



HR Infotech Association

Mumbai Chapter

Proudly Present

Summary of

WhatsAppinar (August 23rd)

By: Mr. Sanjay Dhulapkar

Labour Laws and Employment Matters expert

Topics covered:

- POSH – *Guidelines, Process, Applicability and salient features*
- Maternity Benefit Act – *Including recent amendments*
- No Competition clause – *Issues faced by employers when outgoing employees join rival organizations.*
- Issues faced during Retrenchment & Termination – *Payment of salaries, statutory dues, recoveries etc.*

Q.1: Minimum wages keep on changing and we need updates for automobile Ind. Especially for sales and services division. Where do we check the updates?

- Supriya Bhojane, Lakozy Toyota

A: You can check on paycheck.in which generally gives the minimum wages for various ministry segments and locations.

Q.2: There are security guards who complain that their employer is not depositing the PF contributions to their respective accounts. As an employer we take copy of PF Challan deposited last month. How do we ensure individual PF deposition?

- Pravin Sawant, 63 moons technologies ltd.

A: You need to cross check the same from the ECR sheet generated along with PF Challan, which you need to obtain from the security agency.

Q.3: Very recently there was a question raised by someone - What is the legal recourse for an employer whose employee (either on payroll or thru contract) opts to take up another employment/contract after office hours? Can a person be allowed to take up alternate jobs?

- Pravin Sawant, 63 moons technologies ltd.

A: This amounts to double employment. If the employment contract prohibits the same, the employee cannot engage in double employment. The company can very well take legal/disciplinary action against the employee.

Q. 4 Even after working hours, in free time, can someone take alternative employment or contract.

- Pravin Sawant, 63 moons technologies ltd.

A: It all depends on what the employment contract specifies. If there is blanket prohibition one cannot take employment during free time too.

Q.5: Now a days management is just calling employees and telling them to resign. If they don't, can Employer give termination by giving 1 month notice pay as per appointment letter? Can the employees go to labour court or hire a advocate and fight? Can they ask for retrenchment salary? What to do in such issues? One of my friends is having same issue and the employer is saying cost cutting. Pleases guide.

- Evan, DLINK India ltd.

A: If they fall into "workmen" category as defined under ID act then only they can approach the labour court. Otherwise, the company can very well terminate the services as per the employment contract by paying the notice pay. No retrenchment compensation is payable to non-workman category unless there are specific rules in this regard. Some companies have redundancy policy.

Q. 6: What is redundancy policy? Is it related to separation clause?

- Pravin Sawant, 63 moons technologies ltd.

A: Some companies, normally MNCs, have a separate policy to handle sudden termination of its Management cadre employees.

Q.7: If an employee exits an organization and wants to start his/her own Consultancy Firm, will there be a No Competition Clause applicable here?

- Jemy Romany, Hexaware

A: No competition clause in such cases can be enforced in the court of law. Such clauses are held to be in breach of Indian Contract Act. However if the employment agreement provides for liquidated damages for breach of competition clause, such agreement can be enforced in the court of law only for claiming liquidated damages.

Q.8: If an employee resign and gives 90days notice, can the employer relieve him in between without paying full notice period.

- Vishal Gangurde

A: No. The employer has to pay for the balance period.

Can there be a clause saying employee have to give 90days notice and employer can give 15 days?

A: It is possible. If the employee signs the appointment letter with such a clause nothing much can be done about the same. In any case such clauses are unfair practices.

Can the employees challenge after signing such appointment letter while leaving the organisation?

A: No. Having signed the clause will be binding on the employee.

Q.9: Can the employer add a clause in the appraisal letter stating if the employee decides to resign with 3 months of appraisal and their appraisal is revoked and they are asked to repay arrears of appraised amount?

- Allwyn, Intelliswift

A: No. Having signed the clause, it will be binding on the employee.

Q.10: Can a Male employee avail any benefit under law if his wife passed away after child birth?

- Allwyn, Intelliswift

A: Except for insurance, no other benefits are available. However, the male employee can avail creche benefit for the child.

Q.11: The government of Tamil Nadu in India has recently issued a circular clarifying that employees of IT sector are covered under ID Act 1947 and have a right to form trade union.

- Ganesh

A: There is no prohibition in law to form a union. Any 8 persons can come together and form a Union. Thus, IT personnel can also have their union under the Trade union's Act or under the Societies registration Act like the one formed by Jet Airways Management Guild or Air India Pilot Guild which is also a form of employee association/union.

