

HR Law Hotline

June 04, 2019

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

- The Karnataka State Government has renewed the Standing Orders Act exemption for IT and ITeS companies (along with certain other knowledge based sectors) for five years.
- The technology sector in Bangalore was exempted from this law since 1999. The previous exemption had expired on January 25, 2019.
- As a result of the new notification, IT and ITeS companies in the State of Karnataka (Bangalore) will not be required to comply with the Standing Orders Act until May 2024, provided that certain conditions are complied with by the employer.

The HR Law team at Nishith Desai Associates supported NASSCOM from a legal perspective in its efforts in securing the Standing Orders Act exemption from the State Government of Karnataka.

Bangalore, India's technology capital once again stands exempted from the Industrial Employment (Standing Orders) Act, 1946 ("**Standing Orders Act**") - a labour law which requires employers to define and publish uniform conditions of employment in the form of 'standing orders'.

The exemption has been granted for five years as per the notification issued by the State Government of Karnataka on May 25, 2019 ("**Notification**"). The Notification reinforces the Karnataka State Government's objective to support and promote the growth of technology and related sectors in the State, which is likely to lead to continuing investments in the State.

BACKGROUND

The Standing Orders Act is a pre-independence enactment, a 1946 law, which was originally drafted and intended to apply to industrial establishments such as factories, mines, plantations etc. in order to define the conditions of employment applicable to workmen in these sectors with sufficient precision and to make the said conditions known to them.

The Standing Orders Act requires employers to draft and publish Standing Orders in accordance with the format prescribed in the statute, have it approved by employee representatives and get it certified by the labour department. The Standing Orders contain terms and conditions of employment including 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. Until such time that a covered establishment gets its Standing Orders certified, the Model Standing Orders prescribed under the Standing Orders Act containing several of the above-mentioned provisions would automatically become applicable to such establishment.

The State Government of Karnataka had in 1999 originally exempted the Information Technology ("**IT**") and Information Technology Enable Services ("**ITeS**") sectors from the applicability of the Standing Orders Act. The exemption was thereafter renewed several times with the most recent exemption having expired on January 25, 2019.

THE EXEMPTION

The Notification exempts industries and establishments operating in the following sectors in the State of Karnataka from the provisions of the Standing Orders Act for 5 years:

- IT
- ITeS
- Startups
- Animation
- Gaming
- Computer Graphics
- Telecom
- Business Process Outsourcing (BPO)
- Knowledge Process Outsourcing (KPO)
- Other knowledge based industries.

CONDITIONS FOR EXEMPTION

The exemption is subject to each employer complying with 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**")¹.
2. The employer is required to set up a Grievance Redressal Committee ("**GRC**") consisting of equal number of persons representing both the employer and employees, to address employee complaints in a time bound manner.

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3. The jurisdictional Deputy Labour Commissioner and the Commissioner of Labour, Karnataka are to be intimated about cases of disciplinary action like suspension, discharge, termination, demotion, dismissal, etc. of employees by each employer.
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 by each employer.

Although the Notification does not expressly specify any penalties, failure to comply with the afore-mentioned conditions may result in withdrawal or cancellation of the exemption and trigger the application of the Standing Orders Act to the defaulting establishment.

ANALYSIS

The 1990s witnessed the beginning of a new technological era in India with Bangalore being the front runner. The era only got bigger and better in the following years with healthy competition among various state governments to attract more investments. As per a recent report published by the Indian Brand Equity Foundation², Karnataka has been recognized as the IT hub of India and home to the 4th largest technology cluster in the world.

Given the industry friendly approach and conducive policy and regulatory framework adopted by the State Government, Karnataka continues to remain in the forefront of India's IT & ITeS sectors. The cumulative FDI inflows in Karnataka have been significant enough to account for a major part of India's cumulative foreign direct investment inflows. Karnataka also serves as India's largest software exporter, with special focus on electronics and computer software exports. Needless to mention, the State also houses around one-third of the total IT professionals in India.

In view of the large number of IT and ITeS companies that have operations in Bangalore, the continued exemption from the requirement to comply with the Standing Orders Act is a prudent and progressive step taken by the State Government which will help achieve its twin objectives of enhancing the ease of doing business in India and generation of employment in Karnataka. The exemption will also allow exempted establishments the necessary flexibility to determine and adopt policies, processes, frameworks and facilities that are market benchmarked and are of international standards, such as flexi work hours, work from home, paternity leaves etc.

While the first two conditions for exemption under the Notification are already covered under the Sexual Harassment Act and the Industrial Disputes Act, 1947 ("IDA") respectively, the third and fourth conditions are not covered by any specific labour law, except in cases of retrenchment of workmen and could pose some legal and practical challenges in terms of implementation. The Government's intention behind specifying the four conditions in the Notification is to protect the interests of technology sector employees and reinstate the fact that the exemption from the Standing Orders Act would not absolve employers from compliances under other important labour laws.

– Srinivas Raman, Preetha S & Vikram Shroff

You can direct your queries or comments to the authors

¹ Our research paper on the Sexual Harassment Act is available at http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Prevention_of_Sexual_Harassment_at_Workplace.pdf

² <https://www.ibef.org/download/Karnataka-July-20182.pdf>

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

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