Law allows verbal employment relations. However, this is only applicable to PKWTT arrangements. On the other hand, a PKWT should be made in writing because the employer has an obligation to register PKWT to MoM through the local Manpower Office (*Dinas Ketenagakerjaan*)

C. Employment Rights and Representations

6. **Are there any applicable mandatory parental leave (i.e., maternity leave and paternity leave), under the labour and employment laws in your jurisdiction?**

Yes. Manpower Law allows an employee to take a maternity or paternity leave.

Based on Article 82 of Manpower Law, a female employee has the right for 1.5 month of pre-natal maternity leave and 1.5 month of post-natal maternity leave or, a total 3-month leave. A female employee who just had a miscarriage is granted with a 1.5 month of miscarriage leave or another period of time as determined/recommended by the gynecologist or midwife.

Pursuant to Article 93 (4) of the law, a male employee whose wife gives birth or just had a miscarriage shall have the right to two days of paid leave.

7. **How long does the parental leave last and what benefits are given during such period?**

Please see our responses to question 6 above.

An employee under a paternal leave shall be entitled to full salary (**i.e.**, or, at least, their basic wages).

8. **Are trade unions recognized and what rights do they have?**

Yes. Indonesia recognizes the existence of trade unions. For Indonesian Law purposes, these unions are called "labour unions" as regulated under Law No. 21 of 2000 on Labour Union ("**Labour Union Law**") and Manpower Law. A labour union can be established by employees and registered at the local Manpower Office. Generally, employees have the right to establish a labour union without any intervention from their employers.

A labour union has the right to participate in negotiation processes in the drafting of a collective labour agreement (*Perjanjian Kerja Bersama).* Based on Article 119 of Manpower Law, workers of a company that has a labour union have the right to be represented in negotiations with the employer or business owner in drafting the collective labour agreement, provided that the union has members consisting of more than 50% of the total number of employees in the relevant company. If such labour union has less members than the threshold, its participation in the negotiations can be based on votes by more than 50% of the employees.

Furthermore, Articles 137 and 138 of Manpower Law allows a strike to be held as a basic right of the workers and trade/labour unions as long as it is legally, orderly, and peacefully performed as a result of failed negotiations with the employers.

9. **How are data protection rules applied in the workforce and how does this affect employees' privacy rights?**

Indonesia Manpower Law respects privacy rights of the employees as stated in Article 1 paragraph (1) of Minister of Communication and Information Technology Regulation Number 20 of 2016 on Protection of Personal Data in Electronic Systems ("**MoCI 20/2016**").

Article 30 paragraphs (1) and (2) of MoCI 20/2016 prohibits every person from knowingly and unlawfully accessing computers and/or electronic systems belonging to other persons in any way with or without any purpose of obtaining electronic information and/or documents. Therefore, before a company accesses the personal data of its employees, the employees must state their explicit consent before the company can process, disclose, or retain their personal data.

10. **Does the labour and employment laws in your jurisdiction provides any framework or requirements for health and social benefits?**

Yes. In Indonesia, an employer is required to provide health insurance for the workers as stipulated under Article 100 of Manpower Law to improve the welfare of workers/labours and their families.

Furthermore, Article 15 paragraph (1) of Law 24/2011 jo. Constitutional Court Decision No. 82/PUU-X/2012 requires employers to register themselves and their workers as participants in the health and manpower programs of the government's social security program (*Badan Program Jaminan Sosial* or "**BPJS**").

11. **What are the general rights for employees during their employment period? Are there any other entitlements and/or benefits that are statutorily required?**

In general, employees' rights and obligations shall be determined and agreed between the parties in their employment agreement. As an individual, an employee's basic human rights, such as the right to

own private property, the right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, and the right not to be enslaved shall be protected by law.

In specifics, Manpower Law requires employers to fulfill the rights of their employees:

i. Article 76: Employers are obliged to provide shuttle transportation for female employees who leave and return to work between 23.00 and 05.00;
ii. Article 79: Employers are obliged to provide rest and leave times;
iii. Article 80: Employers are obliged to provide adequate opportunities for employees to perform the worship required by their religions;
iv. Article 88A: Employers are obliged to pay wages to employees under the agreement;
v. Article 148: Employers are obliged to provide a written notification to their employees and/or labour unions, and the agencies responsible for local manpower affairs, at least, seven working days before the date of the company closing (lockout);
vi. Article 156: In the event of termination of employment, an employer is obliged to pay severance and/or service payments, and compensation to the employees for the entitlements they should receive; and
vii. Article 61A: Employers are obliged to provide compensation money to the employees.

D. Employment Benefits

12. **Is there a national minimum wage that must be adhered to?**

Yes, employers in Indonesia must adhere to the regulatory requirements on the applicable minimum wage for both their permanent and non-permanent employees.

Minimum wage is determined regionally, based on various factors related to the regional economic growth and prevailing inflation rates.

GR 36/2021 outlines the formula to determine a minimum wage that should be increased by 1.09% for 2022 stipulation. In this regard, each provincial government should issue a minimum wage decree establishing the minimum wage in the relevant district and regency/city.

13. **Is there an entitlement to payment for overtime?**

Yes. According to Article 78 of Manpower Law, an employer of workers/labours who work beyond working hours is required to pay the overtime.

14. **Is there an entitlement to annual leave? If "yes", what is the minimum that employees are entitled to receive?**

Yes. An employee is entitled to, at least, 12 working days of annual leave, after he/she has continuously worked for 12 months (*Article 79 of Manpower Law*).

15. **Is there a requirement to provide sick leave? If so, what is the minimum that employees are entitled to receive?**

Article 93 (2) (a) of Manpower Law requires the employer to pay wages if an employee becomes ill that he/she is unable to work, and if a female employee is sick on the first and second days of her menstrual period that she is unable to work.

16. **Is there a statutory retirement age? If so, what is it?**

The statutory retirement age is 56 years old, based on Government Regulation No. 45 of 2015 on Implementation of the Pension Security Program. Retirement age can be increased for 1 year every next 3 years until it reaches 65 years. This means that the maximum working age limit for the elderly in Indonesia is generally 65 years.

E. Discrimination and Harassment

17. **What actions are classified as unlawfully discriminatory?**

Neither Manpower Law nor Job Creation Law provides any explicit definition of "discrimination" or "discriminatory" act.

There are, however, several provisions that regulate anti-discrimination towards employees, such as: (i) Article 5 of Manpower Law, which ensures that everyone including disabled persons have equal rights and opportunities in job applications, and securing viable living standard regardless of gender, ethnicity, race, and political orientation; (ii) Labour Union Law also provides provisions on anti-discrimination in job training opportunities.

