



A Call to Arms: **COMPLYING WITH LABOUR LAWS IN INDIA**

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A Knowledge Paper by BCP Associates

A Call to Arms: Complying with Labour Laws in India

When a company is in the business of manufacturing chemicals, there are several anxieties forever lurking around the corner. Given the toxic and highly inflammable nature of the material used, a fire or a leak can have serious ramifications. Most executives who manage such companies could be forgiven for focusing on the potential hazards with little time for what appears to be the minor matter of whether or not the plant has a separate Welfare Office with an attached ambulance.

Unfortunately, they don't have such an option since the latter is a mandatory requirement under the labour laws of the land and non-implementation can have penal consequences. Discovering this lacunae after an incident isn't very helpful either. The key is for such potential landmines to be thrown up by proactive audits, conducted with the intent of uncovering them well before they risk an explosion.

The data used and reflected in this paper is based on critical examination of close to 9,000 Labour Law Audits conducted by BCPA over the last 5 years. For the purposes of this paper, the data set is limited to the States of Karnataka, Maharashtra & Tamil Nadu.

Non-compliance is No Trifle

That's because often, it is the little things that can come back and trip up a large business. The price of non-compliance with the law related to the issue of something as minor as an appointment letter can be inordinately high. It could lead to stiff penalties and possible prosecution of the company's top executives. In many instances, companies end up inadvertently flouting the rules related to payment of overtime to unskilled service providers in areas like security, housekeeping and transportation. Data from companies suggests routine non-compliance across the board related to weekly offs. What comes as a surprise is how, in practice, many of these violations defy sector typecasting. Thus, data collated over thousands of labour audits carried out by BCP Associates shows that IT vendors are just as likely to have overtime violations as manpower vendors. Indeed, contrary to popular perception, vendors providing skilled services tend to be as non-compliant as those providing unskilled services when it comes to leave.

Trivial as these issues seem, consequences stemming from infractions related to them can often be serious with the reputational damage as incalculable as is the individual costs that companies might have to pay.

Last December Apple's Taiwanese contractor Wistron Corp, which produces its phones at a plant in Narasapura Industrial Area of Kolar district, 51 kilometres from Bengaluru, faced serious unrest with thousands of workers ransacking the office complaining that they were not getting their salaries. A subsequent state government report on the incident identified serious breaches of the labour laws and stated that the factory's HR department had not been adequately staffed with personnel of sound knowledge of labour laws, resulting in various violations of supplier guidelines. Just months before the incident, the plant had introduced a 12-hour shift replacing the earlier eight-hour shift leading to glitches in the attendance system. The incident had serious ramifications with the unit having to be shut for several weeks following the rampage. The company was forced to issue a letter of apology for the payment delays. It also decided to remove the vice-president who had been in-charge of the India business.

What's most unfortunate is how easily the entire issue could have been prevented by having in place a strategic advisor on labour law compliance, with real-time oversight over all the various processes and the practices of the company. As it turned out, the problem had been simmering for some time and should have been identified early and addressed appropriately. This stems from a mindset which looks at setting up a water tight compliance system as a cost rather than a timely cure.

Given the heavy price that ends up being paid, it should be evident that it

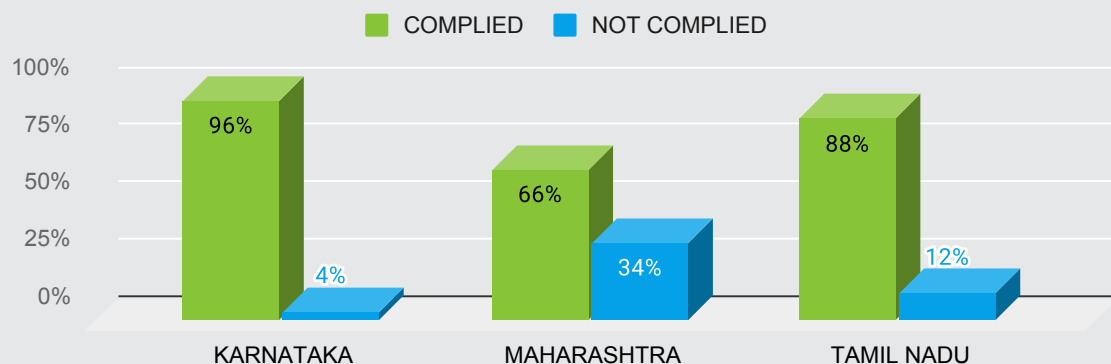
isn't enough to set scheduled yearly or even quarterly audits since what happens between them can be equally incendiary. Too many companies have realized too late the consequences of treating such exercises as a timed rather than an ongoing activity. It is a bit like preventing accidents by filling up potholes as you discover them versus laying a proper foundation and ensuring that the road doesn't develop any potholes.

