

What Haryana's local employment reservation law means for foreign employers

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In India, the Haryana State Employment of Local Candidates Act 2020 (Haryana Local Employment Act) came into force on 15 January 2022. The state government is currently facing challenges to the implementation of the law before the High Court of Punjab & Haryana.

Background

The state government has projected the Haryana Local Employment Act as a definitive step towards state self-sufficiency. The government enacted the law with the objective of ensuring 75% employment of “local candidates” by employers (including private employers) in Haryana. “Local candidates” are defined as those domiciled in the state. A “domiciled person” is one who is a bonafide resident of Haryana having a *Parivar Pehchan Patra* (family ID) issued under the Haryana Parivar Pehchan Act 2021, and satisfying other conditions prescribed by the Haryana government.

The law's aim is to help the local unemployed population tap into opportunities in the state. Incidentally, passing legislation to this effect was part of the manifesto of the ruling party in the lead up to the last election.

The following key obligations of employers are mandated under the Employment Act and rules thereto:

1. Procuring a unique identification number on the [Haryana Udyam Memorandum Portal](#) (HUM ID);
2. Using the HUM ID to register details of all existing employees receiving gross monthly salary up to Rs 30,000 (\$400) (notified positions) within three months of commencement of the Haryana Local Employment Act on the [designated portal](#);
3. Recruiting at least 75% of local candidates in vacancies arising out of the Notified Positions or fresh positions with a gross salary below INR 30,000 (applicable vacancies);
4. Furnishing quarterly reports as prescribed; and
5. Submitting all records, information, or documents to relevant authorities as prescribed.

The state has allowed employers covered under the Act to seek exemption from the requirement to employ 75% local Haryana domiciled candidates in applicable vacancies by making an application on the

designated portal in a prescribed manner. Such applications need to be furnished with inter alia reasonable grounds for the sought exemption besides specific qualification, skill and experience requirements vis-a-vis applicable vacancies for which adequate local candidates are not otherwise available.

Subject to an investigation, the appropriate authorities may either:

1. reject such application;
2. grant an exemption based on such application for up to one year (beyond which such vacancies shall be treated as fresh vacancies); or
3. direct the employer to train local candidates from Haryana to achieve the desired skill, qualification, or proficiency.

The Act will remain in effect for ten years from the date of commencement and inability to comply with the stipulated requirements under the law may lead to penalty amounts ranging between INR 10,000 (\$140) to INR 200,000 (\$2,700).

Legislative developments

The Haryana Local Employment Act was originally enacted with employers required to ensure 75% reservation in vacancies for employees drawing a gross salary of up to INR 50,000 (\$700). The state government reduced the applicable salary threshold to INR 30,000 (\$400) through a notification prior to the commencement of the law, thereby reducing its extent of coverage.

Employers in Haryana need to ensure that they have registered details of all their existing employees who are drawing such monthly gross salary on the designated portal notified by the Haryana government within three months from the date of commencement of the law – 15 April 2022. As per FAQs published by the Haryana government, employers will be able to initiate the recruitment process for new vacancies only after completing the online registration of their existing employees.

The government announced on 17 January 2022 that certain categories of employers/vacancies are exempt from the law, including startups and IT/ITeS employers commencing operations before 15 January 2024, for two years from the date of commencement of their business; short-term employment of up to 45 days; and vacancies filled through promotion, transfer, or absorption of surplus staff of any unit of the same employer in Haryana.

Judicial findings

The constitutionality of the Act is currently being challenged by Faridabad Industrial Associations, IMT Industrial Association, and Gurgaon Industrial Association in separate actions filed before the High Court of Punjab & Haryana. On a combined hearing of their arguments, the High Court stayed implementation of the law on 3 February 2022. Notably, the government, while arguing in favour of the Act, stated that the law is prospective in nature, and will save all the existing employees in Haryana, at the time of promulgation of the law.

The stay order was challenged by the state before the Supreme Court of India. On 17 February, the Supreme Court set aside the stay order stating: "Stay of legislation can only be when the court is of the opinion that it is manifestly unjust or glaringly unconstitutional." The Supreme Court also directed the Haryana government not to take any coercive steps under the Act against any employer until disposal of the matter.

The matter is now being heard at the High Court of Punjab & Haryana. In the meantime, Justice Ajay Tewari, a part of the original bench of the High Court hearing the matter, has recused himself.

Conclusion

As per news reports, the state of Haryana has the highest unemployment rate in India, at an alarming 34.1%. However, there is not enough evidence to suggest that reservation laws can help promote employment in a state or collectively. Other states, such as Telangana and Gujarat, continue to record high employment rates without any reservations for local candidates in private sector jobs. In fact, with respect to the Haryana Local Employment Act, both industry bodies and trade unions have expressed their concerns and consider it a political gimmick.

The Act is not the first protectionist legislation in India, with similar laws on reservations in select private jobs being proposed and/or enacted by other states such as Karnataka, Andhra Pradesh, and Jharkhand. With a pandemic-driven economic crunch, the Haryana Local Employment Act may deter medium and small-scale sector businesses from bouncing back. Employers remain apprehensive that reservation in private employment may derail India's overall focus on ensuring ease of doing business and attracting foreign investment.