Generally speaking, employees' basic rights for equal opportunity and treatment without discrimination are protected under the prevailing laws and regulations.

18. **Are there specified groups or classifications entitled to protection?**

Generally, all employees shall be treated equally. However, some groups such as female and disabled employees are entitled to further protection. For instance, Manpower Law stipulates that female employees shall be provided with transportation to and from their homes if they are required to work between 11 PM and 7 AM. Employed nursing mothers are given the right to breastfeed their babies including pump and store breast milk during working hours. Furthermore, employers of disabled workers must provide adequate access to wheelchairs or other supporting equipment for the relevant disabled workers.

In addition to the above, Article 153 of Manpower Law as amended by Job Creation Law states that employers are strictly prohibited from terminating an employment relationship under the following conditions:

a) Absence due to illness of less than 12 consecutive months, proven by a written statement of the authorized doctor;
b) Absence due to obligations to the State as required by the prevailing laws;
c) Absence due to religious obligation;
d) Absence due to the employee's wedding;
e) Absence due to pregnancy and activities related to childbirth;
f) Blood or marriage relationship between employees in the company concerned;
g) Activities related to Labour Union caried out during or outside the working hours with permission given by the company;
h) Employees' reports related to crime activities committed by the company;
i) Different understanding/ beliefs in connection with religion, sex orientation, political views, ethnicity, color, race, marital status, or physical condition; and
j) The employee is permanently disabled or sick due to a work accident or an occupational disease, whose recovery period is uncertain.

Moreover, Manpower Law prohibits employers from employing minors.

19. **What protections are employed against discrimination in the workforce?**

Please refer to the answer of Point 18 above.

20. **How is a discrimination claim processed and what remedies are available?**

If the discriminatory act is done by the employer, such case might be brought to the Industrial Relations Court. Moreover, employees who are terminated due to discriminatory acts have the right to challenge their termination.

21. **What protections and remedies are available against harassment, bullying and retaliation/victimisation?**

In addition to the provision stated in Point 20, employers that are proven to have done any act of harassment, bullying, retaliation or victimization may be subject to administrative sanctions in the form of rebuke, warning letter, limitation or suspension of business activities, and in some extent, revocation of business license or permit.

Other than the sanctions under the manpower and job creation laws, employers may also be subject to criminal sanctions in the form of fines and/or imprisonment if proven guilty of harassment, bullying, retaliation or victimization.

F. Dismissal and Termination of Employment

22. **What are the main legal frameworks for dismissal and termination of employees in your jurisdiction?**

Dismissal and termination of employment are stipulated under Chapter XII of Manpower Law as partially amended by Job Creation Law and GR 35/2021.

23. **What are the main reasons for lawful termination of an employment contract?**

Several lawful reasons of termination of employment contracts that do not need court approvals are:

a. the employee is still on probation period;
b. the employee has decided to resign;
c. the employee has reached the retirement age;
d. the period of a definite work agreement has come to an end; and
e. the employee has died.

In addition to the above, employers are permitted to terminate their employees due to the following reasons:

a. the employer is conducting legal actions such as merger, consolidation, acquisition, or spin off; and its employees are not willing to continue their employment relationship, or the employer is no longer willing to hire the employees;
b. efficiency, followed by a closure not caused by losses of the company;
c. closure of the company due to concurrent losses for the period of two years;
d. business closure due to force majeure;
e. the employer is in suspension of debts status; or
f. the employer is bankrupt.

(*Article 36 of GR 35/2021*)

24. **Is a minimum notice period required in the event of termination?**

Pursuant to Article 37(3) of GR 35/2021, an employer shall notify the terminated employees or labour union no less than 14 days prior to the termination of employment.

25. **What rights do employees have when arguing unfair dismissal?**

Based on the law, an employee has the right to bring any unfair treatment made by the employer to the Industrial Relations Court.

26. **Are there any minimum requirements for severance payments in the event of dismissal and termination of employment contract?**

Please note that under Job Creation Law, there is a conceptual difference between "*compensation*" and "*severance*". Employees under PKWTT agreements are subject to severance payment in the event of termination, whilst employees under PKWT arrangements shall be subject to compensation in the event of termination. The laws on manpower provide minimum requirements for both severance payment and compensation.

27. **What is the basic formula for severance payment calculation?**

Pursuant to Article 40 paragraph (2) of GR 35/2021, severance payment shall be calculated based on the years of service of the relevant employees.

To be more specific, the calculation shall be as follows:

Years of Service	Severance Pay
Less than one year	1-month wage
1 year or more but less than 2 years	2-month wage
2 years or more but less than 3 years	3-month wage
3 years or more but less than 4 years	4-month wage
4 years or more but less than 5 years	5-month wage
5 years or more but less than 6 years	6-month wage
6 years or more but less than 7 years	7-month wage
7 years or more but less than 8 years	8-month wage
8 years or more	9-month wage

G. Employment Tribunal

28. **Is there any employment tribunal in your jurisdiction that specifically dealt with employment related complaints?**

Yes. Indonesia has the Industrial Relations Court regulated under Law No. 2 of 2004 on Settlement of Industrial Relations Disputes ("**Law 2/2004**"). This is a special court established within the District Court located in every provincial capital, which has the authority to examine, conduct hearings, and provide judgements on industrial relation disputes (*Article 1 point 17 of Law 2/2004*).

29. **What are the procedures and timeframes for employment-related tribunal actions?**

According to Article 56 of Law 2/2004, the Industrial Relations Court has the absolute competence to examine and judge the following employment-related disputes:

a) At the first-degree court regarding employee rights disputes;
b) At the first-and-last degree court regarding conflicts of interest;
c) At the first-degree court regarding disputes over termination of employment; and
d) At the first-and-last degree court regarding disputes between trade unions/labour unions in one company.

Further, Article 57 of Law 2/2004 stipulates that the procedural law in the Industrial Relations Court is the Civil Procedure Code that applies to the Courts within the District Courts, except as specifically regulated in this law. This means there are no specific timeframes in resolving conflicts through the Industrial Relations Court.

H. Miscellaneous

30. **How would you describe the current employment landscape and prevailing trends in your jurisdiction? Are any new developments anticipated in the next 12 months, including any proposed legislative reforms?**

Based on the Indonesia's priority national legislation program (*Program Legislasi Nasional*/Prolegnas), three legislative bills on Manpower matters that have been registered for immediate renewals are:

(i) The Bill on the Protection of Honorary and Casual Workers;
(ii) The Bill on Labour Inspectors; and
(iii) The Bill on Amendments to Law No. 13 of 2003 on Manpower.

