

HR Law Hotline

January 20, 2022

UPDATE ON LAW ON EMPLOYMENT OF LOCAL CANDIDATES IN GURUGRAM (GURGAON): PART II

- The Haryana State Employment of Local Candidates Act, 2020 has come into effect on January 15, 2022.
- The Haryana State Employment of Local Candidates Rules, 2021 and the "designated portal" thereunder have been notified.
- The applicable salary threshold for posts which would require employers to hire local candidates has been revised to INR 30,000 (USD 400 approx.) from INR 50,000 (USD 700 approx.)
- Start-ups and Information Technology /Information Technology enabled Services (IT/ITeS) companies commencing operation before January 15, 2024 shall be exempted for a period of 2 years from the date of commencement of business.

Amidst severe criticism, the Haryana State Employment of Local Candidates Act, 2020 ("**HSELC Act**") has finally come into force from January 15, 2022¹. The HSELC Act has been enacted with the objective of ensuring 75% employment of 'local candidates' (that is, candidates who are domiciled in the state of Haryana) by employers (including private employers) in Haryana. *For more details on the HSELC Act, please refer to our previous hotline available [here](#).*

While the provisions under the HSELC Act continue to remain the same, the Haryana state government has reduced the applicable salary threshold for an employer's obligation to compulsorily register employees on the designated portal from INR 50,000 (USD 700 approx.) to INR 30,000 (USD 400 approx.)². This means that employers will need to ensure that they have registered details of all their existing employees who are drawing monthly gross salary or wages of up to INR 30,000 (USD 400 approx.) on the designated portal within three months from the date of commencement of the HSELC Act.³ Employers will also be able to initiate recruitment process for new vacancies only after completing the online registration of their existing employees⁴.

Likewise, the government has reduced the applicable salary threshold for posts in which 75% of employees should comprise of local candidates⁵ from INR 50,000 (USD 700 approx) to INR 30,000 (USD 400 approx.)⁶. This means that for posts where the monthly gross salary or wages are up to INR 30,000 (USD 400 approx.), every employer will need to ensure that 75% of such posts are occupied by 'local candidates'⁷. The employer will however be able to recruit a 'local candidate' only if such candidate has registered on the designated portal⁸.

The Haryana labour department has, *vide* a notification dated January 13, 2022⁹, specified <https://local.hrylabour.gov.in> as the "designated portal" under the HSELC Act and rules.

HSELC RULES: KEY FEATURES

The rules under the HSELC Act, that is, the Haryana State Employment of Local Candidates Rules, 2021 ("**HSELC Rules**") has been notified on January 10, 2022 and has come into effect along with the HSELC Act. The key features of the HSELC Rules are as follows:

1. Given that the HSELC Act defines a 'local candidate' as someone 'domiciled' in the state of Haryana, the HSELC Rules clarify that a 'domiciled person' will be one who is a *bona-fide* resident of Haryana satisfying the conditions prescribed in this respect by the Haryana government from time to time and having a Parivar Pehchan Patra issued under the Haryana Parivar Pehchan Act, 2021.¹⁰
2. It defines 'employee' as "*any person employed by the employer on payment of salary or wages or any other remuneration but does not include an apprentice engaged under the Apprentices Act, 1961*".
3. It provides for a unique identification number to be provided to all types of businesses operating in the state of Haryana on the Haryana Udhyaam Memorandum Portal¹¹, called the Haryana Udhyaam Memorandum Identification Number (HUM ID).
4. Every employer is required to use its HUM ID and register its existing employees earning a gross monthly salary of up to INR 30,000 (USD 400 approx.) on the designated portal.
5. Local candidates seeking employment under the HSELC Act are also able to register themselves on the designated portal.
6. Employers seeking exemption from the reservation requirement are required to make an application to this effect

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on the designated portal in the prescribed manner, furnishing *inter alia* reasonable grounds for the exemption besides any specific qualification, skill & experience requirements, which is to be investigated by the competent authorities before an exemption is granted.¹² Any exemption granted under the HSEL Act will be valid only for a maximum period of 1 year and any un-filled vacancy upon expiry of the 1 year from the grant of exemption will be treated as a fresh vacancy and be subject to compliance requirements under the HSEL Act.

7. Aggrieved employees are permitted to file complaints against employers for violation of the HSEL Act on the designated portal, which is required to be disposed of by the competent authority within 30 days.
8. Employers are required to furnish a quarterly report containing details of local candidates employed and appointed by the employer in the previous quarter.
9. Employers are required to maintain records containing *inter alia* details of the number of employees, occupational details of employees, number of local candidates¹³ recruited etc. in electronic form which is to be made available for inspection and verification by the labor authorities.
10. Penalty amounts under the HSEL Act range between INR 10,000 (USD 140 approx.) to INR 2,00,000 (USD 2,700 approx.).