The Problem of Monitoring Contract Workers

In the case of Wistron, as indeed in many other cases in India, the problem was related to contract workers, often the weakest link in a company's chain of work, and one that does tend to fall under the radar of routine checks. Past conflagrations at the Maruti plant in Manesar in 2012 and the Noida factory of Italian MNC Graziano Trasmissioni in September

Audit Findings

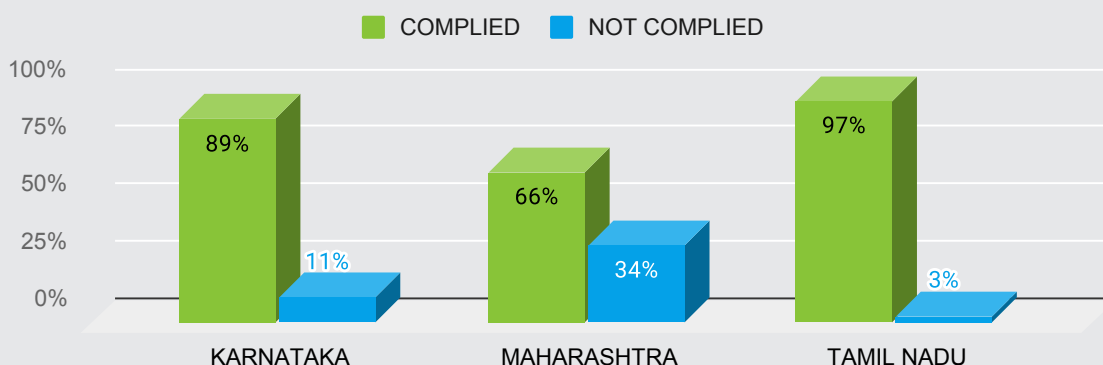
SECURITY SERVICE PROVIDERS - VALID LICENCES AND REGISTRATIONS



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2008 were traced back to persistent issues and non-compliances by contract workers which had escaped notice until they erupted. A company can be put to high risk by its vendors flouting the norms. Lawsuits and prosecutions against them could end up disrupting a company's supply chain.

Nor can the fallout of an adverse event be contained to a city or even a country. With most companies having extensive global footprints, a concern flagged in one country has ramifications elsewhere too since shareholders and employees are likely to raise the issue in calls and meetings. Besides the impact on the brand, it can have a direct bearing on a company's stock price.

*Audit Findings***CANTEEN AND CATERING SERVICE PROVIDERS – PROVIDING OF ADEQUATE LEAVE**

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Often the mere act of non-compliance can erase the rights and wrongs of the issue with public anger tending to overlook the merits of the case. Traditionally too, Indian courts have tended to treat violations of labour laws as equivalent to an infringement of human rights. Society, in general, also makes that connection and perhaps with good reason. BCPA audit data reveals that delayed payment of wages in the unskilled sector was as high as 8 percent over the past five years and it affected close to 2,00,000 workers.

While that may be an extreme example, there are other forms of such negligence. At one large IT firm, the managing director faced prosecution when it was discovered that the company had neglected to provide an escort to women working in night shifts beyond 8 pm who were using company provided transportation. In a sector where women make up 34 percent of the workforce and where the war for talent is a constant, such a slur can seriously impact a company's ability to hire.