Furthermore, the revision of Job Creation Law is highly expected, since the law is deemed conditionally "*unconstitutional*", based on Constitutional Court ("**MK**/*Mahkamah Konstitusi*) Judgement No.91/PUU/XVIII/ stipulating that the law is conditionally unconstitutional due to its non-alignment with the standard formulation of laws and regulations. To avoid any legal vacuum, Job Creation Law would remain effective for the period of two years until the issuance and enactment of the revision.

The revised Job Creation Law is expected to be issued before the deadline at the end of the two-year grace period.

31. **What are the main issues in labour and employment laws in your jurisdiction?**

The current main issues in labour and employment in Indonesia concern mismatched skills, inadequate labour market information, low quantity and quality education, limited opportunities for on-the-job trainings, and high labour mobility costs.

32. **Are there any other matter that requires specific attention from employers in your jurisdiction?**

Employers must keep an eye on the issuance of the revised Job Creation Law and expect further changes in the employment law landscape in the near future.

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India

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A. General Legal Framework of Labour and Employment Law

1. **What are the main statutory sources of labour and employment law in your jurisdiction?**

The Constitution of India empowers both the Indian Central Government and the various State Governments to enact suitable legislation to regulate the labour and employment sector. There are different legislations based on the type of industry, nature of work, etc. Some of the important labour and employment legislations enacted in India are:

a) The Contract Labour (Regulation and Abolition) Act, 1970;
b) The Employee's Compensation Act, 1923;
c) The Employment Exchange (Compulsory Notification of Vacancies) Act, 1959
d) The Employees' Provident Funds and Miscellaneous Provisions Act, 1952;
e) The Employees' State Insurance Act, 1948;
f) The Equal Remuneration Act, 1976;
g) The Factories Act, 1948;
h) The Industrial Disputes Act, 1947;
i) The Industrial Employment (Standing Orders) Act, 1946;
j) The Minimum Wages Act, 1948;
k) The Maternity Benefit Act, 1961;
l) The Payment of Bonus Act, 1956;
m) The Payment of Wages Act, 1936;
n) The Payment of Gratuity Act, 1972;
o) The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013;
p) The Shops and Establishments Acts (each State has its specific legislation); and
q) The Trade Unions Act, 1926.

Apart from the above statutory sources, there are certain sector specific legislations regulating employment conditions of working journalists, newspaper employees, cine-workers, building and construction workers, etc.

The Government of India, to facilitate ease of doing business, has enacted 4 new labour legislations which subsumes 29 existing labour laws. The new labour codes are:

a) Code on Wages, 2019;
b) Code on Social Security, 2020;

c) Occupational Safety, Health and Working Conditions Code, 2020, and

d) Industrial Relations Code, 2020.

All of the new labour codes have been passed by both the houses of the Parliament of India and have received the President's assent. However, they are yet to be enforced by way of a notification by the Government of India.

2. **Is there a contractual system that operates in parallel, or in addition to, the statutory sources?**

Yes, in India, a contractual system exists which is applicable more particularly to employees categorised as non-workmen.

The Industrial Disputes Act, 1947 ("**ID Act**") is applicable to employees categorised as workmen who are protected in terms of lay-offs, retrenchment and closure of establishments.

A workman under the ID Act has been defined as any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical, or supervisory work for hire or reward, whether the terms of employment are expressed or implied, and for the purposes of any proceeding under the ID Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person:

(i) who is subject to the Air Force Act, 1950, the Army Act, 1950 or the Navy Act, 1957; or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding INR 10,000 (USD 135 approx.) per month or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

All other employees not covered under the above definition are considered non-workmen and are not governed under the provisions of the ID Act.

While workmen are governed by the provisions of the ID Act, non-workmen are governed by the contractual system.

B. Employment Contracts

3. **Are employment contracts commonly used at all levels? If "yes", what types of contracts are used and how are they created?**

Yes, it is a common practice for employers and employees to have all the terms and conditions of employment specified in writing and signed by both parties so that their respective rights, duties and obligations are clearly set out. Moreover, since workmen and non-workmen enjoy different benefits, it is important for employers to execute employment agreements with their employees to materialise such distinction between workmen from non-workmen.

Employers in India execute the following types of employment contracts with the employees:

1. Open-ended employment contracts, where employment continues until either the employer or the employee ends the employment; and
2. Fixed-term employment contracts, which terminate after a specified duration.

The proposed Code on Social Security, 2020, and Industrial Relations Code, 2020, mandates a written employment contract in the case of "Fixed Term Employment" ("**FTE**"). The Code defines FTE as the engagement of an employee/worker on the basis of a written contract of employment for a fixed period.

4. **Are there any requirements for a written employment contract? Must they include specific information?**

The employment contract should contain specific information, such as job title or nature of work to be performed, wages or other emoluments, employee benefits, and notice period for termination. The nature of duties are important to distinguish whether an employee is a workman or non-workman, as the former is protected in terms of termination procedures and compensation.

5. **Does a verbal employment relations recognized under your jurisdiction? If "yes", what are the requirements and restrictions of such verbal employment relations?**

In India, labour laws do not statutorily mandate employment contracts to be in writing, and the relationship between an employee and his employer can either be written or oral.

Contracts in India are governed by the provisions of the Indian Contract Act, 1872 ("**CA**"). As per its provisions, an oral agreement is equally valid and enforceable in the courts of India. For an oral agreement to be enforceable, it must fulfill the criteria laid down for a valid contract under the CA, which are as follows:

a) Offer;
b) Acceptance;
c) There should be lawful object;
d) Lawful consideration;
e) Agreement should be made by free consent; and
f) Parties should be competent to contract.

Although oral agreements are valid under the CA, as discussed above, it is advisable to have written contracts for distinguishing between a workman and a non-workman based on their duties, besides the rights, duties and obligations of the employer and employee.

The proposed labour codes, do not make it mandatory to have a written contract of employment except in cases of 'Fixed Term Employment' as discussed in paragraph 4. Yet, it is advisable to have a written contract for the reasons set out hereinbefore.

C. Employment Rights and Representations

6. **Are there any applicable mandatory parental leave (i.e., maternity leave and paternity leave), under the labour and employment laws in your jurisdiction?**

While female employees in India are eligible to receive maternity leaves, there is no statutory provision requiring employers to grant paternity leave to male employees, except for male Central Government employees.

The Maternity Benefit Act, 1961 ("**MBA**") provides that every woman who has completed 80 days of employment in an establishment in the 12 months immediately preceding the date of expected delivery, is entitled to paid maternity leave of 26 weeks. However, in case of women employees who have 2 or more surviving children, they are entitled to 12 weeks of paid maternity leave.

