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THE RISE OF REMOTE WORK: LEGAL CONSIDERATIONS FOR EMPLOYERS AND EMPLOYEES

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ABSTRACT

During the 21st century, remote work has risen tremendously, and there is still a constant surge with the global pandemic that hit the world in 2019, i.e. “CORONAVIRUS”, the remote work culture has grown faster than ever. The change in work ethics and workplace dynamics is most often seen in industries like information technology, finance, healthcare, and education. This evolution has targeted people to strive for more comfort in their lives as remote work has made their lives easier with increased productivity.

INTRODUCTION

In India, in the year 2022, remote work i.e. people working from home for part/full office hours has shown potential for changes in the infrastructure and also a shift in the thinking of the people looking for big office settings.

As of 2023, 12.7% of full-time employees do remote work while 28.2% of people are working in a hybrid model. This hybrid model of work offers employees flexibility and also physical presence at their workplace. Remote work has become a “NEW NORMAL” and is also greatly accepted in India. According to a report by World Bank Data around 2025, approximately 60-90 million Indians will work remotely.²

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² Main, K. (ed.) (2024) *Remote work statistics and trends in 2024*, *Forbes*. Available at:
<https://www.forbes.com/advisor/in/business/remote-work-statistics/>

WHAT IS REMOTE WORK?

A remote worker means an employee doing his/her job which they are authorised to do being far away from the main office setting in the comfort of their homes or any other place with a stable Wi-Fi connection and a laptop. With this, workers have more control over their professional setting, have a committed workstation, and do not need to commute. Employment Agreement plays a major role in work-from-home policies. These contracts must show remote work circumstances. An agreement that an employer and employee have signed is known as an employment contract. It outlines the responsibilities and rights of the employer and the employee.³

BENEFITS OF REMOTE WORK

1. Cost Saving for employees and employers- First of all, employers and employees, both save their money as they cut their expenditures in half which increases their savings and start living a better life. They can provide for their homes and children more.

-As for the employers, they don't have to maintain an office space due to which they don't have to worry about paying rent, electricity bill, water bill, security bills, etc.

- As for the employees, they save on transportation fees. The fact that they don't have to worry about arriving on time gives them emotional serenity. They can work at any time of day, which offers flexibility.

2. More employee satisfaction: Since working remotely relieves employees of the burden of commuting every day, it has become clear that this is a great way to increase satisfaction among workers.

3. Flexibility and balance in work-life- Employees working remotely design a schedule for themselves that maximizes their productivity and well-being to the fullest. The flexibility provided to the employee empowers them to control their work environment better leading to a balanced work-life.

These benefits have increased hiring retention rate, productivity, decreased stress, a healthy workplace, and many more.

³ <https://www.estartindia.com/knowledge-hub/blog/employment-contracts-in-india>

LEGAL CONSIDERATIONS FOR EMPLOYEES AND EMPLOYERS

- FOR EMPLOYERS- Employers have various complications in their remote work arrangements which highly impact the productivity of their remote work policies. Some legal considerations taken by them should include the following⁴-
 1. Tax Management- One of the main issues with remote work is figuring out the jurisdiction of employees who work remotely for tax purposes. Depending on whether they are based in India or another nation, remote workers may have different tax obligations. Employers must understand tax legislation to guarantee compliance and stay out of trouble. Employers should hire people specializing in the field of tax for various types of remote work scenarios. Employers should build a full team that can increase their management and benefit the company by reducing the interest rate on taxes.
 2. Legal Employment Contracts- An employer must have a clear relationship with his employee. A contract should mention the responsibilities that the employer has given to the employee, the code of conduct, their relationship, and the outcomes expected from them specifically related to the field of their work, and their paycheck which they'll get by the end of the month.
 3. 3. Intellectual Property Rights: To prevent disagreements and to safeguard the company's priceless assets, there should be open communication between the employer and the employee. The employer should have a transparent relationship with the employee. An employee is not allowed to utilise the employer's patented property for any monetary gain without the employer's prior consent.
 4. Data Protection and Security: Employers are required by the Digital Data Protection Bill of 2022⁵ to incorporate data protection policies into employment contracts. Employers are required by the Information Technology Act of 2000 to refer their policies to the IT Rules. This is to make sure that an employee cannot leak pricing information to the company. This is being done for their legal protection. Ensuring that employees are aware of these policies is the employer's duty

⁴ *Decoding the legal implications of remote work and virtual teams in India - upscale legal (2024) Facilitating Commercial & Legal Solution - Upscale Legal.*

⁵ The Digital Personal Data Protection Bill, 2022. (N.D.). In *The Digital Personal Data Protection Bill, 2022* (Pp. 1–24).

