

TO BE INTRODUCED IN THE RAJYA SABHA

AS INTRODUCED IN THE RAJYA SABHA

Bill No. XXVII of 2013

THE EMPLOYMENT EXCHANGES (COMPULSORY NOTIFICATION
OF VACANCIES) AMENDMENT BILL, 2013

A

BILL

*further to amend the Employment Exchanges (Compulsory Notification of Vacancies)
Act, 1959.*

BE it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Employment Exchanges (Compulsory Notification of Vacancies) Amendment Act, 2013.

Short title
and com-
mencement.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

31 of 1959.

2. In the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 (hereinafter referred to as the principal Act), in the long title, for the words "employment exchanges", the words "employment guidance and promotion centres" shall be substituted.

Amendment
of long title.

Amendment
of section 1.

3. In the principal Act, in section 1, in sub-section (1), for the words "Employment Exchanges", the words "Employment Guidance and Promotion Centres" shall be substituted.

Substitution
of references
of certain
expressions
by certain
other
expressions.

4. Throughout the principal Act, unless otherwise expressly provided, for the words "employment exchange" and "employment exchanges" wherever they occur, the words "employment guidance and promotion centre" and "employment guidance and promotion centres" shall respectively be substituted and such other consequential amendments as the rules of grammar may require shall also be made. 5

Amendment
of section 2.

5. In the principal Act, in section 2,—

(A) for clauses (b), (c) and (d), the following clauses shall be substituted, namely:— 10

'(b) "employee" means any person who is employed or engaged on contract basis, continuously for a period not less than two hundred and forty days, in an establishment to do any work for remuneration;

(c) "employer" means any person who, employs, or, enters into contract with, one or more other persons to do any work in an establishment for remuneration, continuously for a period not less than two hundred and forty days, and includes any person entrusted with the supervision and control of employees in such establishment; 15

(d) "employment guidance and promotion centre" means any office or place established and maintained by the appropriate Government for the collection and furnishing of information, either by the keeping of registers or through electronic medium or otherwise, relating to— 20

(i) persons who seek to engage employees;

(ii) persons who seek employment;

(iii) vacancies to which persons seeking employment may be appointed; and 25

(iv) persons who seek vocational guidance and career counselling or guidance to start self-employment;';

(B) in clause (g), for the words "twenty-five or more", the words "ten or more" shall be substituted; 30

(C) after clause (g), the following clause shall be inserted, namely:—

'(ga) "plantation" means preparation of any land for planting of commercial crops of perennial nature cultivated extensively in tropical and sub-tropical situations on a large scale by uniform system of cultivation under central management owned and managed by a company formed and registered under the Companies Act, 1956, but does not include the plantation owned and managed by an individual;'; 35
1 of 1956.

(D) clause (i) shall be omitted.

Amendment
of section 3.

6. In the principal Act, in section 3,—

(a) in sub-section (1),— 40

(i) in clause (a), after the words "other than", the words "employment in plantation or" shall be inserted;

(ii) clause (d) shall be omitted;

(iii) in clause (e), after the word "Parliament", the words "or a State Legislature" shall be inserted; 45

(b) in sub-section (2), clause (b) shall be omitted.

7. In the principal Act, in section 4, in sub-section (2),—

Amendment
of section
4.

(i) after the words "every establishment in private sector", the words "employing twenty-five or more persons" shall be inserted;

5 (ii) after the words "category of establishments in private sector", the words "employing twenty-five or more persons" shall be inserted.

8. In the principal Act, in section 5, after sub-section (3), the following sub-section shall be inserted, namely:—

Amendment
of section 5.

10 "(4) The employer shall furnish the information relating to the result of selection against the vacancies notified under section 4 to the employment guidance and promotion centre within thirty days from the date of selection in such form as may be prescribed."

9. In the principal Act, after section 5, the following section shall be inserted, namely:—

Insertion of
new section
5A.