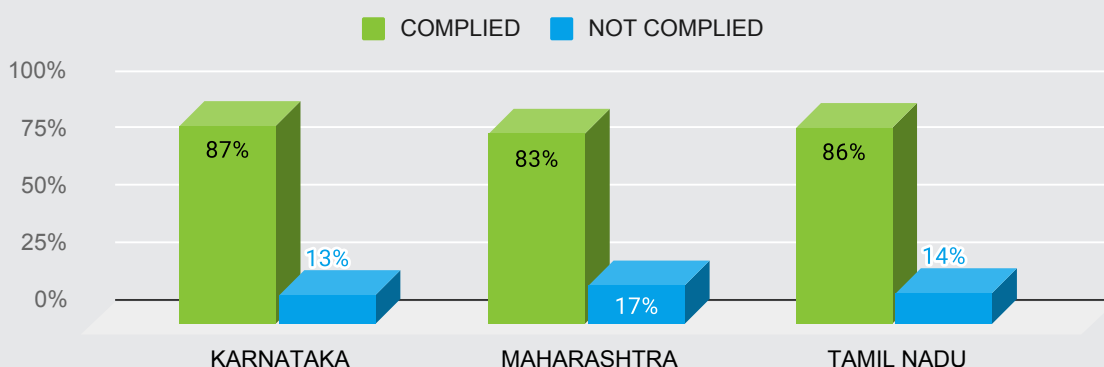
100% Compliance Can be a Force Multiplier

On the flip side, a high audit score can improve a company's Environmental, Social, and Governance (ESG) score and lead to an enhanced image. Thus, Infosys, Wipro and Tata Steel which have been recognised among the World's Most Ethical Companies in 2021 by the Ethisphere Institute, a global leader in defining and advancing the standards of ethical business practices, get an ethics premium which gives them an edge in business terms. According to the Ethisphere's Ethics Index, the listed 2021 World's Most Ethical Companies, outperformed a comparable index of large cap companies by 7.1 percentage points from January 2016 to January 2021.

Viewed from that lens, compliance isn't merely a defensive play meant to prevent the company and its top executives from suffering legal consequences. True compliance also helps strengthen a company's bond with its employees by assuring them of social security and a congenial atmosphere in the workplace. In manufacturing units with large labour forces, it can foster higher levels of industrial peace and harmony, so vital for increasing productivity levels. Once employees have confidence in a company's Fair Labour practices it is likely that they will be more receptive to suggestions for improvement. Take, for instance, the provision that every employee shall be entitled to annual leave with wages at the rate of one day for every 20 days of work performed. Contravention of this rule is punishable with a fine upto to Rs. 20,000 for the first offence and for subsequent offences imprisonment up to one year. The other way to look at it is that by insisting on people taking their annual leave as per the norms, a company can encourage employees to take time off from work and come back rejuvenated. In doing so, it becomes a vital part of human resource development by conveying the message that a company cares for its people's mental well being.

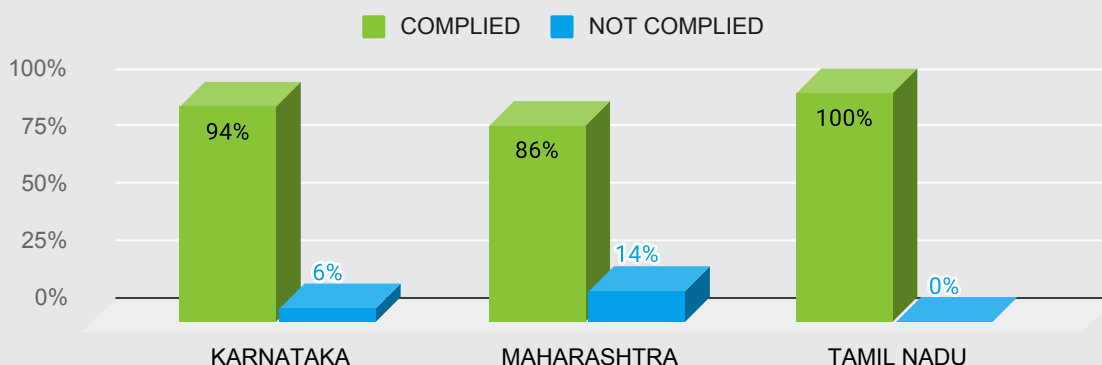
Audit Findings

CONSTRUCTION VENDORS – TIMELY PAYMENT OF WAGES



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One big problem in assessing a company's compliance readiness is that it takes an untoward incident to reveal the true picture. That's because self-assessment is often sketchy. A large US multinational in the engineering and automation business, which set itself a goal of being 100 percent compliant with all labour law provisions, was shocked when it found, following a detailed audit, that its overall compliance level was 95.8 percent and an even lower 82 percent for its vendors. While 95 percent looks impressive, it isn't enough. The 4.2 percent gap could be hiding a serious breach. Thus, when a contract worker working in the factory also puts in extra hours at the shop he makes a bit of extra money for himself.

