

Legality of voluntary resignations in India

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Amazon's voluntary separation program

In November 2022, Amazon initiated a [voluntary separation program](#) (“VSP”) which allowed eligible employees to resign voluntarily from employment in exchange for specific severance benefits, including twenty-two (22) weeks’ base pay, one (1) week’s base salary for every six (6) months of services, up to a maximum of twenty (20) weeks, medical insurance for six (6) months and notice period or pay in lieu of it.

From [press reports](#), it appears that the Pune Labour Commissioner’s office has sent a notice to Amazon questioning the validity of the VSP.

Treatment of forced “voluntary” resignations under Indian laws

In India, an employee’s termination attracts several laws, including the Industrial Disputes Act, 1947, the Factories Act, 1948, the state-specific Shops and Establishments Acts (which are to be read in conjunction with the provisions of the employment contract and any applicable internal policies of the employer), the Payment of Gratuity Act, 1972 and the Maternity Benefit Act, 1961. The applicability of the foregoing statutes depends on, *inter alia*, the scope of employment of the employee, the period of continuous employment with the employer, the notice and other compensation requirements under the contract between the employer and the employee, and the reasons for termination.

Typically, the employer is required to provide at least one (1) month’s prior notice or payment in lieu of notice for terminating employment. Further, under the Industrial Disputes Act, 1947, retrenchment compensation calculated at the rate of fifteen (15) days of average pay for every completed year of continuous service or part thereof in excess of six (6) months, is required to be paid, and a notice of termination has to be sent to the relevant governmental authorities. In some cases, prior permission is required to be obtained from the governmental authorities before proceeding with the termination process.

In case of resignation by an employee, an employer is not required to abide by all the statutory requirements of notice pay, retrenchment compensation or notice to the government authorities. Therefore, seeking resignations from employees after paying them what would be due had they been terminated, has become a practice in India.

In this regard, courts have held that forced resignations cannot be termed as voluntary, and resignations tendered under duress or obtained by the employer in any other manner amount to termination of services by the employer. (*The Sanot Cooperative Agriculture Service Society v. Joint Registrar (Credit) Cooperative Societies and Ors.* (CMPMO No. 274 of

2022); *Shriram Swami Shiksan Sanstha, Nagpur v. Education Officer, Zilla Parishad, Nagpur and Others*, (1983) 85 Bom LR 288 (Bombay High Court).) In such cases, courts may ask employers to compensate the employee or reinstate employment.

Conclusion

In the wake of a global recession, many employers (especially technology companies) are cutting down on their workforce in India. India being an employee friendly jurisdiction, labour authorities and labour unions are vigilant and closely watch the steps being taken by employers. Clearly, the VSP is one such program that has come in the eyes of the authorities. In order to avoid claims from employees and penalties from the government, employers need to re-assess their separation programs. Forced resignations in the garb of being voluntary may not be the best way forward, and it may be easiest to call a spade and spade and follow the statutory termination provisions.