

India's tech outsourcing giants are not happy about employees taking up second jobs. Here's what the law says

India's \$195-billion technology outsourcing industry is in a tizzy over the growing dual-employment trend that many believe is here to stay.



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The Indian technology outsourcing industry has been abuzz with debates about “two-timing” and “cheating” over the past couple of weeks, as companies deal with a growing trend of employees “moonlighting” or taking up second jobs.

On September 16, Infosys sent an email to its employees, reminding them that they were not allowed to hold dual employment. On September 21, Wipro fired 300 employees over allegations of moonlighting. Meanwhile, India's minister of state for electronics and information technology, Rajeev Chandrasekhar, came out in support of the practice, saying, “This is the age of employee-entrepreneurs and companies must now understand there has been a structural shift in the minds and attitudes of the young Indian tech workforce.” Tech Mahindra, a mid-sized IT firm, has said it might consider framing a policy that allows dual employment, as long as “someone is meeting the efficiency and productivity norms.”

So, what does it all mean for someone who wants to take up a second job? I spoke to **Ajay Singh Solanki**, who heads the labor and employment law practice at leading law firm **Nishith Desai Associates**, to understand what the law says about moonlighting in the IT industry. Here are some excerpts:

What does the Indian law say about moonlighting in the IT industry?

With respect to the IT industry, the Shops and Establishment Acts regulate the hours of work, terms of services, leave and holidays, payment of wages, and working conditions, among other things. The Act, in some states, says that an employee cannot work with another organization on a day on which they have been given a holiday. It is fair from a human rights standpoint that these are days given to the employee to rest and recuperate.

So, as far as a plain reading of these provisions is concerned, there does not appear to be a specific legal restriction on a person holding two employments on the same day.

There are cases in which employees hold multiple employments, subject to fact-specific scenarios. For example, the CFO of a company may be looking at the financials of multiple group entities and holding employment with them. In those specific scenarios, it is generally seen that an employee may hold dual employment, and from a purely legal standpoint, it is not restricted.

Are IT companies within their legal rights to fire employees over moonlighting?

Typically, most tech organizations have provisions in their employment contract or policies clearly stating that the employment is on a full-time basis and the employee is not allowed to be employed in any other organization on a permanent, temporary, or part-time basis, without the prior consent of the employer. These documents also include clauses around conflict of interest, confidentiality, and working simultaneously with another employer, especially a competitor. So long as these clauses are present in the contract and the employee has agreed to those terms and conditions, a company can always legally enforce them in court.

Are there any circumstances under which Indian IT companies make exceptions to allow dual employment?

Yes, employers reserve the discretion to allow the same, and we have seen some exceptional circumstances where, say, for example, an employee was allowed to temporarily help in his family business run by his father, wherein his father was terminally ill. However, as you can see, this is a very fact-specific scenario, and employers reserve their right to allow the same on a case-by-case basis and based on adequate disclosures by employees.

I think where the real issue lies in the current debate is that some employees started taking the liberty to take up another employment covertly, without making disclosures to their current employer.

What would you tell a young techie who wants to take up dual employment to make more money?

Employees should look at the fine print of their employment contracts, company policies, etc. Most tech companies already have contractual clauses to restrict dual employment, and those who don't have them already will now start including such clauses since the moonlighting issue has become so prominent.

They must also be absolutely transparent with the employer, and in all integrity, disclose if they have an entrepreneurial ambition and want to explore a new idea.

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