*Audit Findings***HOUSEKEEPING SERVICE PROVIDERS – PROVIDING OF WEEKLY DAY OFF**

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But, unknowingly it is the company that runs the risk of being in breach of the provisions related to working hours or weekly offs.

Similarly allowing a contractor to deploy canteen workers whose names haven't been included in the Register of workmen can become a compliance issue. Such seemingly minor infractions, which can quite easily escape the notice of senior management, have the potential to snowball into major issues.

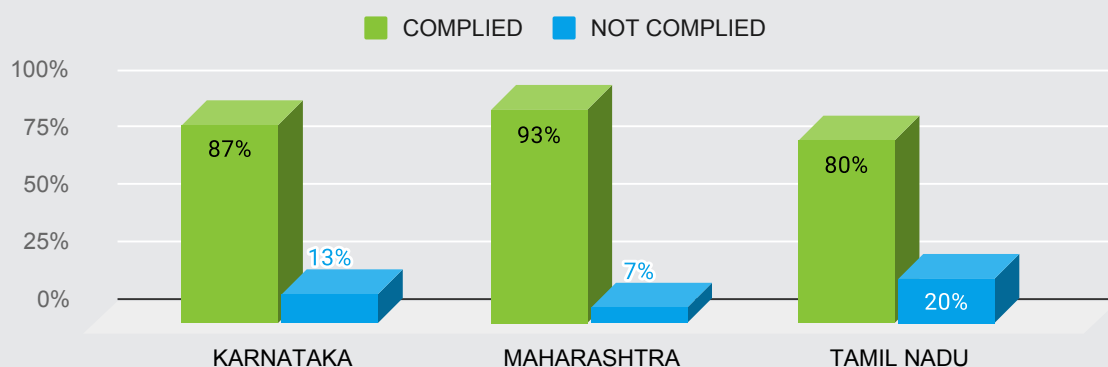
It is important to note that the four new codes are a consolidation of most of the earlier acts. However, the fact that some of the earlier laws have been rolled into others, doesn't mean that they have been diluted. In line with the emerging era of reforms, India has in fact become more rigid on issues related to compliance. There was a time when minor infractions were not considered important enough to deserve management time and oversight. Till the 1990s, the inspectorate raj obviated the need for a compliance system. Minor problems were dealt with on the spot and outside the purview of the law. It was the onset of multinationals like Honeywell and Goldman Sachs and compliance-conscious Indian companies like Wipro and Infosys with global presence, that heralded an era of proactive compliance with the law. These companies, right from the get-go were clear that they had to have a proper system comprising pre-emptive checks and regular audits to ensure they were 100 percent compliant with the complicated maze of labour laws.

Indeed, these companies have shown the way to the rest of corporate India. The only way to ensure 100 percent compliance is to carry out a comprehensive audit of all the processes and activities on a real-time basis and then draw up a regular schedule for filings and returns. This helps validate processes and identify vital gaps. The important thing

is for the process to be dynamic and sensitive to changes. It has been seen that every time there is a change in law or an amendment to it, there is a considerable time gap before the necessary framework can be appropriately changed to account for it. In this lag lurks real danger

Audit Findings

IT SERVICE PROVIDERS – COMPLIANCE WITH OVERTIME REQUIREMENTS



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particularly if the company's management is at that point preoccupied with a major corporate development. Conversely, at most companies inspections are stepped up at certain times of the year coinciding with the financial year end, or the beginning of the year when budgets are available, or at a time of performance reviews. Unfortunately, there is just no time off from the onerous task of ensuring compliance.

The best companies, in fact, consider this an issue important enough for the board to get involved with it. At one large global metals company, the board regularly delves into external audit reports and speaks directly to the auditors to get objective and actual views on lacunae in complying with the law.

