

HR Law Hotline

February 11, 2014

INDIA'S TECHNOLOGY SECTOR IN BANGALORE EXEMPTED FROM LABOUR LAW ON STANDING ORDERS

- The Industrial Employment (Standing Orders) Act, 1946 lays down the rules and regulations governing terms and conditions of employment.
- IT and ITeS companies in the State of Karnataka (Bangalore) were required to comply with this law from April 01, 2013, due to expiry of the previous exemption.
- As a result, several IT and ITeS companies submitted draft standing orders to the labour department for certification.
- Industry associations worked closely with the State Government to develop model standing orders for the IT and ITeS industry.
- As per notification dated January 25, 2014 issued by the Karnataka State Government, IT and ITeS companies (along with certain other knowledge based sectors) have been exempted from compliance under this law for a period of 5 years.

Information Technology ("IT") and IT enabled Services ("ITeS") establishments in the State of Karnataka (Bangalore) have been exempted from compliance under the Industrial Employment (Standing Orders) Act, 1946 ("Standing Orders Act"). This exemption has been granted for a period of 5 years as per the notification issued by the State Government of Karnataka on January 25, 2014 ("Notification") and is subject to certain conditions. The exemption shall be effective from the date of its publication in the Gazette.

BACKGROUND

The Standing Orders Act requires employers to define and publish uniform conditions of employment in the form of 'standing orders'. As per the statute, an employer is required to draft standing orders (in accordance with the format prescribed in the statute), have it approved by the employee representatives and eventually apply to the labour department for certification. The standing orders essentially contain terms of employment, including *inter alia*, hours of work, wage rates, shift working, attendance and late coming, leaves and holidays, termination of employment and suspension/dismissal of workmen for misconduct, etc. Once certified, the standing orders override any conflicting provisions contained in the employment contract, unless such provisions are more favourable to the employee.

The State Government of Karnataka, in the year 1999, exempted the IT and ITeS sectors from the applicability of the Standing Orders Act for a period of 2 years. The exemption continued to be extended thereafter, every 2 years, until August 2011. In September 2012, the Government exempted IT and ITeS establishments from the provisions of the Standing Orders Act until March 31, 2013, subject to the condition that such establishments submit their draft standing orders, for certification, to the Labour Commissioner by December 31, 2012.

Please refer to our previous hotline on the subject at: <https://nishithdesai.com/SectionCategory/33/HR-Law-Hotline/12/65/HRLawHotline/5877/3.html>

THE EXEMPTION

The Notification exempts IT and ITeS companies and other knowledge based industries (such as startups, animation, gaming, computer graphics, telecom, BPO and KPO) in the State of Karnataka from the provisions of the Standing Orders Act for a period of 5 years.

The exemption is subject to the following conditions:

1. The employer is required to constitute an Internal Complaints Committee ("ICC") in accordance with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("Sexual Harassment Act"). Please refer to our hotline on this requirement at: <https://nishithdesai.com/SectionCategory/33/HR-Law-Hotline/12/65/HRLawHotline/4880/2.html>
2. The employer is also required to set up a Grievance Redressal Committee ("GRC") consisting of equal number of persons representing both the employer and the employees, to address complaints of employees in a time bound manner.
3. The jurisdictional Deputy Labour Commissioner and the Commissioner of Labour, Karnataka are to be intimated about cases of disciplinary action, suspension, discharge, termination, demotion, dismissal, etc., of employees.
4. Any information regarding service conditions of employees sought by the jurisdictional Deputy Labour Commissioner or Commissioner of Labour, Karnataka, is to be promptly submitted.

ANALYSIS

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The exemption has been granted in line with the Karnataka Government's i4 Policy: IT, ITeS, Innovation Incentives Policy. In view of the large number of IT and ITeS companies that have operations in Bangalore, the exemption from the requirement to comply with the Standing Orders Act is definitely a prudent and progressive step which would help avoid the unnecessary and complicated procedures and compliance hassles involved in having the standing orders certified. The processes involved in ensuring compliance with the Standing Orders Act also could have resulted in red-tapism and reviving the 'license raj' culture. In granting this exemption, it is interesting to note that the State Government has not limited its view only to the IT and ITeS sector, but has gone on to cover several other knowledge-based sectors, in order to promote the State as a preferred destination.

While the grant of the exemption is a positive development, the conditions based on which the exemption is available appear confusing and unnecessary. For example,

- Since the Sexual Harassment Act already requires the employer to set up an ICC, there does not appear to be a need to make a reference in this Notification. Further, the reference is limited to setting up the ICC and is silent in relation to the other compliances under that law.
- The Industrial Disputes Act, 1947 ("**ID Act**") already contains a new provision in relation to setting up of a GRC. Unlike the previous point, the Notification does not mention whether the GRC is to be formed as per the ID Act provisions and could thus lead to some confusion.
- The need and purpose to include a requirement to intimate the labour department on cases of disciplinary action, suspension, discharge, termination, demotion, dismissal, etc. appears unclear. Information on the number of employees discharged, dismissed, terminated, retrenched, retired, suspended in the year and the amount of compensation paid to them is already required to be provided by employers as a part of the annual returns filed under the local state-specific labour law, called the Karnataka Shops and Commercial Establishments Act, 1961. The Notification does not spell out the form and manner of intimation to be provided to the authorities.

The Notification fails to provide clarity for those companies who have certified standing orders or have applied for certification. The Notification is also silent in relation to the penalties that may be levied if the conditions are not fulfilled by the employer on an ongoing basis and whether the Standing Orders Act would be made applicable in such instances.

— **Preeetha S, Veena Gopalakrishnan & Vikram Shroff**
You can direct your queries or comments to the authors

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Vaibhav Parikh, Partner, Nishith Desai Associate on Tech, M&A, and Ease of Doing Business

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