FOR EMPLOYEES- A Remote worker may take legal considerations such as

1. Wages and Working Hours- A remote worker is very concerned with ensuring that fair and legal employment is granted to him/her. An employer must ensure that they are paying the remote worker following the state and federal laws. The employment contract should specify the provisions relating to overtime pay mentioned in the company's work policy related to virtual work.
2. Employment Classification- An employment classification for a remote worker is very crucial. A remote worker is sitting miles away from the actual workplace most of the time due to which the title or the position on which they are being filled should be circulated to them truthfully.
3. Employment Laws- A remote worker, working in one part of the country for a company in another part of the country must know about the employment laws of their jurisdiction. Indian employers need to consider extending the definition of workplace to include work-from-home into it.

LEGAL DIFFICULTIES FOR REMOTE WORKERS

A virtual environment of work requires a great understanding of regulations relating to the field of employment. Some of the difficulties that can arise in the work environment are-

1. Health and Safety of The Employee- Remote work provides the worker a free environment to work from any part of the world within their comfort. But it is also the responsibility of the employer to provide for a healthy workspace. Creating a legally valid remote work environment and improving employee happiness can be achieved primarily through establishing appropriate rules and encouraging workplace safety.
2. Discrimination and harassment- Discrimination and harassment especially with women in the corporate sector is one of the major difficulties that arise in a workplace environment. With Covid-19 a new set of issues has to be addressed by the employer regarding discrimination. Employers must address their duty of protecting and punishing harassment for employees working from home too. The employer should make detailed anti-harassment policies and anti-discrimination policies for employees working from home.
3. Employment Contracts- Employment contracts are the most important legal requirement for a remote worker. An employment contract is a written agreement between the

employer and the employee. The truthfulness of this contract defines the rights and obligations of the employer and the employee. This contract includes every detail of the relationship between both parties.

LAWS RELATED TO REMOTE WORK POLICIES IN INDIA-

Indian legal system doesn't have clear legislation or specific laws relating to the concept of remote work, or flexibility in working from home but there are also no legal provisions putting restrictions on it as well. Indian law mechanism does not mainly distinguish between employees working in offices and employees working from home. For instance, all workers are entitled to paid time off, vacations, and working hours as specified by the Factories Act 1948, establishments act regardless of where they are employed.

However, remote working modules are covered by several laws, including the Industrial Employment Standing Orders Act of 1946 and the Contract Labour (Regulation & Abolition) Act of 1970. In 2020, the Ministry of Labour and Employment released a circular advising companies to develop a strategy for remote work so that the welfare and rights of workers who work remotely are safeguarded.⁶

Some of the strategies/ guidelines that the organizations came up with include-

The Code on Social Security 2020- The Model Standing Orders for Services Sector, 2020 recognizes the concept of "Work from Home" and states that an employer may permit an employee to work from home for a predetermined amount of time, subject to limitations that the employee and the employer may agree upon. Furthermore, if a female employee has returned from maternity leave and her job can be done remotely, she can ask her employer for authorization to work remotely under the Code on Social Security, 2020.

However, regardless of whether the employer provides the tools, materials, or other inputs, the Code on Social Security, 2020 defines a "homebased worker" as a person who works for pay by producing goods or services for an employer from his home or at another location of his choosing other than the employer's workplace. Therefore, when work is done at the worker's dwelling, "work at home" and "home-based work" as defined by this Code may overlap, even if it is done independently of the typical workplace.

Moreover, terms like remote work or telework, are left out. It is essential that "remote work" and "telework" receive exact legal considerations in the Indian context to outline the rights and obligations.

⁶ Suma RV and shekher, S. (2023) *'work from home' under Indian legal system - etbrworld, ETHRWorld.com.*

Extended Flexibility on Special Economic Zones (SEZ) Units- According to rule, 43A of the Special Economic Zones (SEZ) Rules 2006 means that workers from outside the zone, including SEZ staff, temporarily incapacitated workers, travelers, and offsite workers, can now work from outside the zone. To take advantage of this option, a SEZ unit must send an email to the Development Commissioner before launching the hybrid work program. Employee lists are not required to be submitted, but the unit is required to maintain them and furnish them upon request for verification. However, one case relating to the above concept is,

In the case of *Mangala A.G. vs Union of India, HIL (India) Limited & Ors*,⁷ the High Court of Kerala, has held that a direct division has to be made and the employer will intentionally enable the employee to work from a separate jurisdiction. If an employee is only allowed to work from home, without any additional provisions from the employer, the forum state will not be granted jurisdiction. But if the employer has made it possible for the employee to work from a separate station with the facilities offered, that will be considered a constructive activity, and the forum state will then get jurisdiction over the matter. In certain situations, the employer is free to add to the employment contract the proper jurisdictional clause.