15 "5A. Notwithstanding anything contained in this Act, the appropriate Government may, by notification in the Official Gazette, having regard to the requirement of collection of statistics relating to employment status, require that from such date as may be specified in the notification, the employer in every establishment in private sector employing less than twenty-five persons or every establishment pertaining to any class or category of establishments in private sector employing less than twenty-five persons shall furnish such information or return as may be prescribed in relation to vacancies that have occurred or are about to occur in that establishment to such employment guidance and promotion centre as may be prescribed, and the employer shall thereupon comply with such requisition."

Obligation of
certain
establish-
ments in
private sector
to furnish
returns.

20 10. In the principal Act, in section 6,—

Amendment of
section 6.

(i) for the words and figure "any employer required to furnish any information or returns under section 5", the words, figures and letter "any employer required to notify vacancies to employment guidance and promotion centres under section 4 or furnish any information or return under section 5 or section 5A" shall be substituted;

30 (ii) for the words "under that section", the words, figures and letter "under section 5 or section 5A" shall be substituted.

11. In the principal Act, for section 7, the following section shall be substituted, namely:—

Substitution of
section 7.

35 "7. (1) If any employer fails to notify to the employment guidance and promotion centre prescribed for the purpose any vacancy in accordance with sub-section (1) or sub-section (2) of section 4, he shall be punishable for the first offence with fine which may extend to five thousand rupees and for every second offence with fine which may extend to ten thousand rupees and for every subsequent offence with fine which may extend to ten thousand rupees, or with simple imprisonment which may extend to one month, or with both.

Penalties.

40 (2) If any person,—

(a) required to furnish any information or return under section 5,—

(i) refuses or neglects to furnish such information or returns; or

45 (ii) furnishes or causes to be furnished any information or returns which he knows to be false; or

(b) impedes the right of access to any relevant record or document or the right of entry conferred by section 6; or

(c) refuses to answer, or gives a false answer to any question asked under section 6, necessary for obtaining any information required under section 5 or section 5A,

he shall be punishable for the first offence with fine which may extend to five thousand rupees and for every second offence with fine which may extend to ten thousand rupees and for every subsequent offence with fine which may extend to ten thousand rupees, or with simple imprisonment which may extend to one month, or with both." 5

Insertion of new sections 7A and 7B.

12. In the principal Act, after section 7, the following sections shall be inserted, namely:—

Penalty for contravention of section 5A.

'7A. If any employer of an establishment in private sector referred to in section 5A,— 10

(a) required to furnish any information or return under that section,—

(i) refuses or neglects to furnish such information or return; or

(ii) furnishes or causes to be furnished any information or return which he knows to be false; or 15

(b) impedes the right of access to any relevant record or document or the right of entry conferred by section 6,

he shall be punishable after consecutive two defaults with fine which may extend to five thousand rupees and for every subsequent default with fine which may extend to five thousand rupees for each such default. 20

Offences by companies.

7B. (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of having committed the offence and shall be liable to be proceeded against and punished accordingly: 25

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of having committed such offence and shall be liable to be proceeded against and punished accordingly. 30 35

Explanation.—For the purposes of this section,—

(a) "company" means a body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.' 40

Amendment of section 10.

13. In the principal Act, in section 10, in sub-section (2), after clause (b), the following clauses shall be inserted, namely:—

“(ba) the form in which the information relating to result of selection may be furnished by the employer under sub-section (4) of section 5;

(bb) the information or return in relation to vacancies that have occurred or are about to occur in the establishment in private sector and the employment guidance and promotion centre to which such information or return shall be furnished under section 5A;” 45

STATEMENT OF OBJECTS AND REASONS

The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 was enacted on the recommendations of the Training and Employment Services Organisation Committee set up by the Government of India in 1952 to provide for compulsory notification of vacancies to the Employment Exchanges and for rendering returns, both employment and occupational, relating to employment situation by the employers.

