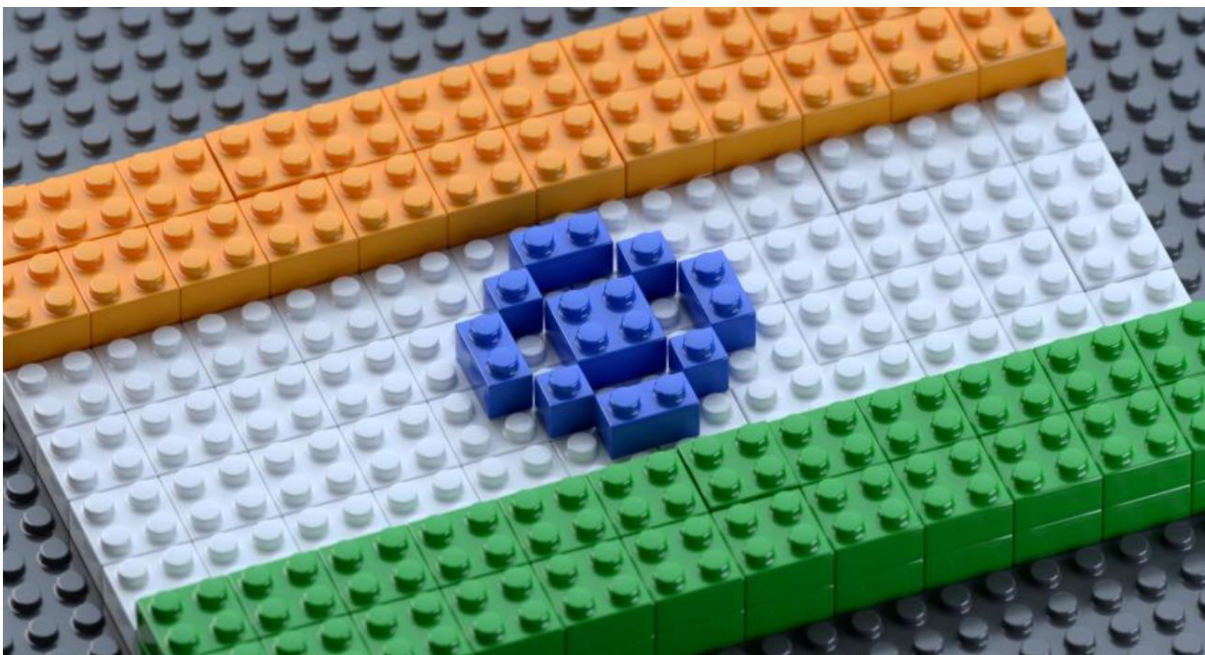




COMPLIANCE

From paperwork to pay checks: considerations for foreign businesses setting up in India

When addressed proactively, labour law compliance is the building block for sustainable success



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The Indian labour law landscape is dynamic, vast and nuanced. The rules are highly contextual and shift based on a multitude of factors including sector, size of the organisation, location, and workforce demographic. For foreign businesses setting up operations in India, it is important to understand employment law obligations at the very outset since it directly impacts the efficiency and success of business operations, risk management, and long-term viability and growth. This article sets out key considerations for foreign businesses setting up operations in India to navigate employment law effectively.

1. Understand the legal terrain before you build.

India's employment regulation is not a single statute or code. The country has over 200 labour-related laws framed by the central (federal) government and state governments. There is no "universal" template, or one-size-fits-all model. Different laws apply depending on the type of business, the scale of operations, and, most importantly, the specific location where the business is set up.

Illustratively, the legal framework applicable to a manufacturing entity is fundamentally different from that governing an IT company; and an IT company in the state of Maharashtra may face a distinct set of obligations compared to one in the state of Karnataka. Manufacturing enterprises are regulated by a central legislation, the Factories Act, 1948, which prescribes detailed standards on workplace safety, working hours, and employee welfare benefits. In contrast, non-manufacturing enterprises are primarily governed by state-specific 'shops and establishments' legislations, which *inter alia* prescribe limits on daily and weekly working hours, permissible overtime, as well as applicable leave and holiday entitlements.

