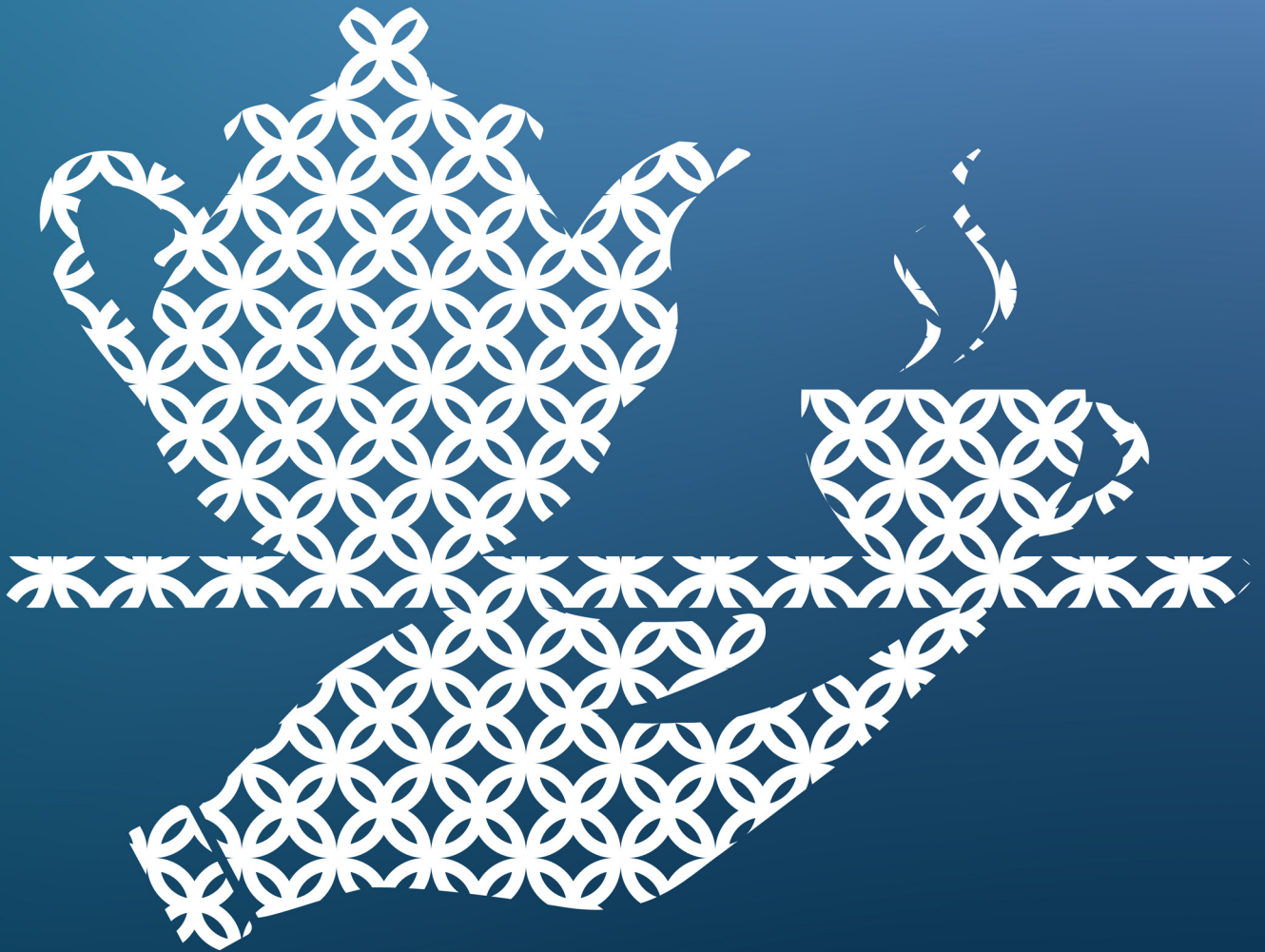




ECONOMIC
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LABOUR & EMPLOYMENT: THE HOSPITALITY SECTOR

LABOUR & EMPLOYMENT & THE HOSPITALITY SECTOR

Query	Response
 <p>What is the role of the Owner and the Operator whilst managing employees?</p>	<p>With a wide variety of hospitality management agreements existing in the industry, a typical hospitality management arrangement is one where exists an Owner who owns the hotel and an Operator who operates the hotel owned by the Owner. Operator's role ranges from recruiting and training the employees to structuring the human resource policy in respect of hours of work, remuneration, days of leave, etc. The Operator has the authority of supervision and control over the employees in relation to the performance of their duties in relation to the hotel. Except, certain employees, the Owner has a little or no say in the recruitment, retention and human resource policy adopted by the Operator. Due to the wide range of duties undertaken by the Operator, one would believe that the Operator is the owner of the employees, however in reality, the employees are engaged by the Owner. All the statutory compliances need to be undertaken by the Owner apart from those of the executive personnel who are on the rolls of the Operator. In certain scenarios, the Owner may issue employment arrangement on the letterhead of the operator to avoid taking the direct responsibility/liability of the employees. This may create an impression of the Operator being the employer of the employees. This practice should be avoided as it can be misleading and may attract legal consequences.</p>
 <p>Whether the principle of Master Servant Relationship is applicable to Hospitality Management Arrangement?</p>	<p>It is important to analyze the Master Servant relationship vis-a-vis the relationship between Owner and employees and relationship between Operator and employees to understand the liability of the employer for the acts committed by his/her employees. There are certain criteria followed by the Court to determine this relationship –</p> <ul style="list-style-type: none"> ▪ The master can tell the servant what to do. ▪ A servant is a person who not only receives instructions from his master but is subject to his master's right to control the manner in which he carries out those instructions. ▪ Generally, a servant, qua servant, has no authority to make contracts on behalf of his master. ▪ A servant is paid by wages or salary. <p>The Master Servant relationship is determined by the amount of control exercised by the employer over the manner in which services are provided by the employee. Here, the Operator has the power to hire, fire, supervise and control the employees. The Owner owns the employees only on paper. While applying the Master Servant relationship to the relationship of Owner and employees, vis-à-vis the relationship between the Operator and employee, it is pertinent to note that this master-servant concept certainly applies to the relationship between Operator and employee.</p>
 <p>Who does the onus fall on for non-payment of wages to the employees? Owner or Operator? How does the labour court react in such circumstances?</p>	<ul style="list-style-type: none"> ▪ In a typical hospitality arrangement, the Owner is usually considered the employer for the employees working at the hotel and the power to hire, fire, train, supervise and control the employees rests solely with the Operators. Owners have little say in respect of the costs related to hotel employees' wages, benefits

Query	Response