2. Over the years, based on experience gained and difficulties encountered in the implementation of the said Act, a number of suggestions were received from various State Governments and Union territory Administrations for amendment of the said Act. The proposed amendments were discussed in various meetings of the Working Group on National Employment Service. The said Working Group broadly endorsed the amendments. In addition, the Act was enacted more than five decades back and with the passage of time, some of its provisions have become redundant or obsolete which need omission. In order to bring the said Act in tune with the present day requirement, certain amendments to the Act are also felt necessary.

3. In view of the above, the Employment Exchanges (Compulsory Notification of Vacancies) Amendment Bill, 2013, *inter alia*, provides for—

(a) changing the short title of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 as “the Employment Guidance and Promotion Centres (Compulsory Notification of Vacancies) Act, 1959” and accordingly to amend the long title of the Act;

(b) substituting the words “Employment Exchanges” with the words “Employment Guidance and Promotion Centres”, throughout the said Act, to give the emphasis on the guidance and counselling aspect rather than mere registration for jobs;

(c) the amendment of clause (g) of section 2 relating to the definition of “establishment in private sector” by substituting the words “ten or more” for the words “twenty-five or more” to collect employment information from establishments employing ten or more persons;

(d) the insertion of a new clause (ga) in section 2 to define the expression “plantation” so as to bring the vacancies in the plantation sector within the purview of the Act and to apply the provisions of the Act to the plantations owned and managed by an individual on voluntary basis;

(e) the amendment of sub-section (1) of section 3 in order to notify vacancies relating to unskilled office work and also vacancies relating to plantation sector along with employment as agriculture or farm machinery operatives;

(f) providing exemption from the application of the Act to the vacancies of staff of the State Legislature at par with the staff of Parliament;

(g) the omission of the provision relating to vacancies in an employment, which carries a remuneration of less than sixty rupees in a month, as there is hardly any post, which carries that remuneration;

(h) providing for an obligation on the employer to furnish the information relating to the selection against the vacancies notified under the Act;

(i) the insertion of a new section 5A, to provide for furnishing of returns by establishments employing ten or more but less than twenty-five persons to work for remuneration and in case of any failure to furnish the returns, to provide the punishment

after consecutive two defaults with fine which may extend to five thousand rupees and for every subsequent default with fine which may extend to five thousand rupees for each such default;

(j) the substitution of section 7 so as to ensure better coverage and proper implementation of the said Act by making penalty provisions more stringent including an additional provision of imprisonment and raising the amount of fine for the first offence which may extend to five thousand rupees, for any second offence with fine which may extend to ten thousand rupees and for any subsequent offence with fine which may extend to ten thousand rupees, or with simple imprisonment which may extend to one month, or with both;

(k) the insertion of new sections 7A and 7B to provide penalties for non-remittance of returns by establishments employing ten or more but less than twenty-five persons and to bring the public and private limited companies offering employment opportunities under the purview of the Act and to make liable any officer or other person working in such companies for committing offence for non-compliance of the provisions of the said Act.

4. The Bill seeks to achieve the above objects.

NEW DELHI;
The 18th January, 2013.

MALLIKARJUN KHARGE

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 13 of the Bill seeks to amend section 10 of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959, relating to the power to make rules, by inserting clauses (ba) and (bb) in sub-section (2) of section 10. Clause (ba) proposed to be inserted empowers the Central Government to make rules for providing the form in which the information relating to result of selection may be furnished by the employer under sub-section (4) of section 5. Clause (bb) proposed to be inserted empowers the Central Government to make rules for furnishing the information or return in relation to vacancies that have occurred or are about to occur in the establishment in private sector and the employment guidance and promotion centre to which such information or return shall be furnished under section 5A.

2. The rules made by the Central Government are required to be laid before Parliament. The matters in respect of which rules may be made by the Central Government are matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE EMPLOYMENT EXCHANGES (COMPULSORY NOTIFICATION OF VACANCIES)
ACT, 1959

(31 OF 1959)

An Act to provide for the compulsory notification of vacancies to employment exchanges.