Adding another layer, a different set of central legislations govern other essential aspects of employment including, termination-related protections for protected employees, social security contributions (e.g., provident fund, employee state insurance), gratuity, statutory bonus, and severance benefits. These legislations include the Industrial Disputes Act, 1947, the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the Employees' State Insurance Act, 1948, the Payment of Gratuity Act, 1972, and the Payment of Bonus Act, 1965. Applicability of these central legislations is also often subject to state-specific thresholds based on factors such as headcount, tenure, or wage levels.

Therefore, it is crucial to map applicable central and state legal frameworks before commencing operations. Early engagement with local counsel and/or conducting a jurisdiction-specific compliance audit helps ensure preparedness and reduces the risk of inadvertent breaches.

2. Decide how you want to hire and onboard individuals.

After mapping the landscape, the next critical step is to determine how to hire the workforce. The staffing model not only impacts operational flexibility and efficiency but will also determine the range and complexity of employment law obligations and compliance cost. Key questions to ask are whether the objective is to explore the market, and scale slowly, or establish large operations with a long-term vision? The hiring strategy should be closely aligned with your business objectives and your appetite for managing local compliance complexities.

Hiring employees on the payroll after setting up a formal business presence in India (either through an incorporated company, limited liability partnership, branch office or liaison office) offers the highest level of control and seamless integration into your company's culture. However, it also brings with it the full suite of Indian statutory responsibilities. These include strict compliance with minimum wage legislation, social security contributions, insurance costs, and other labour welfare laws, all of which carry significant compliance and record-keeping requirements.

Employer on Record (EOR) arrangements or having independent contractors in India during the exploratory phase are increasingly gaining popularity, but these models must be carefully structured to avoid exchange control, tax and misclassification risks. Another option is to engage contract labour, i.e., having third party contractors to support the business by deploying human resources. Importantly, contract labour arrangements cannot be used to permanently fill roles that are perennial to the core operations of a business; and courts have consistently scrutinised such misuse. Moreover, the Occupational Safety, Health and Working Conditions Code, 2020 (yet to come into force) expressly prohibits the engagement of contract labour in core activities, with limited exceptions. As such, any long-term reliance on contract workers should be evaluated carefully, with legal guidance, to avoid misclassification risks and potential liabilities.

Concurrently, the rise of digital nomads and globally distributed teams has prompted businesses to consider remote-first models. The remote engagement of foreign nationals, as well as Indian nationals working from abroad, may trigger local employment law, tax, and social security considerations, and should therefore be evaluated with due care.

3. Get your registrations up!

Once your business structure and hiring strategy are defined, promptly securing the required statutory registrations is essential. Registration requirements depend on both the sector in which you operate (for example, manufacturing vs. services), the nature of your workforce (direct, contract, or both) and the scale of your operations. These obligations typically start with establishment-level registrations, which may include obtaining licenses or registrations under the applicable state shops and establishments legislation or the factories legislation, as well as enrolling under the applicable social security and tax legislations.

Not all compliance obligations are triggered from day one. Certain laws become applicable only after you cross specified employee headcounts or undertake particular activities. However, early and thorough planning is critical, especially if rapid scaling is anticipated. Proactive registration upon meeting the thresholds ensures business continuity and avoids regulatory delays or penalties as your headcount or operations expand.

4. Draw up robust employment documentation and internal policies.

Employment offer letters and contracts should clearly set out role-specific terms, including working hours and termination provisions, ensuring compliance with applicable employment laws. State-specific requirements, such as those relating to working hours, holidays, night shifts, and leave, may be incorporated in internal policies of the company, as these can vary significantly across states. While not legally mandated, background verification has become standard practice for senior roles and positions involving financial responsibility, client data, or strategic decision-making, and may include checks on past employment, education, and criminal records.

Indian law also requires certain workplace policies to be in place from the outset, including a policy on the prevention of sexual harassment under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, and equal opportunity policies for persons with disabilities under the Rights of Persons with

Disabilities Act, 2016, and for transgender persons under the Transgender Persons (Protection of Rights) Act, 2019. In addition to these statutory requirements, many employers adopt best-practice policies such as leave and holiday policies, codes of conduct, health and safety guidelines, grievance redressal procedures, and termination protocols.