DIY Doesn't Work in Compliance

While there are a number of tools available off-the shelf, the complex nature of the compliance structure in India with various states and courts often tending to take different views of the same issue, makes specialist intervention imperative. The devil lies in the detail and often these can only be detected by sophisticated tools combined with human inputs to ensure that the compliance is not just on paper.

Nor is this easy to do by deploying a few people in-house for cursory

checks. Given the complexity, span and sweep of businesses today along with their elaborate supply chains, it isn't humanly possible to keep a strict oversight. Which is where, specially developed artificial intelligence tools that are used by top consultants come into play. These enable a 100 percent sweep of the business, much like a control tower managing the smooth take off and landing of all flights from a runway.

Eventually though, it is people with experience and expertise in labour law who have to devise the audit programs and make important calls on interpreting different situations in the same company. It is this discretionary input and judgement that is often the key differentiator for fully compliant companies versus those that just make do.

The journey of compliance involves the process of adhering to statutory rules while following the prescribed procedure and then reporting of the compliance under the relevant labour laws. The seeming simplicity belies the sheer complexity of the task with landmines at every stage. If that sounds like an exaggeration, consider the fate of Vijay Mallya. Among his many sins, the one that evoked maximum condemnation was his failure to deposit the provident fund of Kingfisher employees. It is when the employees started agitating on such issues, that legislators and regulators sat up and took notice and action against Kingfisher.



Indicative findings from BCP Associates' Labor Law-related audits over last 5 years



With close to 10% violations being seen in relation to validity and accuracy of Licenses and Registrations, it is evident that adequate importance has not been accorded to this crucial aspect of compliance. Companies that have been lax on this issue run a significant risk.



Close to 23,000 employees have been provided insufficient leave in the last 5 years. The provision of earned leave is mandated across the country. The minimum rate of earned leave is 1 day for every 20 days worked while sick and casual leave is typically provided only for Shops and Establishments.



Overtime violations have been found to be a major issue in the IT sector over the last 5 years with close to 14% non-compliance observed in relation to overtime across the industry.



Delayed payment of wages in the unskilled sector was recorded at close to 15% over 5 years for close to 2,00,000 workers in the construction space.



Approximately 36,000 employees were not provided with a weekly-off in the last 5 years across 3 States. The law mandates a full day of rest for every 6 continuous days worked.



A comparison of the data shows that companies with skilled employees, as in the IT or ITES sector, are just as likely to be non-compliant with key legal requirements as those which have an unskilled workforce, for instance construction or security service providers. However the nature of the non-compliance typically varies.

Audit Findings

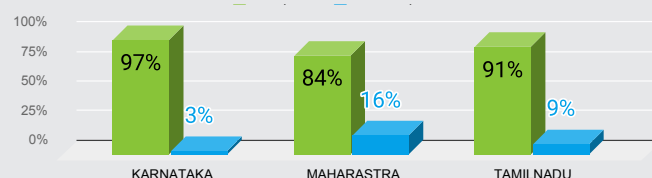
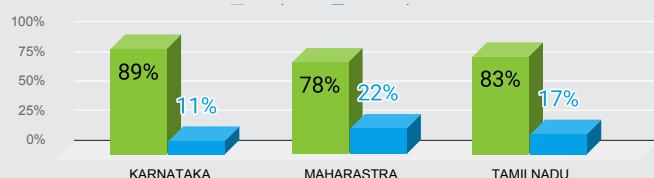
Comparison of compliance levels between Skilled and Unskilled service providers

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■ Complied ■ Not Complied

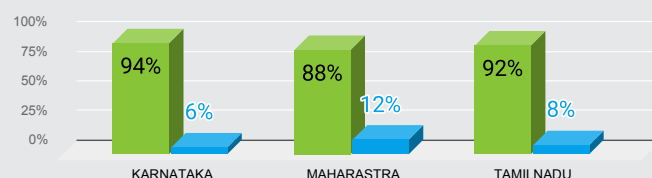
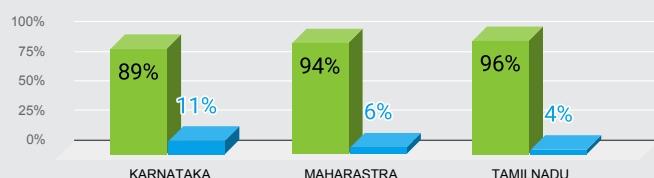
VALID LICENCES AND REGISTRATIONS