	*	*	*	*	*
Short title, extent and commencement.		1. (I) This Act may be called the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959.			
	*	*	*	*	*
Definitions.		2. In this Act, unless the context otherwise requires,—			
	*	*	*	*	*
		(b) “employee” means any person who is employed in an establishment to do any work for remuneration;			
		(c) “employer” means any person who employs one or more other persons to do any work in an establishment for remuneration and includes any person entrusted with the supervision and control of employees in such establishment;			
		(d) “employment exchange” means any office or place established and maintained by the Government for the collection and furnishing of information, either by the keeping of registers or otherwise, respecting—			
		(i) persons who seek to engage employees,			
		(ii) persons who seek employment, and			
		(iii) vacancies to which persons seeking employment may be appointed;			
	*	*	*	*	*
		(g) “establishment in private sector” means an establishment which is not an establishment in public sector and where ordinarily twenty-five or more persons are employed to work for remuneration;			
	*	*	*	*	*
		(i) “unskilled office work” means work done in an establishment by any of the following categories of employees, namely:—			
		(1) <i>daftri</i> ;			
		(2) <i>jamadar</i> , orderly and peon;			
		(3) dusting man or <i>farash</i> ;			
		(4) bundle or record lifter;			
		(5) process server;			
		(6) watchman;			
		(7) sweeper;			
		(8) any other employee doing any routine or unskilled work which the Central Government may, by notification in the Official Gazette, declare to be unskilled office work.			
Act not to apply in relation to certain vacancies.		3. (I) This Act shall not apply in relation to vacancies,—			
		(a) in any employment in agriculture (including horticulture) in any establishment in private sector other than employment as agricultural or farm machinery operatives;			
	*	*	*	*	*

(d) in any employment to do unskilled office work;

(e) in any employment connected with the staff of Parliament.

(2) Unless the Central Government otherwise directs by notification in the Official Gazette in this behalf, this Act shall not also apply in relation to—

* * * * *

(b) vacancies in an employment which carries a remuneration of less than sixty rupees in a month.

4. (1) * * * * * Notification of vacancies to employment exchanges.

(2) The appropriate Government may, by notification in the Official Gazette, require that from such date as may be specified in the notification, the employer in every establishment in private sector or every establishment pertaining to any class or category of establishments in private sector shall, before filling up any vacancy in any employment in that establishment, notify that vacancy to such employment exchanges as may be prescribed, and the employer shall thereupon comply with such requisition.

* * * * *

6. Such officer of Government as may be prescribed in this behalf, or any person authorised by him in writing, shall have access to any relevant record or document in the possession of any employer required to furnish any information or returns under section 5 and may enter at any reasonable time any premises where he believes such record or document to be and inspect or take copies of relevant records or documents or ask any question necessary for obtaining any information required under that section. Right of access to records or documents.

7. (1) If any employer fails to notify to the employment exchanges prescribed for the purpose any vacancy in contravention of sub-section (1) or sub-section (2) of section 4, he shall be punishable for the first offence with fine which may extend to five hundred rupees and for every subsequent offence with fine which may extend to one thousand rupees. Penalties.

(2) If any person—

(a) required to furnish any information or return—

(i) refuses or neglects to furnish such information or return, or

(ii) furnishes or causes to be furnished any information or return which he knows to be false, or

(iii) refuses to answer, or gives a false answer to, any question necessary for obtaining any information required to be furnished under section 5; or

(b) impedes the right of access to relevant records or documents or the right of entry conferred by section 6,

he shall be punishable for the first offence with fine which may extend to two hundred and fifty rupees and for every subsequent offence with fine which may extend to five hundred rupees.

* * * * *

10. (1) * * * * * Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

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further to amend the Employment Exchanges (Compulsory Notification of Vacancies)
Act, 1959.

(Shri Mallikarjun Kharge, Minister of Labour and Employment)