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POSSIBLE IMPACT OF HARYANA STATE EMPLOYMENT OF LOCAL CANDIDATES ACT, 2020 BEING MADE EFFECTIVE

The Legislative assembly of Haryana had passed the legislation titled Haryana State Employment of Local Candidates Bill, 2020 on November 5, 2020 which received Governor of Haryana's assent on March 2, 2021 and became a statute, Haryana State Employment of Local Candidates Act, 2020 ("**the Act**")

Since effective date of the Act had not been notified, the Haryana Government has recently issued a notification No. Lab/25467/2021 dated November 06, 2021 and specified January 15, 2022 as enforcement date for the Act. Vide another notification No. Lab./25478/2021 issued on the same date, the Governor of Haryana has notified ₹ 30,000/- (Thirty thousand rupees) as gross monthly salary or wages for the registration by a beneficiary (local candidate as explained below) under the Act.

As per the objects of the Act, it has been enacted to provide seventy-five percent (75%) employment to 'local candidates' by an employer in the State of Haryana.

Significant provisions of the Act are as under:

(1) **Term:** It commences from the date of notification and cease to have effect on the expiry of ten (10) years from the date of its commencement.

(2) **Applicability:** This Act applies to an 'employer' being a Company, Society, Trust, Limited Liability Partnership (LLP) firms, Partnership firm and any person employing ten (10) or more persons, etc., on salary, wages or other remuneration excluding any Central or State government or an organization owned by Central or State government. Such an employer could be engaged in the activity of manufacturing or providing any service or be any such entity, as may be notified by the Government from time to time.

(3) **Compulsory Registration:** On and from the date of commencement of the Act, every employer is required to register such employees receiving gross monthly salary or wages not more than ₹ 30,000/- (Thirty thousand rupees) (USD 400 approx.) on the designated portal available on the official website of Labour Department, Haryana namely Haryana Udhyaam Memorandum portal. An employer will have to update all employment details within three (3) months of this Act coming into force. The proviso

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to this Section mentions that no person shall be employed or engaged by any employer till the registration of all such employees is completed on the designated portal.

(4) **Recruitment of 'local candidates'**: Every 'employer' is required to employ seventy-five percent (75%) of local candidates with respect to such posts where the gross monthly salary or wages are not more than ₹ 30,000/- per month (approximately US\$ 400)¹. Provided that the local candidates may be from any district of the State (of Haryana), but the employer may, at his option, restrict the employment of local candidates from any district to ten percent (10%) of the total number of local candidates.

This also comes with the condition that no local candidate is eligible to avail the benefits under the Act, unless he registers himself on the designated portal.

5) **'Local Candidate'**: means a candidate who is 'domiciled' in the State of Haryana.

(6) **Exemption**: An employer may claim exemption from the requirement of recruitment of local candidates, where adequate number of local candidates of the desired skill, qualification or proficiency are not available by applying to the Designated Officer in such form and manner, as may be prescribed. The Designated Officer shall, after such inquiry, as he deems fit and after evaluating the attempt made by an employer to recruit local candidates of the desired skill, qualification or proficiency, may either accept or reject the claim of an employer; or direct the employer to train local candidates to achieve the desired skill, qualification or proficiency. Every order made by the Designated Officer under sub-section (2), shall be placed on the website of the Government.

(7) **Compliance Requirements**: Every employer is required to furnish a quarterly report, by such date, as may be notified by the Government in the Official Gazette, of the local candidates employed and appointed during that quarter on the designated portal in such form, as may be prescribed.

The Act provides the definition of Authorized Officers, who will have the power to examine quarterly reports of employers, call for any record, information, or document for verification and pass orders for compliance with the Act. Such Authorized Officers will also have the power to enter an employer's premises at mutually acceptable times to conduct inspection to ascertain compliance of the Act.

¹ USD 1= INR 75, approximately

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(b) **Penalties for contravention:** As per the Act, non-compliance of the requirement of compulsory registration of employees may attract fine within the range of ₹ 25,000 (approximately USD 333) to INR 100,000 (approximately USD 1,333).

Failure to fill in 75% of the relevant posts for local candidates may lead to fine within the range of ₹ 50,000 (approximately USD 666) to ₹ 2,00,000 (approximately USD 2,666). Additionally, a penalty of INR 50,000 (approximately USD 333) can be levied on an employer who produces false records or counterfeits or knowingly makes/ produces a false statement.

Significantly, if an offence has been committed by a company, every director, manager, secretary or person concerned with the management of the company would be deemed guilty of the offence, unless he / she is able to prove that the offence in question was committed without his / her knowledge or consent.

Anhad Law's Perspective

The recent notifications issued on November 06, 2021 is significant as it confirms a definite date (January 15, 2021) from when the notification will become effective. The Haryana Government has now reduced the upper limit of gross monthly salary for jobs covered under the Act from ₹50,000 (approximately USD 666) to ₹30,000 (approximately USD 333) which could have been the result of feedback received from the corporates and chambers of commerce.

The Act, which is 'domicile' based job quota legislation, a path breaking development, as claimed by the State Government, to secure employment for persons domiciled in State of Haryana, in private sector companies, etc., is an old concept as similar initiatives had been introduced in some other Indian States in the past.

While the Act intends to extend the protection to persons 'domiciled' in the State of Haryana, it does not provide the definition of 'domicile'. However, since State Government provides residence certificate, the condition give on the websites of the State of Haryana provides that to be eligible to claim a residence (domicile) certificate, a person should be born in Haryana or have lived there for at least fifteen (15) years. It has been reported that the State government has now revised this limit to five (5) years².

² <https://haryanacmoffice.gov.in/12-january-2021-0>

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It is well known that Haryana is a highly industrialised State in India having several automobile or automotive manufacturing entities as well as IT/ ITES entities operating therefrom. It is therefore clear that a large number of medium, small or micro sector establishments shall be impacted by the Act.

The Act is likely to add more complexities for the companies having operations in the State of Haryana and while companies would need to undertake registration only but later on they may be subjected to inspection by the authorized government officials, adding more burden of compliance with another statute.

Given the definition of 'employer' in the Act, a company having operations in the State of Haryana and employing ten (10) or more persons should be subject to obligations under the Act and not merely if it was incorporated in the State of Haryana.

It is, however, remain to be seen if the constitutional validity of the Act will be challenged before the High Court of Punjab and Haryana and how the relevant government officials will interpret the provisions of the Act.

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