	<p>and compensation programs whilst finalizing the budgets proposed by the Operators. However, the 'payment of statutory benefits' is the responsibility of the Owner. Wages are paid by the Operators as they have exclusive control over the operating accounts of the hotels. Operator holds the responsibility to ensure all the prevailing labour laws and the best industry practices are followed in the hotel. In such situations, it is easy to pose a question against the Operators being an employer. Hence, the contract entered between the Owner and the Operator shall clearly mention the duties, responsibilities, and liabilities of the both the parties to avoid any future conflict.</p> <ul style="list-style-type: none"> ■ There is a possibility that when an issue of retrenchment or non-payment of wages arises, the employees file a suit jointly against the Owners and the Operators and the labour court, after analyzing the relationship between the Owners and Operators vis-a-vis employees may take a stand of jointly holding both the parties responsible for 'unfair labour practice' or any other breach of law. ■ In scenarios where the Operator's share is received from the gross revenue of the hotel, before making payment to the employees, the Labour Court may pass an order in favour of the employees ordering payment of all the statutory payments from the Operator's share.
 What can the Owners and Operators do to mitigate their liabilities in such scenarios?	<p>Owners and Operators can revise their arrangements to arrive at a mutual decision determining the apportionment of funds and extent of control being shared between the Owner and Operator. Courts in India have usually held the following factors relevant while determining whether an employer-employee relationship exists: (i) responsibility for payment of the salary; (ii) exercise of control and supervision over the work of the employees; (iii) responsibility for selection and appointment of the employees, and (iv) exercise of disciplinary authority over the employees. Both Owners and Operators can mutually discuss the extent of control with respect to the employees to define/limit their liabilities and can also alternatively also discuss varied situations with their insurers to understand the risks arising on account of non-payment of wages, or termination of employees. Both parties can also explore the option of keeping the insurance coverage for a longer period, and insuring employee salaries as well as statutory allowances.</p>
 Can the principle of vicarious liability can be applied on the Owners and the Operators for an act committed by the employee?	<ul style="list-style-type: none"> ■ The principle of vicarious liability makes the employer liable for the act committed by the employee within the scope of his employment. To establish the vicarious liability of the employer (i) There must be a relationship of a certain kind between the wrongdoer and the defendant (ii) The wrongful act must be related to the relationship in a certain way and (iii) The wrong shall be done within the course of employment. To establish the vicarious liability, the master servant relationship has to be established between the wrongdoer and the person who is sought to be liable - which can be determined by examining the extent of control the master exercises over the servant's manner of executing the instructions. The servant also has no authority to make contract on behalf of his master. Second, the wrongful act has to be done during the course of servant's employment which is a settled law. In case of <i>Sitaram Motilal Kalal Vs Santanuprasad Jaishankar</i>

