

In a bid to improve the position of India in “ease of doing business” rankings, the current Indian government has been constantly working towards amending, consolidating and simplifying the plethora of labour legislations in force in India, some of which date back to the time of India’s independence.

In this update, we summarise the latest key developments in the Indian employment law, both at the central and state level.

Karnataka Introduces Draft Rules for Crèche Facilities Under the Maternity Benefit Act

The Maternity Benefit Act, 1961, as amended by the Maternity Benefit (Amendment) Act, 2017, makes it mandatory for every establishment employing 50 or more employees to provide a crèche facility within such distance as may be prescribed. However, the amendment did not clarify the specifications of the crèche requirement. Karnataka government is the first to introduce the Draft Karnataka Maternity (Amendment) Rules, 2018 (Draft Rules), introduced on August 30, 2018. The Draft Rules shed light on the proposed specifications that are expected by the authorities for the crèche requirement. Some of the major provisions of the Draft Rules are briefly discussed below.

- **Location:** To be located within the premises of the establishment or within 500 meters from its entrance.
- **Kitchen and bathroom:** Crèche to have an attached kitchen and an adjoining bathroom with adequate facilities.
- **Staff:** To be comprised of a qualified crèche-in-charge, crèche attendant and, where the number of children exceeds 10, women helpers.
- **Facilities:** Safe and secure outdoor play facility for exclusive use by children, equipment like cots, beds, mattresses, blankets, soaps and oil to be provided to the children.
- **Working hours of crèche:** To be open during working hours of the mothers and, if the mothers are employed in shifts, it should also operate in shifts with different staff for each shift.
- **Refreshment:** At least 250 ml of milk to be made available each day for every child. Children older than two years of age should additionally receive wholesome refreshment. Mothers to be allowed to visit the crèche four times a day to feed the child.

Board’s Report to Include Compliance With Anti-sexual Harassment Law

India’s current Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (SH Act) imposes an obligation on every employer employing 10 or more employees to constitute an Internal Complaints Committee (ICC) to address grievances relating to sexual harassment, and to include details of the number of cases filed with the ICC and their disposal in their annual report.

In light of the increasing number of sexual harassment cases surfacing in India, especially after initiation of the #MeToo movement, the government has taken a step forward to ensure that companies comply with the SH Act requirement by hardwiring that obligation into the Companies Act, 2013 (Companies Act). The Ministry of Corporate Affairs, *vide* its notification dated July 31, 2018, has amended the Companies (Accounts) Rules, 2014, making it mandatory for all companies (other than “small companies” and “one person companies”) to include, in their board’s report, a statement confirming compliance with the provisions relating to the constitution of ICC under the SH Act.

Back Wages – Not a Matter of Right Upon Dismissal Being Set Aside

In September, 2018, the Supreme Court of India¹ clarified the issue of back wages being awarded to workmen upon a reinstatement order. The apex court, in its judgment, held that a workman has no right to claim back wages from his employer as of right only because the court has set aside his dismissal order in his favour and directed his reinstatement in service. A dismissed employee, whose services have been reinstated by a court, can claim back wages only after proving that he was not gainfully employed during the period of dismissal, **but not as a right**.

The court added that it is necessary for a workman to plead and prove that he was not gainfully employed after the dismissal in order to be entitled to claim back wages – with the initial burden of proof lying with the employee and not the employer.

This judgment has been welcomed by Indian employers, by establishing the principle that back wages are not a matter of right and that an award of the same depends upon the facts and evidence of each case. While the employer may lead evidence against the employee that he was gainfully employed elsewhere, the burden of proof nevertheless lies on the employee to first prove this.

¹ *Rajasthan State Road Transport Corporation v Phool Chand (Rptd. by LRs)*(Civil Appeal No 1756 of 2010).

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