The Central Government employees are permitted to avail paternity leave of 15 days under their specific service leave rules.

The proposed Code on Social Security, 2020 also provides for maternity benefits on the lines of the MBA.

7. **How long does the parental leave last and what benefits are given during such period?**

In addition to the paid maternity leaves discussed above in paragraph 6, the MBA provides a woman employee protection from dismissal or discharge from employment on account of pregnancy or during the paid maternity leave. Additionally, an employer is also prohibited from changing the terms of employment to the woman's disadvantage during the period of her maternity leave. The MBA also allows employers to permit women employees to work from home for such a period as may be mutually agreed to in addition to the maternity leave, if the nature of work allows work from home.

As discussed above the specific service leave rules permit 15 days paternity leave to every male Central Government employee. Such leave can be availed by the concerned employee either up to 15 days before the birth of the child or within 6 months from the date of the birth of the child.

The proposed Code on Social Security, 2020 embodies the provisions of the MB Act but does not provide any paternity leave for male employees.

8. **Are trade unions recognised and what rights do they have?**

Trade unions are governed by the provisions of the Trade Union Act, 1926 ("**TUA**"). Any trade union having at least 10% or 100 workmen at the establishment, whichever is less, subject however, to at least 7 workmen/employees, may seek registration of the trade union under the TUA.

The TUA provides the following rights to a registered trade union:

a) Immunity is granted to office bearers and members from proceedings relating to criminal conspiracy in respect of any agreement made between the members for the purpose of furthering any of its objects unless the agreement is an agreement to commit an offence;

b) Immunity from civil suit or other legal proceedings in respect of any act done in contemplation of a trade dispute to which a member is a party, on the ground that such an act induces some other person to break a contract of employment, or that it interferes with the trade, business or employment of some other person or interferes with the right of some other person to dispose of his capital or labour as he wills it.

c) Maintain a separate fund for political purposes from which payments may be made for the promotion of civic and political interests of its members;

d) Amalgamation with other trade unions in the manner prescribed under TUA;

e) Agreements between members of a registered trade union would not be void or voidable merely on account of the fact that any of its objects are in restraint of trade.

The proposed Industrial Relations Code, 2020, has adopted the provisions of the TUA, with the added provision for recognition of a registered trade union as the negotiating union.

9. **How are data protection rules applied in the workforce and how does this affect employees' privacy rights?**

The labour laws in India do not contain any specific provisions concerning the protection of employees' data or the privacy of the employees.

However, the provisions of the Information Technology Act, 2002 read with the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 ("**SPDI Rules**") require every employer to implement security practices and procedures as required under the SDPI Rules for protecting sensitive personal data or information of employees. Employers are required to obtain prior permission of employees to disclose sensitive personal data or information of employees to any third party.

"Sensitive personal data or information" of a person under SPDI Rules has been defined as "*personal information which consists of information relating to;-*

a) password;

b) financial information such as Bank account or credit card or debit card or other payment instrument details;

c) physical, physiological, and mental health conditions;

d) sexual orientation;

e) medical records and history;

f) biometric information;

g) any detail relating to the above clauses as provided to body corporate for providing services; and

h) any of the information received under the above clauses by body corporate for processing, stored or processed under lawful contract or otherwise"

10. **Does the labour and employment laws in your jurisdiction provides any framework or requirements for health and social benefits?**

a) The Employees' State Insurance Act, 1948 which covers factories (and any other establishments as may be notified by Central or State Government) with 10 or more employees receiving wages of up to INR 21,000 per (USD 280 approx.) per month, provides for medical care to the employees and their dependents as well as cash benefits during sickness and maternity, and monthly payments in case of death or disablement. The employee contributes 0.75% of their wages while the employer contributes 3.25% of the employee's wages towards the Employee State Insurance ("**ESI**") scheme.

ESI benefits under the proposed Code on Social Security, 2020 ("**CSS**") are being extended to unorganised workers, gig workers, and platform workers and their families.

b) The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 which applies to factories and establishments employing 20 or more employees having wages of up to INR 15,000 (USD 200 approx.) per month, requires both employer and employee to mandatorily contribute an equal amount to the provident fund created with the Central Government, which is equivalent to 12% of the basic wages of the employee. Employees drawing wages exceeding INR 15,000 (USD 200 approx.) per month can voluntarily become members of the Employee Provident Fund Organisation.

The CSS reduces the rate of contribution for both the employer and employee from 12% to 10%.

c) The Employees' Compensation Act, 1923 provides for payment of compensation to a workman employed in an industry as listed in the act, or his family in case the employee suffers any employment related injury resulting in disability for a period exceeding 3 days or on his death.

d) The Maternity Benefit Act, 1961 provides that every woman who has completed 80 days of employment in an establishment in 12 months immediately preceding the date of expected delivery, is entitled to paid maternity leave of 26 weeks.

e) The Payment of Gratuity Act, 1972 provides that any employee (workman and non-workman) who has been in service for a continuous period of 5 years, is entitled to receive gratuity payment from the employer at the rate of 15 days' wages for every completed year of service on his resignation or termination of the employment contract.

While the proposed CCS retains the provisions of the Payment of Gratuity Act, 1972 the qualifying period for working journalists has been reduced from 5 years to 3 years.

11. **What are the general rights for employees during their employment period? Are there any other entitlements and/or benefits that are statutorily required?**

The general rights provided to employees under the existing labour and employment law regime in India are as follows:

a) **Leave:** If an entity is a factory (engaged in manufacturing activity) covered under the Factories Act, 1948 the workers who have worked in a factory for 240 days or more in a calendar year are

entitled to annual leave with wages in the subsequent calendar year, at the rate of 1 day for every 20 days of work performed.

In case an entity is an establishment under the Shops and Establishments Act, which are State specific, the number of days of annual leave to which employees are entitled would depend on the respective shops and establishments legislation of the State the establishment is located in. The minimum threshold usually ranges from 15 to 20 days annually. Additionally, most States through their respective Shops and Establishments Act, provide casual and/or sick leave of around 7 to 15 days annually.

Further, every employer is required to grant paid holidays on 26th January, 15th August, and 2nd October which are declared as national holidays. Additionally, State specific legislation may require 5 or more festival holidays to be allowed each year.

