

## HR Law Hotline

June 27, 2009

### INDIAN EMPLOYMENT EXCHANGES ACT: NON-COMPLIANCE LIKELY TO ATTRACT INCREASED PENALTIES

The Ministry of Labour and Employment ("**Ministry**"), which *inter alia* controls and regulates the functioning of the employment exchanges across the country, has introduced the Employment Exchanges (Compulsory Notification of Vacancies) Amendment Bill, 2009 ("**Bill**"). The Bill proposes certain amendments to the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 ("**EECNV Act**") including expanding the scope of the employment exchanges and increasing the penalties for non-compliance.

#### BACKGROUND

The EECNV Act, which applies to public and private establishments (subject however to certain conditions), seeks to inform job seekers about vacancies in various employment sector. The establishments to which this enactment applies, are required to notify to the employment exchanges of any vacancy in employment positions, prior to filling up such vacancy. The notification allows the employment exchanges to track job opportunities in different employment sectors and thereby assist the unemployed in identifying appropriate employment opportunities. The EECNV Act however clarifies that there is no obligation cast upon the employer / establishment to recruit any person referred through the employment exchange. The EECNV Act also clarifies that there is no obligation for the employer to report any vacancies which are proposed to be filled through internal promotion or absorption of surplus staff of any branch or department of the same establishment.

While the EECNV Act was enacted with the right intentions, over time, the implementation of this law was not stringent and many employers were either unaware of their obligations or chose not to comply with the provisions. The Bill seems to have been introduced to ensure greater compliance.

#### THE BILL

The Bill seeks to rename the employment exchanges to "Employment Guidance and Promotion Centers", thereby increasing its scope. As a result, the 965 centers in the country shall also be expected to play an active role for those persons who seek vocational guidance and career counseling or guidance to start self-employment. Another amendment proposed by the Bill is an obligation cast upon the employer to intimate to the centers within the prescribed time period the result of selection against the vacancies notified.

What is likely to be of immense concern to the employers is that in addition to a proposed increase in the fine for contravention of the EECNV Act, the Bill makes a reference to imprisonment. Fine for the first offence is proposed to be increased ten-fold to INR 5,000 whereas the imprisonment may extend up to one month. For subsequent offences, the fine is proposed to be increased to INR 10,000 whereas the imprisonment may extend up to three months. The Bill states that in case the offence is committed by a company, "*every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.*"

If recent news reports are to be believed, the Ministry is also considering extending the applicability of the EECNV Act to private sector establishments that have a minimum of 10 employees, as against the existing limit of 25 employees.

#### IMPLICATIONS

The proposed amendments under the Bill, if implemented, are likely to reinstate the dominance of the employment guidance and promotion centers. Further, since the Bill has revised the penalties for non-compliance to include imprisonment, it is anticipated that establishment will strive harder to ensure compliance with the EECNV Act. Moreover, as the proposed amendments are likely to extend the burden of penalty upon the management of the companies, it would necessitate a greater degree of responsibility on the part of the management to take up the compliance more seriously.

The proposals assume significance on the grounds that it will help the Ministry to evaluate the extent of unemployment more accurately. At the same time, it will also help the government in gaining a deeper insight into the prevalent job market. The Ministry has sent a strong and positive signal that it remains concerned about the growing rate of unemployment in the country.

- Harshita Srivastava, Priyadarshani Sherchan & Vikram Shroff

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