SKILLED Service Providers

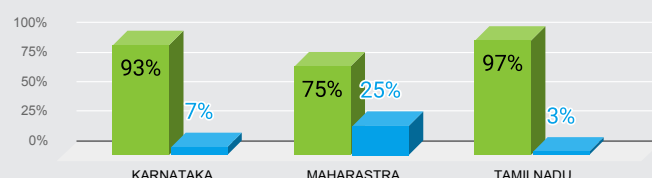
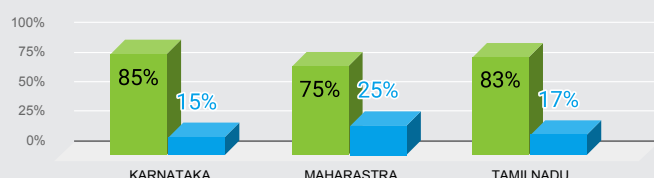


UNSKILLED Service Providers

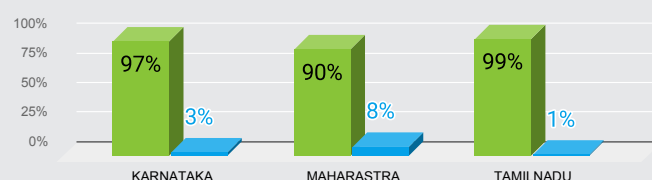
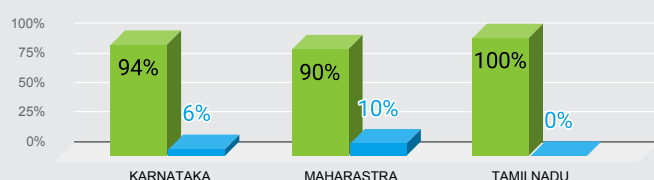
TIMELY PAYMENT OF WAGES



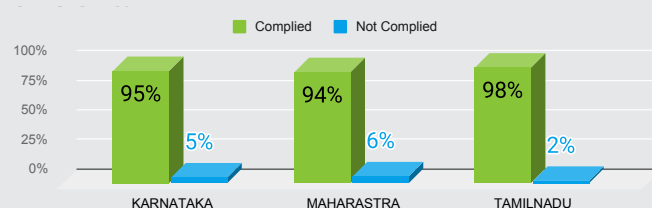
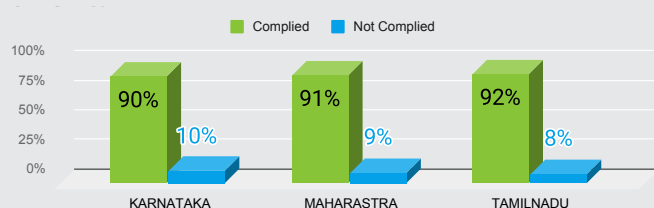
PROVIDING OF ADEQUATE LEAVES



PROVIDING OF WEEKLY DAY OFF



COMPLIANCE WITH OVER-TIME REQUIREMENTS





Our Services

Labour Code Services

Wage restructuring & realignment of HR Policies and Processes to comply with the new Labour Codes: from hiring to separation – including expert legal & HR support during implementation.

Advisory

Advisory is Designed to provide practical advice & solutions that enable a company to strictly adhere to legal requirements while overcoming hurdles of daily operations or handling strategic matters.

Legal Audit

End-to-end evidence-based Employment Law Audits that help organisations understand and mitigate risk exposure. Deep-rooted legal expertise coupled with best-in-class technology.

POSH

Your Strategic Partner for POSH- Assisting you in creating a respectful work environment with zero-tolerance to sexual harassment.

People Services

Designing the best-in-class HR practices in tune with contemporary legal aspects that create an Impactful Organization.

Technology

Intelligent digital solutions & tools which enable Legal & HR teams with Audit Analytics, Document Management & E-Learning.

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