The provisions of the Factories Act, 1948 relating to annual leaves have been embodied in the proposed Occupational Safety, Health and Working Conditions Code, 2019 except for the qualifying period which has been reduced from 240 days to 180 days.

b) **Notice:** The Industrial Disputes Act, 1947 mandates an employer to provide at least 1 months' notice mentioning the reason for termination or wages in lieu of the notice period, along with compensation at the rate of 15 days' wages for every completed year of service, as well as an intimation to the State Government, before terminating an employee being a workman who has been in continuous employment for the last 1 year. However, in case of a workman employed in a factory, mine, or a plantation, having 100 or more employees, the IDA requires the employer to give 3 months' notice indicating the reasons for termination or wages in lieu of the notice period and seek prior government approval before such workman can be terminated. In case an entity is an establishment under the Shop and Establishments Act, which are State specific, the act provides that no employee (workman as well as non-workman) will be terminated without a mandatory written notice of 1 month and wherever law requires the notice should also mention the reason for termination. In case the provisions of both the IDA and Shops and Establishments Act are applicable to an establishment, the courts in India have held that in such a situation the act having more beneficial provision would be applicable to the concerned employee.

c) **Payment of Bonus**

The Payment of Bonus Act, 1965 ("**PBA**") provides that where the employer is a factory or any other establishment employing 20 or more persons, every employee earning monthly wages of up to INR 21,000 (USD 280 approx.) per month must be paid a minimum bonus at the rate of 8.33% of the wages earned during the accounting year, provided that the employee has worked in the establishment for at least 30 working days in that year.

The proposed Code on Wages, 2019 embodies the provisions of PBA.

D. Employment Benefits

12. **Is there a national minimum wage that must be adhered to?**

The Minimum Wages Act, 1948 ("**MWA**") provides jurisdiction to both the Central Government as well as the State Governments to fix minimum rates of wages and review and revise the minimum wages at regular intervals not exceeding 5 years. For any scheduled employments specified under MWA, which are under the authority of Central Government, the Central Government has the authority to fix minimum wages and for the rest of the scheduled employments, the State Government has the authority to fix the minimum wages.

The Central Government in 2017 fixed the national floor level of minimum wage at INR 176 (USD 2.5 approx.) per day and the minimum wages, which vary from State to State, can go up to approximately INR 900 (USD 12 approx.) per day, depending upon the type of industry and skill level.

Further, the proposed Code on Wages, 2019 embodies the provisions of the MWA in relation to the powers granted to Central or State Governments to fix minimum rates of wages.

13. **Is there an entitlement to payment for overtime?**

The Factories Act, 1948 ("**FA**"), provides that a worker who works in a factory is required to work for not more than 9 hours a day or not more than 48 hours in a week. In case of any overtime, he is entitled to overtime wages at twice the rate of his ordinary wages.

The Shops and Establishments Act, which are State specific, provide that an employee should not work for more than the specified hours (varies from 8 hours to 10 hours depending on the State in question) in a day or the aggregate specified hours (varies from 48 hours to 54 hours depending on the State in question) in a week. Any employee who works for more than this period is entitled to twice the wages as overtime wages for the extra hours worked.

The proposed Code on Wages, 2019 and the Occupational Safety, Health and Working Conditions Code, 2019 provide for overtime wages at twice the ordinary/normal rate of the employees' wage.

14. **Is there an entitlement to annual leave? If "yes", what is the minimum that employees are entitled to receive?**

The Factories Act, 1948 ("**FA**") provides that the workers who have worked in a factory for a minimum period of 240 days in a calendar year are entitled to annual leave with wages in the subsequent calendar year, at the rate of 1 day for every 20 days of work performed.

The proposed Occupational Safety, Health and Working Conditions Code, 2019 has embodied the provisions of the FA in relation to the annual leaves.

In case the entity is an establishment under the Shops and Establishments Act, which are State specific, the number of days of annual leave to which employees are entitled depends on the respective shops and establishments legislation of the State the establishment is located in. The minimum threshold ranges from 15 to 20 days. Additionally, most States through their respective Shops and Establishments Act, provide casual and/or sick leave of around 7 to 15 days annually.

15. **Is there a requirement to provide sick leave? If so, what is the minimum that employees are entitled to receive?**

Most States through their respective Shops and Establishments Act, provide sick leave of around 7 to 15 days for the employees.

However, the Factories Act, 1948 ("**FA**") does not provide for sick leave, but in most cases, the employer has a leave policy in place which allows sick leave in addition to the annual leave mandated by the FA.

16. **Is there a statutory retirement age? If so, what is it?**

In certain industrial establishments where the Industrial Employment (Standing Orders) Act, 1946 applies (establishments where 100 or more workmen are/were employed on any day in the preceding 12 months), the age of retirement or superannuation of a workman needs to be mutually agreed upon between the employer and the workman under an agreement which would be binding on both the workman and the employer. And if no such agreement enumerates a retirement age, the age of retirement is deemed to be 58 years in such an establishment. However, as a matter of practice, most establishments have as a policy, the retirement age at 60 years.

The proposed Code on Social Security, 2020 does not provide for any retirement age except for a building worker, for whom the retirement age is set at 60 years.

E. Discrimination and Harassment

17. **What actions are classified as unlawfully discriminatory?**

Following actions are classified as unlawfully discriminatory under the concerned legislation:

a) The Industrial Disputes Act, 1947 ("**IDA**") classifies the following actions of an employer as unlawfully discriminatory:

   i. Encouraging or discouraging membership in any trade union by discriminating against any workman, such as:

      1. discharging or punishing a workman, because he urged other workmen to join or organise a trade union;
      2. discharging or dismissing a workman for taking part in any strike (not being a strike which is deemed to be an illegal strike under the IDA);
      3. changing seniority rating of workmen because of trade union activities;
      4. refusing to promote workmen to higher posts on account of their trade union activities;
      5. giving unmerited promotions to certain workmen with a view to creating discord amongst other workmen, or to undermine the strength of their trade union; and
      6. discharging office-bearers or active members of the trade union on account of their trade union activities.

   ii. To show favouritism to one set of workers regardless of merit.

iii. Discharging or discriminating against any workman for filing charges or testifying against employer in any enquiry or proceeding relating to any industrial dispute.

iv. Discharge or dismissal of workmen:

1. by way of victimisation;
2. not in good faith but in the colourable exercise of employer's rights;
3. by false implication of a workman in a criminal case on false evidence;
4. on untrue or trumped up allegations of absence without leave;
5. against the principals of natural justice in conduct of enquiry; and
6. disproportionate punishment for misconduct of minor or technical character without considering past record or service of a workman.

b) Equal Remuneration Act, 1976 ("**ERA**") addresses discrimination on the grounds of gender in matters of employment and payment of remuneration. This act makes it unlawful if there is discrimination with respect to recruitment, wages, work, transfers, and promotions on the basis of gender for the same work or work of similar nature.

c) Rights of Persons with Disabilities Act, 2016 makes discrimination such as denial of promotion, dismissal, or lowering of rank on the ground of disability, unlawful.

d) The Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 makes discrimination or unfair treatment against persons with Human Immunodeficiency Virus or Acquired Immune Deficiency Syndrome in matters of employment, unlawful.

e) The Transgender Persons (Protection of Rights) Act, 2019 prohibits denial or discontinuation or unfair treatment in relation to employment or occupation.

f) Maternity Benefit Act, 1961 ("**MBA**") makes it unlawful for the employer to discharge or dismiss a woman from employment on account of pregnancy or during paid maternity leave. Additionally, an employer is also prohibited from changing the terms of employment to a woman's disadvantage during the period of her maternity leave.

