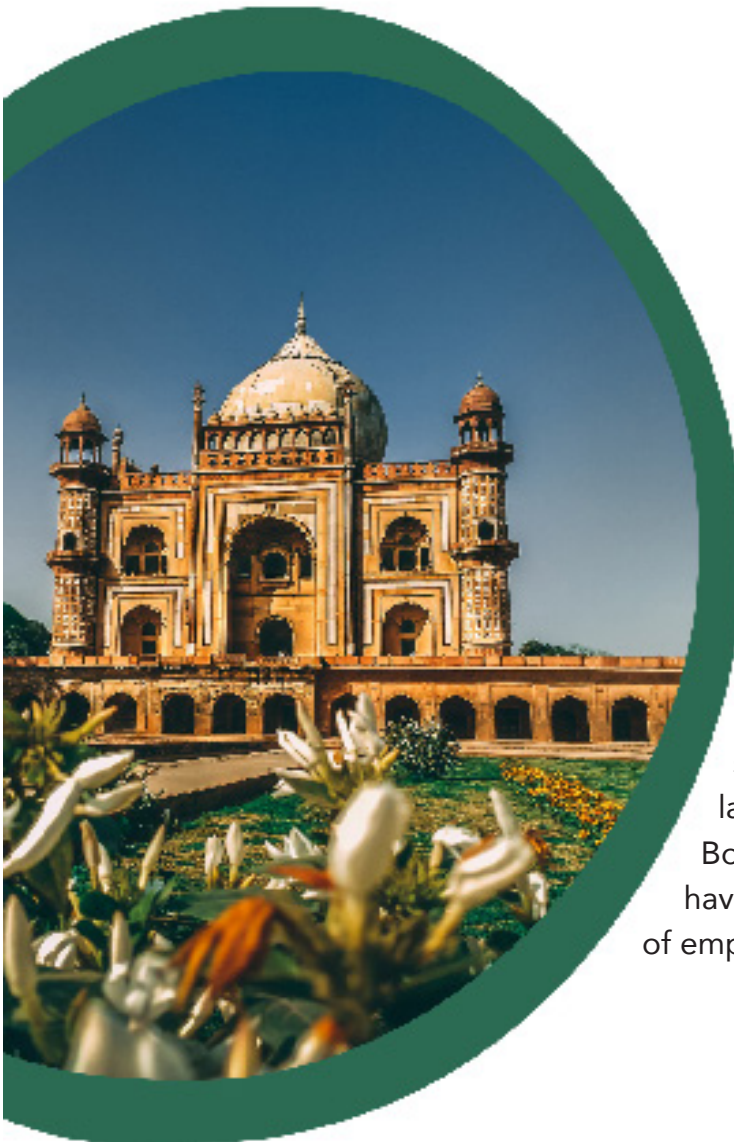




EMPLOYMENT IN INDIA



India, in South Asia, is the second-most populous country and the most populous democracy in the world, as well as being the seventh-largest country by area. Its capital is New Delhi, and its largest city is Mumbai. The service sector makes up more than 50% of its GDP. In India, there is no singular source of employment law covering labour and employment related matters. Both the Central and the State Governments have the power to legislate on the subject of employment and labour relations.



WORKING TIME AND OVERTIME

The work week in India is 40 hours, with a standard workday of 8 hours. Employees are entitled to 10.5 hours between workdays. Work hours should not exceed more than 50 hours per week, or 9 hours per day. There is no legal requirement to pay overtime apart from to factory workers, who are entitled to receive 2x salary payments for any hours worked over 8 hours per day or 48 hours per week.

ANNUAL LEAVE

The Factories Act provides 12 days of annual leave for all employees who have worked at least 240 days in a given year. Annual leave allowances differ between adult workers, who are entitled to one day of earned leave for every 20 days of service (15 days per year), and young workers under the age of 15, who get one day of earned leave for every 15 days of service (20 days per year).

TRIAL PERIOD

The typical probation period in India is six months and can be extended by a period of three months at a time. The maximum probation period must not exceed two years.

RESIGNATION AND DISMISSAL

A 30-to-90-day notice period applies to terminating 'workmen' - employees whose role is not primarily supervisory, administrative, or managerial - for convenience. During probation, the required notice period is reduced to 15 days. Employees are entitled to a gratuity payment upon termination of service after five years of continuous employment, which equates to 15 days' salary for each full year of service.

