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**Employment Laws**

**Legal Tangles of Terminating an Employee**

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**Legal Tangles of Terminating an Employee**

Reorganization and consolidation, economic slump and business needs sometimes require companies to take the hard decision of retrenching or terminating its employees. But most companies treat the termination process of all employees alike with disruptive consequences subsequently.

Indian laws classify employees in “workmen” and “non-workmen” categories. The classification of an employee as a workman or not assumes significance as, from a legal standpoint, terminating the services of a “workman” category employee is significantly more complicated as compared to terminating the services of a “non-workman” category employee. Also, a workman is provided various protective remedies under law and is entitled to certain statutory benefits which a non-workman may not be entitled to (depending on the terms of his employment). Accordingly, a “non-workman” category employee can usually be terminated on the basis of the terms of his employment contract (also known as a hire and fire rule). However, termination of a workman requires more compliances, adherence to processes and payment of retrenchment compensation to the terminated employee. It is therefore important for the employer to assess the category of the ‘employee’ that it intends to retrench.

For an employee to be categorized as a ‘workman’, the person employed in an industry should be doing a *manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward*. However, a person who is employed mainly in a managerial or administrative capacity, or who being employed in a supervisory capacity draws wages exceeding Rs. 10,000/- per month or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature, is excluded from the definition of a workman under The Industrial Disputes Act, 1947.

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The actual and predominant duties discharged by an employee would determine whether the employee will qualify as a “workman” or “non-workman” and mere managerial or administrative designations are not conclusive of the status of any employee as “non-workman”. The assessment as to whether a particular employee would qualify as a workman has been subjected to extensive judicial interpretation and the Supreme Court of India has, in the matter of *Anand Bazar Patrika (P) Ltd. v. Their Workmen*, clarified that “if a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and, conversely, if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out, incidentally or as a small fraction of the work done by him, will not convert his employment as a clerk into one in supervisory capacity...”.

Prior to terminating an employee without cause, the employer must assess:

- (i) the dominant purpose of the employment and the nature of duties performed by the employee and not some additional/incidental duties being performed.
- (ii) whether the employee can bind the company in matters of some decisions taken on behalf of the company.
- (iii) the nature of the supervisory duties performed by the employee and whether they include directing the subordinates to do their work and/or overseeing their performance.
- (iv) if the employee has the power either to recommend or sanction leave of the workmen working under him.
- (v) if the employee has the power to take any disciplinary action against the workmen working under him.
- (vi) if the employee has the power to assign duties and distribute the work.
- (vii) if the employee has the authority to invent material and to distribute the same amongst the workmen.
- (viii) if the employee has any workmen working under him and does he write their confidential reports, etc.

Some of the employees held by courts to be workmen include: an accounts officer performing duties of a clerical nature; an assistant engineer performing duties of a clerical nature; an assistant executive in a quality control department not authorized to initiate any departmental proceedings against his

subordinates; manager of a warehouse not performing supervisory or administrative duties; etc. On the other hand, a depot superintendent supervising subordinates working in a depot; factory manager performing supervisory duties, sanctioning leaves and also initiating disciplinary action against factory employees; a foreman performing supervisory duties such as checking of material, recommending leave applications, appraisal of work; etc. have been held not to be workmen.

Usually determination of an employee as a workman is a mixed question of law and facts. Once an employee has been categorized as a workman, the company would need to provide at least one month to three months' notice or wages in lieu thereof (depending on the numbers of employees employed by the employer) at the time of termination of his services. The workman would also be entitled to be paid fifteen days average salary for every completed year of service or any part thereof in excess of six months as retrenchment compensation. Certain other regulatory compliances such as providing notice of retrenchment or obtaining prior approval from the applicable labour authorities may need to be undertaken, depending on the nature and number of employees employed by the employer.

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