The proposed Industrial Relations Code, 2020 has adopted the provisions of IDA in relation to the unlawfully discriminatory action of an employer.

Further, the proposed Code on Wages, 2019 has adopted the provisions of ERA in relation to the discriminatory actions based on gender.

The proposed Code on Social Security, 2020 has adopted the provisions of MBA in relation to the discriminatory actions against the woman employee on account of pregnancy.

18. **Are there specified groups or classifications entitled to protection?**

In addition to the protection granted to the categories of employees as discussed in paragraph 17 above, workmen are afforded better protection under the provisions of the IDA as against the non-workmen who are covered under the contractual terms of employment.

19. **What protections are employed against discrimination in the workforce?**

Generally, the companies in India formulate and implement internal policies which:

a) prohibit any kind of discrimination and provide for mechanisms such as sensitivity training, workshops to sensitise the workforce against any kind of discrimination, among others; and

b) setting up grievance committees for handling matters of discrimination.

20. **How is a discrimination claim processed and what remedies are available?**

Employees who face discriminatory actions as discussed in paragraph 17, may approach appropriate authorities as may be appointed under relevant statutes, which are provided below:

S. No.	Legislation	Appropriate Authority
1.	Industrial Disputes Act, 1947 ("**ID Act**").	1. Grievance Redressal Committee (for industrial establishments with 20 or more workmen, for the resolution of disputes arising out of individual grievances). 2. Works Committee (for an industrial establishment with 100 or more workmen, for maintaining good relations, and to resolve any material difference of opinion between an employer and workmen). 3. Conciliation Officer (for settlement of an industrial dispute). 4. Board of Conciliation (for settlement of an industrial dispute). 5. Labour Court (for adjudicating industrial disputes related to matters specified in the 2nd schedule of the ID Act). 6. Industrial Tribunal (for adjudicating industrial disputes related to matters specified in the 3rd schedule of the ID Act). 7. National Tribunal (for adjudicating industrial disputes, which involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by such industrial disputes).

2.	Equal Remuneration Act, 1976.	1. An officer not below the rank of a Labour Officer. 2. Local Court (not inferior to that of Metropolitan Magistrate or First Class Judicial Magistrate).
3.	The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013.	1. Internal Committee (mandatory where the employer has 10 or more employees). 2. Local Committee (where the Internal Committee has not been formed). 3. Local Court (not inferior to that of Metropolitan Magistrate or First Class Judicial Magistrate).
4.	Rights of Persons with Disabilities Act, 2016.	1. Executive Magistrate. 2. Grievance Redressal Officer for a government establishment. 3. Special court in the State, wherever setup.
5.	The Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention And Control) Act, 2017.	1. Complaints Officer (establishment level). 2. First Class Judicial Magistrate.
6.	Maternity Benefit Act, 1961.	1. Inspector appointed by Central/State Government, as applicable. 2. Local court.

The affected employee is required to make a written complaint to the appropriate authority which will examine the evidence adduced and pass an appropriate order.

If an aggrieved employee is successful in proving discrimination before the appropriate authority, he may be awarded adequate compensation/damages and may also be reinstated if terminated, as may be decided by the appropriate authority.

The proposed Industrial Relations Code, 2020 ("**IRC**") provides that in case of any discriminatory action by the employer as discussed in paragraph 17, the affected employee may approach Grievance Redressal Committee, and subsequently, if the dispute is not resolved, the employee may approach

the Conciliation Officer through the trade union and if the dispute remains unresolved the affected party may approach the Industrial Tribunal for seeking remedial actions.

The proposed Code on Wages, 2019 provides that in case of discrimination by the employer based on gender relating to wages, the dispute on the same would be decided by such authority as may be notified by the Central Government or the State Governments, as may be applicable.

The proposed Code on Social Security, 2020 allows a woman discriminated against to appeal to the competent authority as may be notified by the Central Government or the State Governments, as may be applicable.

21. **What protections and remedies are available against harassment, bullying and retaliation/victimisation?**

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 provides for the formation of an Internal Committee in every establishment with 10 or more employees to handle grievances related to sexual harassment faced by women. The Internal Committee consists of 1 presiding officer who should be a woman employed at a senior level at the workplace, at least 2 members from amongst the employees, and 1 member from amongst non-governmental organisation or association committed to the cause of the women or a person who is familiar with the issue relating to sexual harassment. In case there is no Internal Committee constituted in the organisation, the Local Committee, constituted in every district by the State Government, will handle such grievances.

To discharge workmen by way of victimisation is considered to be an unfair labour practice under the Industrial Disputes Act, 1947 for which an aggrieved workman can approach the labour court to seek redressal.

An employee may approach the local law enforcement authorities in case harassment, bullying, and retaliation/victimisation is manifested through any action which constitutes an offence under the provisions of the Indian Penal Code, 1860.

The proposed Industrial Relations Code, 2020 ("**IRC**") adopts the provisions of IDA in relation to the actions of an employer resulting in victimisation of the employee. The IRC provides that the affected employee may approach the Industrial Tribunal for seeking appropriate remedial actions.

F. Dismissal and Termination of Employment

22. **What are the main legal frameworks for dismissal and termination of employees in your jurisdiction?**

The law relating to termination of employment is different for employees who are categorized as workmen and for those who are categorised as non-workmen.

For employees who are categorised as workmen and have been in continuous service for at least 1 year under an employer, the Industrial Disputes Act, 1947 provides for 1 months' notice in writing mentioning the reason for termination or wages in lieu thereof along with severance compensation at the rate of 15 days' average pay for every completed year of service, besides intimation to the State Government. However, in case of any workman working in a factory, mine, or plantation having 100 or more employees, the IDA requires the employer to seek prior government approval before terminating any such workman and thereafter give 3 months' notice in writing mentioning the reason for termination or wages in lieu thereof.

The Shops and Establishments Act (State specific), which applies to both workmen as well as non-workmen requires an employer to give 1 month's written notice or wages in lieu thereof and wherever the State law mandates the notice should mention an adequate reason for termination, to the employee before being terminated. However, in case of misconduct, and subject to the outcome of an inquiry to be conducted by the employer, an employee can be terminated without notice or payment in lieu thereof.