RESTRICTIVE COVENANTS

The Indian Contract Act 1872 provides that every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind is void.

Therefore, post-termination non-competition clauses are void and enforceable. Customer non-solicits are possibly enforceable, though it may be argued that a restriction on activities with customers is a restraint of trade. Non-solicitation provisions, even if they are upheld, generally only entitle the employer to damages, and it is highly uncommon for an Indian Court to grant an injunction preventing the customer from taking their business elsewhere. Non-solicitation provisions in relation to other employees may be enforced against a former employee, but the courts do not generally grant injunctive relief restraining the employees who are being solicited from leaving the company.



CONTRACT OF EMPLOYMENT

Currently, there is no requirement for a formal written contract of employment in India, although employers generally enter into written employment agreements. Some state-specific laws require employers to record certain terms of employment such as wages, designation, and work hours. The OSH Code has a statutory requirement for the employers to issue appointment letters to every employee on their appointment in the establishment, with such information and in such form as may be prescribed by the appropriate government. Recent amendments to the Employee's Compensation Act 1923 (ECA) and the Maternity Benefit Act, 1961 (MBA) require employers to inform employees (in writing) of the benefits available to them thereunder.

MATERNITY AND PATERNITY

Pregnant employees are eligible for a total of twenty-six (26) calendar weeks of maternity leave. A mother may start her leave up to eight weeks before the expected delivery. Employers cover the costs of maternity leave, unless the employee is a factory level employee, then the costs are covered by social funds from the Government. Additionally, pregnant employees may also be eligible for a medical bonus of INR 3,500. There are no legal stipulations for paternity leave except for government sector employees, who are entitled to 15 days' leave.

SICKNESS AND DISABILITY

In India, employers must provide six days of sick leave per year. Some employers provide an unpaid leave for long term medical issues, but this is not mandatory.

SOCIAL SECURITY

Social security in India is governed by the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act). The EPF Act contains the following three principal schemes:

- Employees' Provident Funds Scheme, 1952
- Employees' Pension Scheme, 1995
- Employees' Deposit-Linked Insurance, 1976

The EPF Act is mandatory for companies with 20+ employees and can be entered voluntarily by smaller organisations. Every covered employer is required to contribute 24% (12% each for the employer's and the employee's share) of the employee's monthly salary toward the Employees' Provident Fund and Employees' Pension Fund. Local employees who draw a monthly salary of INR15,000 or more are excluded from the legislation unless they are already covered, but this exclusion does not apply to International Workers. The employer contributions are exempt from tax up to 12% of monthly pay.

HEALTHCARE AND INSURANCE

Since April 2020, it has been mandatory for all employers to provide a Mediclaim policy to employees in India.



EMPLOYMENT OF FOREIGN NATIONALS



Employment visas are not granted for jobs for which a large number of qualified Indians are available to fill the position or for routine, ordinary, secretarial or clerical jobs. Employment visas will usually be granted to foreign nationals whose annual salaries exceed INR 1,625,000, with some exceptions. A change of employer in India is generally not permitted during the duration of the employment visas, except for at a senior level or for a skilled profession. The intended legal entity and the location of work in India must be clearly specified when applying for an employment visa.



SALARY AND SALARY TAXES

MINIMUM WAGE

While India has no national minimum wage, minimum wages may be set by state or sector of industry. Wages vary from INR 160 per day in Bihar to INR 423 per day in Delhi.

SALARY PAYMENTS

The payroll cycle in India is generally monthly, with wages paid on or after the 28th of each month.

SOCIAL SECURITY

Employees covered under the EPF Act contribute 12% of their monthly salary to the Employees' Provident Fund and Employees' Pension Fund, in addition to an employer contribution of 12%.

INCOME TAX

Taxable Income (INR)	Tax Rate (%)
First 250,000	0
Next 250,000	5
Next 500,000	20
Above 1,000,000	30





EMERALD TECHNOLOGY

www.emerald-technology.com
info@emerald-technology.com
+44 (0) 870 889 0300

Europe

Somerset House
37 Temple Street
Birmingham
B2 5DP
United Kingdom

Asia Pacific

22 Malacca Street
#03-02
RB Capital Building
Singapore
048980

Middle East

Business Central
Towers
PO BOX 503055 2001A
Dubai Internet City
UAE