

# BUSINESS GROWTH AT PACE WITH HR DOCUMENTS IN PLACE



**Introduction :** Simple and unambiguous HR documents provide a big support to any organisation for bringing clarity in HR policies and maintaining harmony within the organisation. These documents have evidentiary value in Court of laws and ought to be executed with utmost care. While the implementation of new Labour Code is delayed, current labour legislations are playing crucial role in governing relations between employer and employee. HR documents drafted on the basis of the legal provision, such as offer letter, employment agreements, HR policies and manual etc. play a significant role. This article explores some of the important HR documents which may be considered by the Companies and its importance from a legal perspective.

**A. Offer Letter :** While selecting employee on the pay roll an organisation goes through various stages of recruitment such as screening, interviewing, background check, selection and onboarding.

Once the stage of screening, scrutinising, interview and selection is completed HR needs to work on the offer which the organisation intend to give to the selected candidate. An offer letter formalizes the employment relationship, sets expectations and will list down the benefits that the employee would be entitled to along with the salary structure. The offer letter should also contain the roles and responsibilities which are expected from the new employee i.e. job description needs to be drafted properly and approved by the Management. In order to cover any risk that may arise after background verification, necessary disclaimers need to be added at this stage, so that in future if any representations or documents provided by selected candidates appear to be false, then such employee can be terminated on immediate basis.

The offer letter needs to be countersigned by the employee. By counter signing the offer letter, the employee accepts the job offer and its terms. In case there is any misunderstanding in terms of offer made by employer, or if any dispute arises with respect to the agreed employment terms, this document duly accepted by the employee is valuable.

**B. Employment Agreement :** This is one of the very crucial HR documents, which captures all the terms and conditions of the employment. It serves as a foundational document that contributes to a positive and transparent working relationship between employers and employees.

{1}The article reflects the general work of the authors and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice.

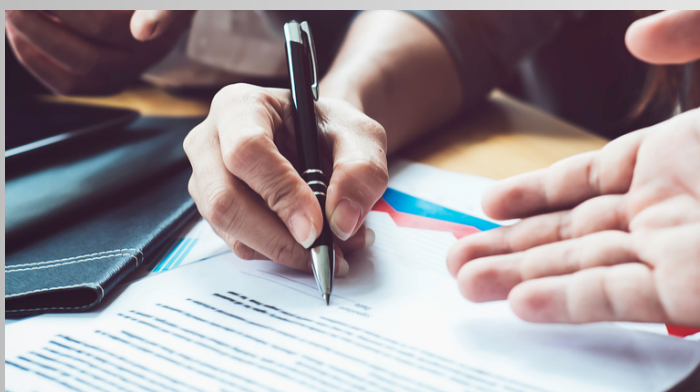
In some of the states under the provisions of the Shops and establishments Act, it is mandatory for the employers to issue appointment letter to employees. For example: Section 34 of the Delhi Shops and Establishment Act, 1954 specifically provides that employers are required to furnish letters of appointment to employees which should contain the following particulars along with other details as deemed fit: (a) the name of employer (b) the name, if any, and the postal address of the establishment. (c) the name, father's name and the age of the employee. (d) the hours of work. (e) date of appointment.

Under the provisions of new Labour Code same is proposed to be made mandatory in all states. Some of the important provisions which employment agreement must cover are:

- Job description
- Location of employee and transfer within India or outside India
- Leaves
- Probation (if applicable)
- Background verification
- Confidentiality obligation
- Non-compete and non-solicitation (This may be added depending upon the nature of the business of the organisation and only subject to strict restrictions in a narrow sense, for limited cases).
- Assignment of Intellectual Property Rights
- Notice period
- Termination
- Compliance to policies, procedures and applicable laws
- Dispute Resolution.