Q.12: What if the acceptance of the resignation is not given and given with the last working day on the same day which is before 90 days?

- Ganesh

A: The acceptance of resignation from the employer is not required if the employee would be serving the notice period and/or complying with the obligation of payment in lieu of notice. Upon expiry of the notice period the contract would automatically come to an end. It may be noted that both parties have a right to put an end to the contract by following the terms in employment contract.

Q.13: If in the confirmation letter which is signed by the employee says that notice will be maximum of 90 days and on management discretion and if we release the employee before 90 days due to unavailability of project still need to pay 90 days in full - Ganesh

A: The notice period cannot be vague. If in the normal circumstances the employer expects the employee to give 90 days notice, then the employer would be also required to pay for the 90 days or balance notice period.

Q.14: What if the acceptance of the resignation is not given and given with the last working day on the same day which is before 90 days? - Ganesh

A: The acceptance from the resignation is not required if the employee would be serving the notice period and/or complying with the obligation of payment in lieu of notice. Upon expiry of the notice of the noticed period the contract would automatically come to an end. It may be noted that both parties may have right to put an end to the contract by following the terms in employment contract.

Q.15: In case the project he is working on is over and the company does not want to utilise his services anymore. In those cases can he be released early and the FnF to be paid will only be as per his last working day n not 90 days. Is that OK?

- Disha Vakharia

A: He can be released early. But the balance notice period will have to be paid in full.

Q.16: For example an employee's last working date as per 90 days notice period it's 12-Sep-18 . And the org. Wants his last working day to be 10-Aug-18 and the employee is joining a new org. On 11-Aug-18 y should the company still pay him till 12-sep-18.

- Disha Vakharia

A: Since the organisation wants him to leave early they will have to pay for the balance notice period

Q.17: If we have mentioned noticed period of 90 days is compulsory on appointment letter and employees leaves organisation by giving resignation and by serving notice of only 30 days and he disappears saying will not be serving more than 30 days, Can we take any action on this?

- Mithz

A: The legal recourse would be to initiate recovery for the balance notice period. Moreover if business inconvenience is caused or he has not given proper handover, the employer can also sue for damages.

Q.18: Is there any minimum notice period to be given before termination?

- Mithz

A: There is no minimum notice period for termination. The same would depend on the employment contract.

Q.19: What course of action does an employee take if he has been offered from new company while he has resigned from current company and the joining company has revoked his offer letter not stating valid reason for revocation?

- AK2089

A: Offer once made in writing and accepted by the employee becomes a contract. Thus the employee can sue the new company for breach of contract and claim damages. However this may take lot of time in court.

Q.20: If any employee breaks up the bond during employment signed by him, how can the amount be recovered? And what action can be taken of breach of contract?

- AK2089

A: The only remedy is to file a civil suit or recover the amount from F&F settlement other than from Gratuity and Provident Fund.

Q.21: Maternity act says establishment to provide creche facilities, but for how long? Is this to be fully paid by the company? Any alternates?

-Sonali, Dimension Data

A: The act is vague on this. There is no definition of "child" under the maternity benefit act. Thus one has to fall back on similar provisions under the factories act, which provides for creche facility for children up to 6 years. The expenses are to be fully covered by the employer.

Q.22: The signed employment agreement or appointment letter is a contract which is signed by both the parties, so the terms should be followed accordingly. Right?

- Ganesh

A: As long as the document is signed by the party or the party accepts the terms of the policy the same would be binding on him or her.

Q.23: If the appointment letter mentions, early release is at the discretion of the org, then too is payment for full 90 days mandatory?

- Shweta

A: Yes

Q.24: Few employers are still following maternity leave of 12 weeks instead 24 weeks by taking concerned employee in confidence. Any issue will raise in future?

- Supriya Bhojane, Lakozy Toyota

A: This is illegal and if complained it could lead to prosecution of the employer for breach of maternity Act.

Q.25: Can the employer mention in appraisal letter that if he/she resigns within a week of receiving the letter, the appraisal will not be effective?

- Gitika

A: If the employee consents to such a clause, the same would be binding on the employees. However, in normal course appraisal/increment is based on the past performance and cannot be conditioned in this manner.

This session was conducted by Mr. Sanjay Dhulapkar.

His profile: He holds over two decades of work experience in Labour laws and employment matters and has previously worked in TATA group as a retainer advocate for close to decade. Currently, he is practising exclusively on management side in labour and employment matters.

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Stay tuned for upcoming events.

THANK YOU