In case the provisions of both the IDA and Shops and Establishments Act are applicable to an establishment, the courts in India have held that in such a situation the act having more beneficial provision would be applicable to the concerned employee.

The proposed Industrial Relation Code, 2020 ("**IRC**") provides that any employee who can be categorised as a worker and who has been in continuous service for at least 1 year cannot be dismissed without giving 1 months' notice mentioning the reason for termination or wages in lieu of notice, and would be entitled to severance payment at the rate of 15 days wages for every completed year of continuous service, in case of termination for any reason other than disciplinary action. In case of termination on grounds of misconduct, the employer need not provide written notice but is required to conduct a disciplinary inquiry against such employee, giving adequate opportunity to the employee of being heard.

23. **What are the main reasons for lawful termination of an employment contract?**

An employment contract can be lawfully terminated for the following reasons:

a) as per the terms of the contract for non-workmen;
b) closure of an establishment;
c) due to acts of misconduct (after conducting an enquiry in case of a workman), such as:
    i. wilful insubordination or disobedience, whether alone or in conjunction with another or others, or of any lawful or reasonable order of a superior;
    ii. theft, fraud, or dishonesty in connection with the employer's business or property;
    iii. causing wilful damage to work in progress or to property of the employer;
    iv. taking or giving of bribes or an illegal gratification;
    v. habitual late attendance and habitual absence without leave or without sufficient cause;

vi. habitual breach of any law applicable to an establishment;

vii. riotous or disorderly behaviour during the working hours at the establishment or any act subversive of discipline;

viii. habitual negligence or neglect of work;

ix. striking work or inciting others to strike work in contravention of the provisions of any law or rule having the force of law;

x. sexual harassment which includes such unwelcome sexual determined behaviour (whether directly or by implication) as –

1. physical contact and advances; or
2. demand or request for sexual favours; or
3. sexually coloured remarks; or
4. showing pornography; or
5. any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

24. **Is a minimum notice period required in the event of termination?**

Please refer to paragraph 22.

25. **What rights do employees have when arguing unfair dismissal?**

Unfair dismissal or wrongful termination of an employee is an act where an employee is terminated without adhering to the statutory provisions of the appropriate law. The aggrieved employee may claim reinstatement with back wages, and compensation for wrongful dismissal. The employee may also claim costs of litigation, which the court may or may not award to the employee.

The proposed Industrial Relations Code, 2020 ("**IRC**"), includes any dispute or difference between employers and employees with respect to discharge, dismissal, retrenchment of a worker as an "Industrial Dispute". IRC allows Industrial Disputes to be settled voluntarily through arbitration, or through conciliation proceedings with the help of a conciliation officer. Further, these disputes can be referred to an Industrial Tribunal which has the power, to award appropriate relief and penalise the employer.

26. **Are there any minimum requirements for severance payments in the event of dismissal and termination of employment contract?**

Severance payment is statutorily payable only to those employees who are categorised as workmen. As per the provisions of the Industrial Disputes Act, 1947, a workman who has been in continuous service for at least 1 year is entitled to severance payment (also known as retrenchment compensation in India) in case of termination of employment.

In the case of non-workmen severance payment if any would be determined by the terms of the employment contract or the State specific Shops and Establishments Act.

Additionally, gratuity is payable statutorily to an employee (workman as well as non-workman), who has been in continuous service for five years with the employer, upon his resignation or termination of the employment contract. Gratuity can wholly or partly be forfeited by the employer in case of termination resulting from any act of the employee causing damage to property, riotous behaviour, act of violence, or an offence involving moral turpitude, committed in the course of employment.

The proposed Industrial Relation Code, 2020 ("**IRC**") provides that any employee who is categorised as a worker and has been in continuous service of at least 1 year cannot be dismissed without giving 1 months' notice or wages in lieu of notice, mentioning the reason of termination and would be entitled to severance payment.

Also, the proposed Social Security Code, 2020 provides that an employee who has been in continuous service of 5 years is entitled to gratuity payment on resignation or termination of his employment contract. The qualifying period for working journalists for gratuity entitlement under SSC has been reduced from 5 years to 3 years.

27. **What is the basic formula for severance payment calculation?**

The Industrial Disputes Act, 1947 ("**IDA**") provides for severance payment upon termination of employees who are categorised as a workman. Accordingly, a workman in continuous service for not less than 1 year, are entitled, inter alia, to retrenchment compensation at the rate of 15 days' average pay for every completed year of service or any part thereof in excess of 6 months; such compensation under the IDA is not payable in case of workmen working in an industrial establishment which is a factory, mine or plantation having 100 or more workmen.

Additionally, the employer is required to pay gratuity to the employee (workman and non-workman) whose employment is being terminated, if such an employee has completed 5 years of continuous service with the employer. Such an employee is eligible for payment of gratuity at the rate of 15 days' wages for each completed year of service or part thereof in excess of six months. Statutorily, gratuity payments are capped at INR 2 million (USD 26,500 approx.) to be considered for tax exemption. Gratuity can be wholly or partly forfeited for the reasons mentioned at paragraph 26 above.

In case the employment contract specifies more beneficial severance payment or other benefits, the employee would then be entitled to such other benefits that may have been agreed upon between the parties.

The proposed Industrial Relations Code, 2020 ("**IRC**"), provides for the severance payment equivalent to 15 days' average pay, or average pay of such days as may be notified by the Central/State Governments, as applicable, for every completed year of continuous service or any part thereof in excess of 6 months to workers in continuous service for a period of not less than one year.

The proposed Code on Social Security, 2020, provides that an employee who has been in continuous service of 5 years is entitled to gratuity payment on resignation or termination of his employment

contract, equivalent wages for 15 days or such number of days as may be notified by the Central Government, based on the rate of wages last drawn by the employee concerned.

