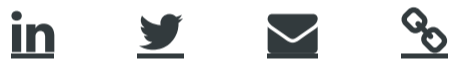


Moonlighting surge forces India's tech firms to re-examine exclusivity terms

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Shani Alexander, Senior Reporter

In the absence of a national law, India's technology giants are re-examining their employment terms and conditions amid an increase in employee moonlighting.

While working multiple jobs in the informal gig sector is commonplace, the trend has, until recently, been rare among professionals in India's formal economy.

Post-pandemic, however, financial fears and need to learn new skills in a competitive market are driving workers towards moonlighting despite many employment contracts containing exclusivity clauses.

Remote working is largely considered a key factor in more people taking on multiple jobs. Some 65% of tech sector workers admit to moonlighting from home or know a colleague who does, according to [research](#) from Kotak Institutional Equities.

Citing concerns about workers' commitment, risk of confidentiality breaches, lost productivity, performance issues, and competition, employers have started cracking down on the practice.

IBM warned employees against gig work or a second job last week, saying moonlighting is a "conflict of interest" and could put critical client data and commercial assets at risk.

Big Blue's warning followed Wipro firing 300 workers found to be moonlighting for competitors. The technology and consulting firm's chairman, Rishad Premji, described moonlighting as "cheating", "an unethical practice", a "complete violation of integrity in its deepest form".

By contrast, Infosys said it would allow gig work provided there was no conflict of interest. The Indian tech giant has fired staff found to have breached internal compliance rules.

To deter moonlighting, some companies have started combing through workers' tax filings, using camera and productivity tracking software, and investigating employees' work.

Legislation lacking

The growth in moonlighting has led to public debate on whether the practice is legal. Unhelpfully, current federal legislation on the number of jobs a person can legally hold in India remains a grey area.

At the state level, some laws prevent working for two or more establishments in excess of a standard working day of eight to nine hours. Such a provision does not, however, prohibit multiple part-time jobs, provided the total working hours are within the statutory limit.

A lack of overarching legislation nationwide has meant employers must turn to the courts to stop workers pursuing other jobs. In [Lupin Ltd v Shri. Satyendra Yadav and Anr](#), the Bombay High Court held the worker had illegally engaged in dual employment without the permission of their employer.

But with litigation a lengthy and time-consuming process in India, and outcomes far from certain, the nation's long-awaited new labour codes may be the answer many employers are looking for.

The draft Standing Orders rules for the service sector states: "A worker shall not at any time work against the interest of the industrial establishment in which he is employed and shall not take any employment in addition to his job ... but the employer may permit him to take up an additional job assignment with or without conditions."

A more balanced approach?

While companies may prevent employees seeking any kind of outside employment, the debate on moonlighting is forcing many employers to re-examine their policies on exclusivity.

"Most companies are examining if their business requires strict restrictions prohibiting all outside activity, or whether some outside activity is permitted with appropriate checks and balances," says Trilegal partner [Atul Gupta](#).

"The best disincentives to moonlighting are better pay and job satisfaction, but implementation of clearly worded employment terms and policies on the topic can also be deterrents to employees who may place personal interest over that of an organisation."

Instead of a complete ban, Nishith Desai Associates' [Vikram Shroff](#) suggests employers take a more balanced approach to moonlighting. "It may not be possible for the employer to fully control what an employee does outside of the regular working hours. At the same time, employers must ensure that such outside activities do not create a conflicting situation.

"It is only a matter of time before employers come up with new and innovative ideas to provide opportunities to engage employees beyond their regular work duties and, accordingly, provide the benefits of moonlighting through the company rather than employees going outside and posing a conflict."



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