



Businesses with Employees in India Should be Aware of Court Rulings Against Preferential Hiring Based on Residency: Key Takeaways

Insights

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Two courts in India recently struck down laws seeking to establish preferential hiring based on residency. These decisions invalidated acts passed by two Indian states that required private businesses to fill a percentage of job vacancies with local residents. Although the court decisions may not be the last word – as the laws could be revived on appeal – businesses have more leeway for now. Read on to learn the impact of these decisions on your hiring practices in India, as well as what to expect next.

Quick Background

The state of Jharkhand passed a local law in 2021 requiring private businesses with 10 or more employees to fill 75% of certain job vacancies with local residents. It aimed at increasing job opportunities for state residents and reducing migration. Employers faced fines for noncompliance of up to 50 thousand rupees (approximately USD 600), plus additional daily penalties until the breach was corrected.

The state of Haryana enacted a similar law in 2021 mandating all private establishments in the state to reserve 75% of new jobs for residents. Employer violations could have resulted in fines of up to two lakh rupees (approximately USD 2,400), plus additional daily penalties until the breach was corrected.

What Happened?

Industry associations in Jharkhand and Haryana challenged the two laws in their respective state and the courts struck down the acts, declaring that they violated the Indian constitution and fundamental rights, such as the right to equal opportunities and the right to move freely and work throughout the Indian territory. The courts also found that the restrictions threatened national unity and are not in the public interest.

Be aware that neither of the decisions is final: the Jharkhand court is waiting for a response from the state's government and an appeal is pending in the Haryana case.

What's Next?

For now, companies that hire employees in Jharkhand and Haryana can continue to do so regardless of where the employees reside. However, both lawsuits are still pending and one or both of the decisions may be reversed by a higher court. In the event that any of these hiring restrictions will become enforceable, however, you can prepare by taking these four steps:

1. **Review your employees' places of residence** and assess the number of employees residing in the applicable state.
2. **Review your hiring practices**, such as job postings and selection for interviews, and be prepared to ensure you can hire employees in the applicable state and achieve the required percentage of local residents, if needed.
3. **Develop an action plan.** Even if companies have local hiring requirements, it is unlikely that you will be allowed to terminate non-local employees to fulfil the required quota without proper notice. As a general rule, termination of employment contracts in India requires adequate notice (or equivalent pay in lieu of notice). There are also special rules for collective dismissals. Therefore, if the laws are revived, you should create an action plan to satisfy the new requirement while also staying compliant with existing employment laws in India.
4. **Reach out to our International Practice Group** to help your business navigate these changes.

Conclusion

We will continue to monitor developments related to legal changes in India, and specifically, restrictions on local employment. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [International Practice Group](#).

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