OTHER RECENT DEVELOPMENTS

The Haryana government has, *vide* a separate order dated January 17, 2022¹⁴, exempted certain categories of employers/vacancies from the applicability of the HSEL Act. Accordingly, start-ups and IT/ITeS companies, commencing operations before January 15, 2024 shall be exempted from the HSEL Act for a period of 2 years from the date of commencement of business. The reservation requirement will also not apply to short term employment of up to 45 days and vacancies filled through promotion / transfer/ absorption of surplus staff of any unit of the same employer in Haryana. The order also enables the state government to exempt any class, post, skill and category of employment *vide* a separate notification, in which local candidates of desired qualifications may not be available.

In terms of representations by industry bodies against the law, a writ petition was previously filed by A.K. Automatics challenging the HSEL Act which was dismissed by the Punjab and Haryana High Court in March 2021 on the basis that the HSEL Act was not in force at that time and therefore not affecting the petitioner adversely¹⁵. The petitioner had argued that the HSEL Act was violative of several provisions of the Indian Constitution¹⁶ besides being violative of the fundamental rights of individuals to apply for jobs in all parts of the country. At present, a petition has been filed by the Gurgaon Industrial Association challenging the constitutionality of the HSEL Act, which is pending before the Punjab and Haryana High Court¹⁷. Reportedly similar petitions have been filed by other industrial associations of Rewari and Faridabad.¹⁸

ANALYSIS

While the Haryana state government strongly believes that the HSEL Act will go a long way in opening up new avenues of employment for the youth in the state, the government's move to impose reservation requirements in private employment is being perceived by multiple stakeholders including employer associations as a very regressive step. It is feared that the brunt of the law will have to be borne by private-sector employers given that the jobs in such establishments are largely skill based and local resources having such skills may be scarce.

Industry associations therefore believe that the HSEL Act will make it difficult for industries to remain competitive in the state with acute shortage of skilled local manpower¹⁹. Reportedly the impact of the HSEL Act is already being felt in the industry rich Faridabad and Gurugram districts of Haryana where many offices in these areas are looking to move out to locations outside Haryana such as Delhi or Greater Noida (state of Uttar Pradesh).²⁰

In the midst of the raging condemnation by industry bodies especially in the IT/ITeS sector, it remains to be seen whether the HSEL Act ends up meeting the same fate as similar laws which were introduced in other Indian states such as Andhra Pradesh²¹ and proposed in states such as Maharashtra and Karnataka. With the pandemic having already impacted employers severely, the HSEL Act is expected to create more pressure for employers in Haryana. While the state government has envisioned a self-sustained state, such a protectionist law could derail India's overall focus on ensuring ease of doing business and attracting foreign investment.

Industry associations and employers now eagerly await the High Court hearings hoping for some relief.

— Vivek Ilawat, Sayantani Saha & Preetha S

You can direct your queries or comments to the authors

¹ https://local.hrylabour.gov.in/uploads_new_2/notifications/1636355412.pdf

² https://local.hrylabour.gov.in/uploads_new_2/notifications/1636355656.pdf

³ Section 3 of the HSEL Act

⁴ As per FAQs published by the Haryana government on the HSEL Act available at: <https://local.hrylabour.gov.in/home/faq>.

⁵ As per Sec. 2(g), HSEL Act, "Local Candidate" means a candidate who is domiciled in the State of Haryana.

⁶ <https://drive.google.com/file/d/1akdd9g9dtGF3YAm3lv0jKVfShpLcdt8/view?usp=sharing>

⁷ Section 4 of the HSEL Act

⁸ Proviso to Section 4 of the HSEL Act

⁹ https://storage.hrylabour.gov.in/uploads/labour_laws/Y2022/Jan/W2/D14/1642137354.pdf

¹⁰ <https://meraparivar.haryana.gov.in/TheHaryanaParivarPehchanAct,%202021.pdf>

¹¹ <https://harudhyam.edisha.gov.in/>

¹² Designated Officer with assistance of the Authorized Officer, as specified under the HSELC Act

¹³ See supra at 3

¹⁴ https://local.hrylabour.gov.in/uploads_new_2/notifications/Exemption%20order.pdf

¹⁵ <https://thewire.in/government/haryana-despite-changes-to-local-candidate-job-quota-law-industry-still-not-happy#:~:text=The%20petition%2C%20filed%20by%20Rohtak,chaos%20in%20the%20current%20industrial>

¹⁶ Articles 14, 15, 16 (2) and 16 (3), 19 (1)(g), 21, Constitution of India

¹⁷ <https://www.hindustantimes.com/cities/gurugram-news/gurugram-industries-body-to-approach-high-court-over-reservation-law-101642021612394.html>.

¹⁸ <https://www.theweek.in/news/biz-tech/2022/01/18/will-haryana-local-job-quota-law-end-gurgaon-growth-story.html>

¹⁹ Ibid.

²⁰ <https://thewire.in/government/haryana-despite-changes-to-local-candidate-job-quota-law-industry-still-not-happy>

²¹ <https://www.hindustantimes.com/cities/others/andhra-pradesh-s-local-job-quota-law-cleared-20-months-ago-yet-to-pick-up-pace-101615641920960.html>

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