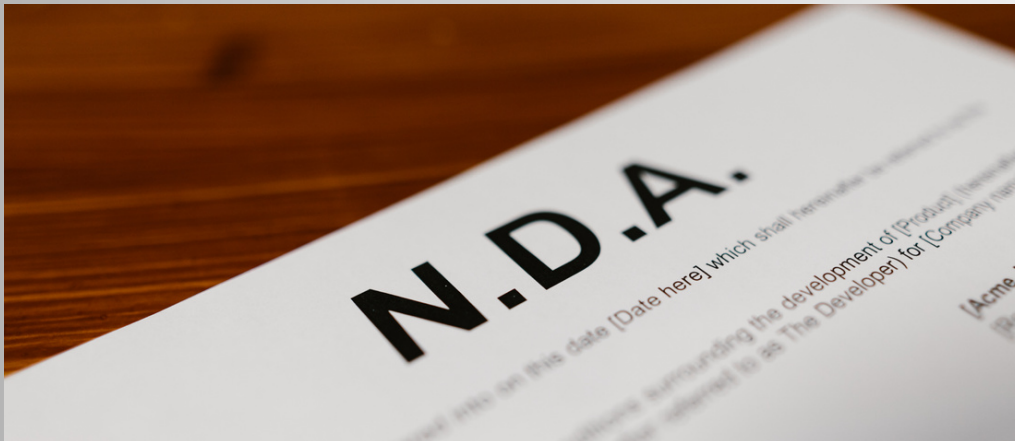
In case there is any breach of the terms of employment agreement or appointment letter, the Company has legal remedies available.

If the employees are deputed at client site or carrying out certain important tasks for the employer's customers directly, then specific clauses to protect client information, adherence to client policies (during the deputation period) etc. need to be incorporated.





Recently, Wipro sued its CFO Jatin Dalal over violation of a non-compete clause in November 2023 and claimed Rs. 25 Crores as damages. The City Civil Court has referred the matter to arbitration as the employment agreement contained an arbitration clause.[2]. Enforcing non-compete clauses is always tricky in India and plethora of judgments lay down valuable guidance on the same, which will have to be considered in each case specifically.



**C.Non Disclosure Agreement:** Non-Disclosure Agreement plays a pivotal role in protecting the employer's defined confidential information. NDA ensures that confidential information shared between parties remains protected. This is crucial when discussing proprietary business strategies, trade secrets, or any other confidential information that could be harmful if disclosed. This agreement is essential in mitigating business risk arising out of disclosure of confidential information of not only the employer but also their clients, customer or vendors as the case may be. In case of breach of confidentiality obligation by a party, the injured party can seek legal remedies, including monetary damages or injunctive relief.

Having NDA in place increases possibility of more and more business collaboration, partnerships or joint ventures by assuring parties that their confidential information is very well protected.

In Resilient Innovations Private Limited versus Ashneer Grover[3], the respondent was sued for breach of confidentiality obligations as the respondent had made certain social media posts which were in violation of the non-disclosure obligations executed amongst the Parties. The respondent tendered an apology for the posts and confirmed that he would adhere to all the obligations.

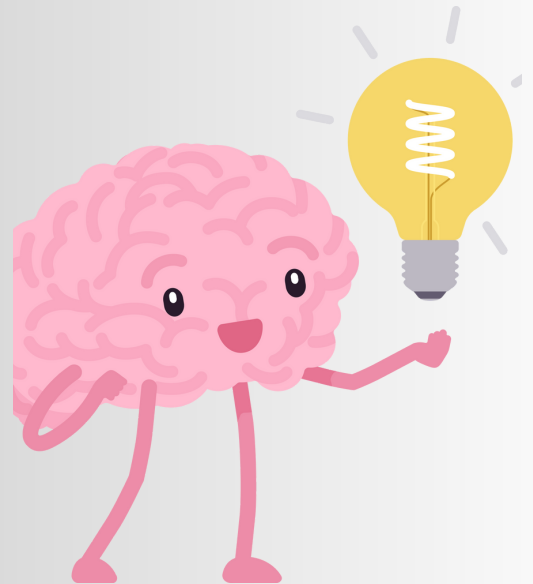
[2] In The Court Of : CCH44 XLIII ADDL. CITY CIVIL AND SESSIONS JUDGE CNR Number : KABC010316202023 Case Number : O.S./0007705/2023 Date : 03-01-2024

[3] IN THE HIGH COURT OF DELHI AT NEW DELHI + O.M.P.(I) (COMM.) 388/2023 Order Date: 24.11.2023

**D. Intellectual Property Assignment Agreement:** The Intellectual Property Assignment Agreement clearly defines the ownership of intellectual property created during the course of employment or collaboration and will provide that all works created during the course of employment shall be considered as work for hire i.e. all rights in such works shall belong to the employer.

While Section 17(c) of the Copyright Act clearly states that, in the absence of an agreement between the parties, the employer is the original owner of the copyright in cases where an author creates a work while employed under a service or apprenticeship contract, it is important that a specific assignment is obtained. Sometimes, companies work with foreign nationals who may be subject to different laws.

