

## Recruitment and wage & hour law in India

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### Recruitment

#### *Advertising*

#### **What are the requirements relating to advertising positions?**

Under the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959, if the state so requires, a private sector establishment with 25 or more employees must notify vacancies to specific employment exchanges. However, this is seldom observed.

#### *Background checks*

#### **What can employers do with regard to background checks and inquiries in relation to the following:**

##### **(a) Criminal records?**

While it is possible to conduct criminal background checks, this is extremely difficult in practice because criminal records are not digitised and are not consolidated nationwide. Accordingly, where a criminal background check must be carried out, this is typically done at the police station with jurisdiction over the employee's current place of residence or anywhere that he or she has lived for a reasonable period.

##### **(b) Medical history?**

Employees' medical histories cannot be accessed easily, since these are not digitised and there is no repository of medical records. Employee consent is required to disclose medical records to the employer. However, some employers require employees to undergo medical checks and have the diagnostic centre send the report directly to the employer. Subject to certain specific restrictions (eg, pre-employment testing for HIV is not permitted), there is no prohibition against this practice under Indian law.

##### **(c) Drug screening?**

Indian law does not prohibit drug screening.

##### **(d) Credit checks?**

An individual is entitled to obtain information on his or her credit rating. The employer can also access this information, with the employee's permission and on providing necessary proof of identity. Access to credit rating information is more common in banks and financial institutions.

##### **(e) Immigration status?**

Indian law does not specifically require an employer to check the immigration status of a foreigner. Indian law does not prevent the employer from checking whether a foreign employee holds the necessary visa to work in India. If a foreign individual on an employment visa wishes to change employment to another company, he or she must leave India and apply afresh for a visa. The only exception is where the foreigner is changing jobs between a registered holding company and its subsidiaries or vice versa, or between subsidiaries of a registered holding company and the employee role is at a senior level (such as a managerial or a senior executive position) or is a skilled position (such as a technical expert). In such case the foreigner may not need to leave India, provided that they obtain prior government approval for the change in employment.

**(f) Social media?**

There is no bar against conducting background checks through social media.

**(g) Other?**

The most common background checks undertaken are of educational qualifications. The employee must consent to this and the employer (or an outsourced provider) will then write to the relevant institution requesting confirmation. The institution may charge a fee for providing this information. Most institutions have a procedure in place in this regard.

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