If you are part of a multinational business, you may already have a global HR handbook which lays down policies and frameworks that reflect the culture, vision, and mission of the organisation. The challenge lies in localising it for India without creating contradictions or overlooking mandatory requirements. While global frameworks can be valuable, certain aspects may not align with Indian law. For example, employee benefits standards elsewhere may conflict with statutory benefit schemes in India. A careful review is essential to ensure compliance while preserving intended benefits for employees. Understanding local workplace culture and expectations is key to building a strong employer brand. HR policies that go beyond legal minimums such as accommodating festivals, family responsibilities, and hierarchical sensitivities, not only strengthen engagement and build psychological safety but also minimise legal and operational risks.

5. Compensation and benefits

Employers in India are required to comply with a wide range of statutory compensation and benefit obligations. At the outset, wages must meet or exceed the prescribed minimum rates, and employers are mandatorily required to make contributions towards employee provident fund and state insurance schemes. Most employees are also entitled to overtime pay for hours worked above the normal working hours, earned, sick, and casual leave, with provisions for accumulation and encashment at the time of exit. The central maternity benefit legislation in India provides for paid leave, medical bonus, and related entitlements in cases of childbirth, adoption, and surrogacy for women employees. In addition, employers must provide statutory bonus to eligible employees, ensure equal pay for equal work, and avoid discrimination in recruitment, promotions, and service conditions. Beyond statutory compliance, businesses are also expected to design transparent and objective reward and incentive structures, supported by robust performance management systems, to minimise risks of favouritism and strengthen employee trust.

It has become increasingly common for global organisations to provide stock linked incentives such as employee stock options (ESOPs), stock appreciation rights (SARs), and restricted stock units to employees of their subsidiaries in India. These benefits are regulated by Indian company law, and exchange control laws, in addition to employment law nuances.

6. Staying compliant, continuously.

Labour compliance in India is not a one-time task but a continuous obligation for every employer. Maintaining statutory registers, submitting periodic returns, and ensuring monthly payment of social statutory contributions are recurring responsibilities. Lapses such as missed deadlines or inaccurate filings can result in not just fines and audits but can also disrupt business expansion plans and damage your company's reputation. In the manufacturing sector, compliance can be particularly stringent when undertaking a reduction in force exercise. For instance, manufacturing entities employing workers

above a specified threshold must obtain prior government approval even for a single employee exit.

Notably, the labour law compliance landscape in India is also evolving, with close to 30 existing statutes being consolidated into four new labour codes. While the new labour codes are yet to be enforced, the tailwind of regulatory change is unmistakable. To stay ahead, businesses must remain agile and ready to adapt their policies and internal processes as the legal environment shifts. Compliance in India must be treated as a dynamic, living process, and not a “set it and forget it” exercise.

7. Additional considerations.

Beyond core hiring, registration, and compliance requirements, foreign businesses must account for related legal and operational considerations that can materially affect market entry and ongoing operations in India. If a foreign national is sent to India as an employee, appropriate employment visas may be required to be obtained. Additionally, depending on bilateral agreements between India and the foreign national’s home country, the foreign national may also be required to contribute to Indian social security schemes, such as the employees’ provident fund.

In addition, employers should be compliant under the existing privacy regime and be prepared for stricter obligations under the forthcoming Digital Personal Data Protection Act, 2023 which will require robust policies, consent protocols, and enhanced information security measures, once it is in effect. Finally, workforce structuring and employee headcount can influence corporate tax planning, affect cost structures, and trigger permanent establishment risks in India.

8. Final word.

A deliberate, well-advised approach to compliance safeguards more than just regulatory standing. It fosters employee trust, minimises operational disruptions, and enables management to focus on business growth. When addressed proactively, Indian labour law compliance can serve as a powerful foundation and differentiator for your business, turning regulatory requirements into a springboard for sustainable success.

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*Trilegal is the exclusive contributor for India on the **IEL Monitor** - IEL's forward-looking database of incoming labour and employment law legislation around the world.*