The Maternity Benefit (Amendment) Act 2017- After returning from maternity leave, women are allowed to work remotely or from home under the terms and conditions of their employment relationship, as long as their work does not negatively affect the company's systems and is mutually agreed upon by the employer and employee. This is made possible by the Maternity Benefit (Amendment) Act of 2017.

The Sexual Harassment at Workplace (Prevention, Prohibition, and Redressal) Act 2013-Under this Act, Indian courts have interpreted the phrase "Workplace" very effectively. The idea that a worker's place of employment is an office or that they work as drivers outside of the office has been carefully considered. Although the term "workplace" has a broad definition, it should now be expanded to include the recently popularized practice of working from home as well as to include any establishment that offers health and safety protection for employees when they are working from home.

LAWS GOVERNING REMOTE WORK IN THE UNITED STATES- By 2025, it is estimated that 32.6 million people in the United States of America will be working remotely. That's why employers must consider all of the remote work legal considerations to make their policies so that those policies should align with the regulations.

⁷ *Mangala A.G. vs Union of India, HIL (India) & Ors*

The FLSA (Fair Labor Standards Act)- Regardless of how you work, some labor regulations still apply. One of them is the FLSA, which establishes rules for recordkeeping, overtime compensation, and minimum wage for all workers, including remote workers.

Employers must cover the cost of 20-minute breaks under the FLSA. Additionally, workers must have a 30-minute food break. The meal breaks that are discussed here ought to occur continuously. The same number of breaks are available to remote workers as they are to those employed by traditional models.

The Family and Medical Leave Act (FMLA)- This grant qualified workers the right, independent of their place of employment, to take unpaid time off for specific family and medical needs.

The Americans with Disabilities Act (ADA) -This forbids discrimination against people with disabilities and mandates that companies provide disabled workers with reasonable accommodations, such as remote work arrangements when practical.

Occupational Safety and Health Act (OSHA) -Although it wouldn't be unreasonable to assume that those who work from home are exempt from OSHA regulations, that assumption would be incorrect. OSHA establishes guidelines for occupational health and safety, which also apply to remote workers. These guidelines cover danger avoidance, equipment use, and ergonomics.⁸

SUGGESTIONS/ RECOMMENDATIONS

Companies and employees should consider the following Recommendations to help them negotiate to work through the constantly changing legal environment around remote employment in India:

1. **Legal Consultation:** It is advisable for enterprises operating in certain industries with unique regulatory requirements or those involved in cross-border remote work arrangements to seek counsel from legal professionals specializing in employment law.
2. **Well-Drafted Policies and Contracts:** Organizations that use remote workers should have extensive, precisely outlined policies and contracts in place. The conditions of employment, expectations, rights, and obligations of both parties should be outlined in these contracts, along with clauses about confidentiality, data protection, and intellectual property.

⁸ *Which employment laws apply to employees who are remote in the United States?* (2023) *Employment and Commerce Law Group*.

3. Regularly Monitoring Legal Developments: Employers and workers alike should be updated on any new laws, rules, or guidelines about remote employment, as the legal landscape is always changing.
4. Employee Education and Training: Reducing hazards and fostering a more productive and law-abiding remote work environment can be achieved by offering staff thorough education and training on policies, legal requirements, and best practices.

CONCLUSION

The arrival of COVID-19 and the national lockdown in March 2020, changed how millions of Indians work. “WORK FROM HOME” is now a reality for millions, which has altered how we spend our working hours and lives. Different types of businesses that rely on remote work must address the changing nature of the modern workforce to overcome the legal problems of remote work. From a legal standpoint, working remotely in India presents both benefits and difficulties. To guarantee a seamless and legal remote work experience, employers must proactively modify employment contracts, respect employee rights, and uphold their legal obligations.

Employees should be granted health and safety measures, safeguard them from discrimination and harassment issues, and make a remote work environment a new dynamic change in the world.