Query	Response
	<ul style="list-style-type: none"> ▪ <i>Bhatt</i> the Supreme Court of India while referring to the law laid down in <i>Storey v. Ashton I.L.R</i> stated, "The true rule is that the master is only responsible so long as the servant can be said to be doing the act, in the doing of which he is guilty of negligence, in the course of his employment as servant." ▪ With respect to hospitality arrangements, the Indian Courts may hold the Owner or the Operator liable depending upon the extent of control being shared by both the Owner and Operator. In such scenarios, the Owner may seek appropriate indemnities against the Operator for any liabilities arising out of the relationship between the employees and the Operator. However, in ideal situations, the Owner remains the employer of the employees apart from the key managerial persons whose employer shall be the operator.
 <p>How can new labour codes affect the Hospitality Industry?</p>	<ul style="list-style-type: none"> ▪ According to the new wage definition, in effect, at least 50 % of the gross remuneration of employees should form the basis to calculate benefits such as gratuity, retrenchment compensation and provident fund, etc. in situations where the sum of basic salary and other fixed allowances (such as dearness allowance) is less than 50 % of the gross remuneration. While it will simplify the nomenclature, it will have significant cost repercussions. ▪ As the base to calculate provident fund and gratuity increases, employers will have to shell out more as part of their workforce cost. Also, there will be a one-time cost increase for employers to audit their current base of employee pay structure and align it with the new system. It may also result in rising compliance cost burden and penalties, if any. Employers will certainly see an impact in the increased gratuity cost. As of now, it is applied to all employees, management and otherwise. Also, it is calculated on 15 days of basic pay and dearness allowance. Now, with the new calculation, gratuity will have to include the other allowances of wages such as travel, special allowance, etc. Hence, in the long run employees might gain higher retirement benefits, but low-paid employees who may want more cash in hand may have to suffice with a lower take home salary. This may be problematic for the employees as majority of them belong to a lower pay grade.
 <p>What are the benefits for the Fixed Term Employees, Gig Workers, Platform Workers in the Hospitality Industry under the New Labour Code?</p>	<ul style="list-style-type: none"> ▪ A fixed term contract is one under which an employee is engaged for a specified period of time. This can mean that the employment will terminate on a specified date or on the occurrence of a specified event (such as the completion of a particular project). Fixed term contracts are popular in the hospitality industry due to industry requirements. However, the major concern with Fixed Term Employees is that they are not entitled to similar statutory benefits, conditions of work and termination policy as that of permanent employees. The new Labour Code brings in a major overhaul in relation to the same. The Code on Social Security and the Industrial Relations Code defines the term 'Fixed Term Employment' and makes it clear a fixed term employee's working hours, wages, allowances, and other benefits shall not be less than that of a permanent employee doing the same work or work of a similar nature. They also clearly stipulate that fixed term employees shall be eligible for all benefits available to a permanent employee under any law for the time being in force. Another big change brought in by the code is that the Fixed Term Employees will be eligible for gratuity on pro rata basis.

Query	Response
	<ul style="list-style-type: none"> ▪ Apart from the above, gig workers and platform workers are also brought under the purview of the new labour code and will be eligible for various social security schemes on par with the permanent employees.
<p>We hope you have found the information helpful. For further details please reach out to the author:</p> <div> <div data-bbox="207 636 606 763"> <p>PV Murthy Consultant – Labour & Employment Economic Laws Practice pvmurthy@elp-in.com</p> </div> <div data-bbox="740 636 1118 763"> <p>Retika Yadav Associate – Labour & Employment Economic Laws Practice retikayadav@elp-in.com</p> </div> </div>	



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