This is essential for avoiding disputes over the rights to inventions, designs, software, or other creations and crucial for companies to protect their investment in research and development. This document essentially establishes the legal enforceability of the employer's rights over intellectual property. In case of infringement or unauthorized use, the IP Assignment Agreement provides a basis for legal action to protect the employer's interests. Many times, the employer is also required to assign IP rights in the works created to the end customer. In such cases, this document assumes added significance.



In the matter Mr. Diljeet Titus, Advocate vs Mr. Alfred A. Adebare And Ors.[4], the defendants were advocates, working at the plaintiff's law firm. On termination of employment, the defendants took away important confidential business data, such as client lists and proprietary drafts, belonging to the plaintiff. The defendants claimed that they are the owners of the copyright work as it was done by them during their term with the plaintiff law firm and their relation between Law firm was not that of an employer and employee.

The Delhi High Court rejected this contention and ruled that the plaintiff had a clear right in the material taken away by the defendant. Accordingly, the Delhi High Court restrained the defendant from using the information taken away, either through themselves or their representative and from disseminating or otherwise exploiting the same including the data for their own benefit. Although the defendants are free to carry on their profession, utilize the skills and information they have mentally retained, and they are being restrained only from using the copied material of the plaintiff in which the plaintiff alone has a right. The defendants having worked with the plaintiff cannot utilize the agreements, due diligence reports, list of clients and all such material which has come to their knowledge or has been developed during their relationship with the plaintiff and which is per se confidential.

### **E. HR Manual:**

This document is also known by different nomenclature, such as Employee Handbook, Employee Manual, HR Handbook etc. HR Manual is a set of policies, rules and regulations, procedures governing the entire organisation. HR Manual is a systematically written document, which provides clarity to the employees with respect to their rights and duties towards the organisation and creates more positive culture.

[4] Mr. Diljeet Titus, Advocate vs Mr. Alfred A. Adebare And Ors. on 8 May 2006 130(2006) DLT330

Ultimately every policy is drafted considering the common aim i.e. bringing consistency and uniformity in the culture of organisation and nobody is treated unequally on any ground whatsoever. The HR Manual can be in any form, either in hard copy or in soft copy and available online, so that it is readily available for employee to refer at any time. Once this document is ready, it is very essential that the document is understood by each and every employee and acknowledged by them.

Below are few policies which every organisation may adopt for the well-being of the organisation and their employees:

- a.Code of Conduct
- b.Equal Opportunity Policy
- c.Recruitment Policy
- d.Leave Policy
- e.Health and Safety Policy
- f.No Drug and Alcohol Policy
- g.Reimbursement Policy
- h.Social Media Policy
- i.Equipment Usage Policy
- j.Salary, Increment & other related benefit Policy
- k.Whistle Blower Policy
- l.Data Protection Policy
- m.Maternity Benefit Policy
- n.Prevention of Sexual Harassment at Workplace Policy
- o.Exit Policy
- p.Retirement Policy
- q.Grievance Redressal Policy



The list of policies and documents provided above is not comprehensive and may vary from organisation to organisation depending upon the business and culture of the respective organisation. Some of them are important from administrative angle and some of them from legal point of view.



Organisations may also draft their own Code of Conduct which gives shape to the culture in the organisation, promote ethical behaviour, ensures legal compliance, and fosters a positive and respectful workplace environment. It will benefit not only new employee recruited but also new vendors registered/onboarded with organisation, helping them to understand the organization's values and behavioural expectations.

For any violation of Code of Conduct and policies, it is very important that consequences and mode of conducting disciplinary action for such violation are listed in the Code of Conduct. There should be consistency in disciplinary actions for violation of the policies.



Recently, in **Hitachi Astemo Private Limited versus Nirajkumar Prabhakar Rao Kadu**[5], termination of an employee on the ground of posting offensive facebook posts was considered and upheld by the Bombay High Court. In this judgement the Hon'ble Court, highlighted the seriousness of the situation caused by the provocative Facebook posts. The Court has taken a view that the posts were defamatory and intended to incite hatred and violence against the company's Management. Emphasizing the lack of evidence supporting the claim of a hacked account, the Court concluded that the employee indeed made the controversial posts.

[5] Hitachi Astemo Private Limited versus Nirajkumar Prabhakar Rao Kadu WRIT PETITION NO. 13192 OF 2023



**Conclusion:** The regulatory framework in India places a significant emphasis on ensuring fair and ethical employment practices, protecting the rights of both employers and employees. The HR documents play a vital role in ensuring legal compliance, protecting the rights of both employers and employees, and providing a framework for effective HR Management in accordance with Indian laws. Properly drafted and maintained HR documents contribute to a transparent and legally sound employment relationship.

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