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## India's IT firms — in the dock

Employees of Indian software companies in the US on H1B visas have or are threatening to file suit against them. **Turna Ray** looks at what's going on



**TECH BLUES:** Employees in a reputed IT firm have reportedly been asked not to put extra hours on the timesheet

Michigan, agreed to pay \$ 2.65 million in back wages and fines last year to settle a US Department of Labor complaint that it underpaid over 200 of its H1B workers. The company, which does work in India and the US, will be barred from participating in the H1B visa programme for 18 months.

Another class action may be brewing in a California court against Infosys for allegedly failing to pay overtime to its H1B employees. Although the lawsuit has yet to be filed, the law firm United Employees Law Group PC has said it is investigating the case. An Infosys spokesperson said that no formal case had been filed against Infosys in any California court for failing to pay overtime wages to its employees working on H1B visas. "We have not received any notification from any US court. The company learnt about the case only

Non-immigrant employees of Indian software companies, claiming they are being overworked, underpaid and denied benefits, are airing their grievances the American way — in court. A nationwide class action lawsuit filed by employees in the US on H1B visas against Tata America International Corporation (TAIC), and parent companies Tata Consultancy Services (TCS) and Tata Sons, in a US district court in San Francisco alleges TAIC required its foreign (H1B visa) employees to hand over their federal and state tax refunds.

The lawsuit, filed in February, alleges that TAIC received as much as \$ 5,000 a year per employee as a result of the policy. The lead plaintiff, Gopi Vedachalam, an L1 visa-holder (a visa for higher level employees such as executives and managers), further asserts that TAIC required him to return \$ 25,000 in earned wages and never paid him for unused vacation days; he is seeking punitive damages.

That's not all. Computech Corporation, a minority-owned information technology (IT) services firm based in

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through the media. We are looking into the case at an internal level," said the spokesperson. California Labor Code 515.5 states that employees (US citizen or H1B holders) in the computer software industry who receive below \$ 47.81 an hour or \$ 99,445 a year and who work more than eight hours a day or 40 hours a week are entitled to overtime. But the Fair Labor Standards Act exempts computer systems analysts, computer programmers, software engineers, and other workers in the computer field who are paid at least \$ 455 a week or no less than \$ 27.63 an hour from receiving a minimum wage and overtime pay.

The recent spate of such lawsuits gives further credence to the anti-immigration view that the H1B and L1 visa programmes are just a means for companies to import cheap labour. A recent report published by the Think Tank Center for Immigration Studies said that salaries for H1B employees average \$ 13,000 less than that for Americans in the same occupation and state. Under the US law, employers must pay H1B workers either the wage rate of other employees with comparable qualifications or the "prevailing wage" based on occupation and location, whichever is higher. The US Department of Labor largely depends on foreign workers' complaints to identify employers who violate such laws.

In challenging the Tata companies in the US courts, however, their Indian employees appear to be taking a more proactive approach toward asserting their rights. Lead attorney Steven Tindall noted that the lawsuit against the Tata companies was the first of its kind. "This case constitutes one of the first class action lawsuits against a company engaged in 'reverse outsourcing' — bringing non-US citizens to the country to work in US corporations — for violation of labour laws," he said. Tindall estimates that approximately 5,000 non-US citizen employees of the Tata companies are affected by the class action. TCS currently employs about 9,500 associates in North America, a majority of whom are deputed on H1B or L1 visas.

TCS maintains that the company has a very thorough orientation and induction programme for employees relocating to the US from India. "The training does include benefits and pay and we do inform them about paying taxes," the firm stated.

A public relations agency that represents TCS said in a statement: "The company has so far not been served with any papers in the alleged suit. The company therefore has had no opportunity to examine the veracity of the allegation made. The company is surprised at the allegation since it has been legally advised that it is fully compliant with all the applicable federal and state laws in all the jurisdictions where it operates. All the company's employees in the United States are paid their remuneration in accordance with the terms of their employment contracts, which are fully compliant with the applicable employment laws. The company will appropriately and adequately respond to any legal proceeding in this regard as and when it is formally served."

In the class action suit, the plaintiffs claim the company required they sign power-of-attorney agreements, delegating an outside agency to submit their tax returns.

Meanwhile, the website, *abuse.org*, posted comments from workers venting grievances about bad bosses and long hours from December 2004 to October 2005. A few of the experiences, now reposted on *www.developerdotstar.com*, recount exploitation of H1B workers. One programmer, who describes himself as a Caucasian employed at "a very large international company", noted the firm always worked through agencies to hire H1B contractors. "Most H1B employees were from India, and the irony is that most of the

agencies were run by Indians," he said. "The Big Company worked these people like crazy (working weekends, etc), and there was huge pressure on the employees not to put the extra hours on the timesheet."

These Indian-run agencies would mark up the employees' rates and then pocket the additional pay instead of giving it to the employee, he said. Most of the employees didn't complain fearing that the agency would "send them back to India". Efforts are now on in the US Congress to amend the current immigration visa programme. One such Bill, H.R.3381, gives L-1 intra-company transferees some recourse to finding alternative work in the US in case of employer abuse.

The CEO of Keshav Consulting Solutions (an IT consulting firm specialising in ERP, WebTechnologies, etc, based in North Carolina), Pradeep Palreddy, says he can't afford to underpay his employees. Without the brand power of big Indian companies, KCS must offer more money and benefits to attract the cream, Palreddy says.

Ultimately, the lawsuits mar the reputation of Indian-owned businesses in the US corporate environment. "In the US, the kind of an employer you are is important," Palreddy says. "Such lawsuits place Indian corporations in a bad light."



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