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the legal profession

Edited by Salvador del Rey and Robert J. Mignin

Labour and Employment Compliance in India

Third Edition

Manishi Pathak



Wolters Kluwer

International Bar Association

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About the International Labour and Employment Compliance Handbook

From 1976 through 1988, the International Bar Association and Kluwer Law International published the groundbreaking International Handbook on Contracts of Employment. This Handbook provided one of the first global overviews of the law of the international employment relationship.

Since publishing the first edition, globalization of business has created an increased demand for knowledge of labor and employment laws throughout the world. Therefore, along with Kluwer, we decided to publish an updated Handbook which we have titled the International Labour and Employment Compliance Handbook.

This new Handbook was intended to be a practical guide by providing a general overview of key labor and employment issues in multiple jurisdictions. Each chapter was written so that it is easy to understand by lawyers and non-lawyers alike. Each country author has also followed a standard outline to assist readers in analysing employment issues in each country.

The first edition of this new Handbook included nineteen (19) different countries.

This Handbook would not have been possible without the help and assistance of many people. Most importantly, the individual country authors are all distinguished legal practitioners who spent considerable time drafting and revising their country reports to meet difficult deadlines. We thank each of them. Our friends at Kluwer, especially Ewa Szkatula, have done a wonderful job in keeping the editors and the authors on schedule. Finally, we want to also express our gratitude to Cuatrecasas, Gonçalves Pereira, and Baker & McKenzie LLP for their valuable assistance in the coordination and organization of this project. Our warmest thanks to each of them.

ABOUT THE INTERNATIONAL LABOUR AND EMPLOYMENT COMPLIANCE HANDBOOK

Because of the success of the Handbook, Wolters Kluwer Law & Business decided to publish each country report also as a separate book to give a choice in obtaining the information. We hope this new format will be a helpful and useful resource just like the Handbook. Both formats are available in print and online.

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March 2013

India

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Legal Compliance in India

1. LEGAL FRAMEWORK: EMPLOYMENT LAWS

The Employment Legal Framework in India consists of the Constitution of India, Central and State statutes, judicial precedents and collective/individual contracts. The order in which the relevant sources of law take precedence in the event of a conflict is as follows:

- (i) The Constitution.
- (ii) Central statutes.
- (iii) State statutes.
- (iv) Judicial precedents.
- (v) Individual agreements.
- (vi) Collective agreements.

It is relevant to mention that any act or omission that is considered to be an offence or is prohibited under any laws of the land would also be deemed to be violative/prohibited/offence under the employment laws, even if not specifically covered.

Further, it is advisable to ensure that whether a specific Central or State statute, or both, are applicable, and the same are complied with. Depending on the facts of a case, Central/State-specific statutes and/or compliances provided therein may be applicable to an employer and/or an employee.

The Constitution of India is the primary source of law in India. It sets forth the general rules for governance and coexistence. Further, it establishes the fundamental rights which are guaranteed to every citizen (and in some cases even to non-citizens) and the obligations of the State with regard to safeguarding of these rights.

Part III of the Constitution lists the fundamental rights guaranteed to a person. These include the right to freedom of speech, the right against exploitation, the right against forced labour, the right to constitutional