G. Employment Tribunal

28. **Is there any employment tribunal in your jurisdiction that specifically dealt with employment related complaints?**

Apart from any employment related disputes between employer and workmen, the Industrial Disputes Act, 1947 ("**IDA**") also categorises any dispute between employer and individual workman in relation to discharge, dismissal, retrenchment, or otherwise, termination of the services of an individual workman by an employer is termed as an "Industrial Dispute". To settle any industrial dispute, IDA provides for the following forums:

a) Labour Court: The Labour Court consisting of 1 presiding officer is setup up by the State Governments through a notification in the gazette. The Labour Court has the jurisdiction to adjudicate the following matters:
   1. The propriety or legality of an order passed by an employer under the standing orders;
   2. The application and interpretation of standing orders which regulate conditions of employment;
   3. Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed;
   4. Withdrawal of any customary concession or privilege; and
   5. Illegality or otherwise of a strike or lock-out.

b) Industrial Tribunal: The Industrial Tribunal consisting of a chairman and 2 members (1 representing workers' interests and the other employers' interests) is setup up by the State Governments through a notification in the gazette. The Industrial Tribunal has the jurisdiction to adjudicate the following matters:
   1. Wages, including the period and mode of payment;
   2. Compensatory and other allowances;
   3. Hours of work and rest intervals;
   4. Leave with wages and holidays;
   5. Bonus, profit sharing, provident fund, and gratuity;
   6. Shift working otherwise than in accordance with standing orders;
   7. Classification by grades;
   8. Rules of discipline;
   9. Rationalisation; and
   10. Retrenchment of workmen and closure of the establishment.

c) National Tribunal: The National Tribunal is set up by Central Government through a notification in the gazette. Its main function is the adjudication of industrial disputes which involve questions of national importance or are of such a nature that industrial establishment situated in more than one State are likely to be interested in, or affected by, such disputes.

The proposed Industrial Relations Code, 2020 ("**IRC**") provides that for the resolution of any industrial dispute, one or more Industrial Tribunals may be constituted by State/Central Government, as the case may be. Moreover, the Central Government may constitute one or more National Tribunals for adjudication of disputes, which in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such disputes. It must be noted that the IRC has dispensed with the constitution of the Labour Court.

The proposed Code on Social Security, 2020, provides that any person aggrieved by an order passed by any authority in regard to the specified matters may prefer an appeal to the tribunal constituted by the Central Government as an Industrial Tribunal under the IRC.

The proposed Occupational Safety, Health and Working Conditions Code, 2020, provides that in case of failure of the resolution process or mechanism for the resolution of a dispute as specified therein, either party to the dispute may invoke the jurisdiction of the Industrial Tribunal constituted under the IRC.

The proposed Code on Wages, 2019 provides that any dispute between the employer and the employee on the matters specified therein constitutes an industrial dispute under the IRC, and thus can be referred to an Industrial Tribunal as provided for in the IRC.

29. **What are the procedures and timeframes for employment-related tribunals actions?**

In case of any dispute between employer and individual workman in relation to discharge, dismissal, retrenchment, or otherwise termination of the services of an individual workman by the employer, such a workman can directly make an application to the Labour Court or Industrial Tribunal for adjudication of the dispute, after the expiry of 45 days from the date the workman has made the application to the Conciliation Officer of the Central/State Governments, as applicable, for conciliation of the dispute. However, in case of any other employment related dispute affecting an individual workman, such a dispute can either be sponsored by a trade union or by a substantial number of workmen.

Further, if there is an Industrial Dispute in relation to the terms of employment, the workmen may approach the Central/State Governments, as applicable, for the dispute to be referred to the Labour Court or Industrial Tribunal for adjudication of the Industrial Dispute. Where the Central/State Government, as applicable, is of the opinion that there exists an Industrial Dispute, it may refer the Industrial Dispute to the appropriate forum.

Upon receipt of the complaint, the Labour Court or Industrial Tribunal will summon the employer to appear, present its statements, documents, evidence, etc., as may be required. Both the employer and workman/workmen are given the opportunity to present their respective case and submit appropriate

evidence. Based on the statements and evidence presented to it, the appropriate Labour Court or the Industrial Tribunal issues its final order. Every award or order passed by the Labour Court or Industrial Tribunal is published in the Official Gazette within of 30 days from the date of receipt of the award or order by the Central/State Governments. An award or order becomes enforceable on the expiry of 30 days from the date of its publication in the Official Gazette. In practice, depending upon the complexity of the issues involved, the Labour Court or the Industrial Tribunal may take 2 to 3 years to decide the matter.

The proposed Industrial Relations Code, 2020 ("**IRC**"), provides that every order or award passed by the Tribunal should be communicated to the concerned parties and the Central/State Government, as may be applicable, and the award or order would become enforceable on the expiry of 30 days from the date of its communication.

H. Miscellaneous

30. **How would you describe the current employment landscape and prevailing trends in your jurisdiction? Are any new developments anticipated in the next 12 months, including any proposed legislative reforms?**

Like any other economy, the COVID-pandemic has vastly changed employment trends in India. The economic downturn has forced companies to turn to contracting their business requirements and offshoring some of their business verticals. India is seeing an increased demand for contract staffing across industry sectors as it gives businesses flexibility in relation to the cost risks associated with the permanent workforce.

The concept of fixed-term employment has been introduced by an amendment in the Industrial Employment (Standing Orders) Central Rules, 1946 in March 2018.

Moreover, States in an attempt to regulate the conditions of employment and other conditions of service of workers in accordance with the socio-economic requirements of present times, have started initiating major reforms in the labour laws, e.g. Gujarat enacted the Gujarat Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2019, Maharashtra enacted the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017, among others.

The Central Government, with the objective to consolidate and amend the laws, has enacted 4 new labour legislations which will subsume 29 existing labour laws out of the approximately 44 state and central laws currently regulating different aspects of labour. The need for the compilation of labour laws into 4 distinct codes was felt to cure the legislative framework of the duplications and contradictions

prevalent because of the sheer multitude of labour legislations. Though there have been no radical changes incorporated into the proposed labour codes, the benefits are manifest as:

a) the incorporation of the definition clause in each code ensures uniformity of interpretation across all the subsumed legislations;

b) easier compliance (as pointed out by the report by the 2nd National Commission on Labour);

c) redundant provisions would be removed; and

d) rationalisation of the scope of the legislation.

The new labour codes are:

a) Code on Wages, 2019;

b) Code on Social Security, 2020;

c) Occupational Safety, Health and Working Conditions Code, 2020; and

d) Industrial Relations Code, 2020.

The above laws are still to come into force and are expected to be implemented in the next fiscal year commencing from April, 2022.

31. **What are the main issues in labour and employment laws in your jurisdiction?**

Labour laws in India are enacted by both the Central and State Governments. The existence of multiple laws governing labour and employment has made compliance very arduous for businesses. The complex law system has created a lot of redundancy and loopholes in the legal system which paves the way for exploitation and litigation.

32. **Are there any other matter that requires specific attention from employers in your jurisdiction?**

India being a socialist country, the judiciary is generally favourable to the employees/workers in case of disputes. Thus, employers should be mindful of the general tendency of the outcome in a court case to being favourable towards the employee. Additionally, employers should be aware that in case where provisions of both the Industrial Disputes Act, 1947, and the Shops and Establishments Acts, which are State specific, are applicable, the act having more beneficial provisions for the employees would be applicable.

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