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I. Regulatory Updates

Telangana renews exemptions given to IT/ITeS establishments under Telangana S&E Act

As per a recent notification¹, the Telangana Government has renewed the exemption given to IT/ ITeS establishments under the Telangana Shops and Establishment Act, 1988 vide Notification No. G.O.Ms .No. 5. This exemption is from sections 15, 16, 21, 23 and 31 of the said legislation for a further period of 4 years w.e.f. 30 May 2024. These sections pertain to opening and closing hours of work, daily and weekly hours of work, special provision for young persons, special provisions for women and other holidays.

The conditions in the current notification are similar to those in the earlier one and include provision of overtime pay beyond 48 hours of work per week, and weekly off. They also need to ensure adequate security for young and for women employees engaged in night shift, besides to and fro transport from their residences such as:

- Adequate security during the course of employment and to and fro transport from residences in case of night shifts.
- Checks on Drivers by obtaining biodata, conducting pre-employment screening, and collecting details such as driving license, photographs, address, telephone No/Mobile No. etc.
- Duty of supervisory officer to decide the schedule and route of the pickup and drop on every Monday or the next working day.
- Route selection to ensure that women are not picked up first and dropped last.
- Provision of security guards for night shift vehicles, surprise checks of vehicles, setting up of a control room/ travel desk for monitoring vehicle movements.
- Confidentiality where personal details of the women employees are not disclosed to unauthorised persons.
- The Notification further states that the conditions stipulated above must not be detrimental to the employees working in the said establishments. Further if the above conditions are violated, the exemption orders issued to the company shall be revoked by the government at any time without prior notice.

¹ June 7, 2024



IT/ITeS establishments in Karnataka will continue to be exempted from the provisions of Karnataka Standing Orders Act

Similarly, the Government of Karnataka has also issued a notification², by which the exemption given to IT/ ITeS establishments under the Industrial Employment (Standing Orders) Act, 1946 ('Standing Orders Act') vide Notification No. LD 328 LET 2023 has been renewed. In this case, the renewal is for a further period of 5 years w.e.f. 10 June, 2024. As per the latest Notification, there are no changes to the conditions prescribed since 2014, by which companies in this industry were allowed to be exempted under the Standing Orders Act.

These conditions are:

- a) Constitution of Internal Committee under the sexual harassment law of India.
- b) Informing authorities when there are disciplinary issues which lead to discharge or dismissal, etc.
- c) Constitution of Grievance Redressal Committee.
- d) Submission of information on service conditions to authorities.

While the notification exempts IT/ITes from the Standing Orders Act, it mentions that once the labour codes come into effect, the provisions of the Industrial Relations Code, 2020 will be applicable to IT/ITes companies in Karnataka.

Impact of the notifications:

The notifications do not bring in additional conditions for IT/ITes establishments to be exempted both in Karnataka and Telangana, with the exception of maintenance of integrated registers and filing of integrated returns in Telangana.

A point for companies in Karnataka to bear in mind, would be the lapse of all the exemptions provided under the Standing Orders Act, once the labour codes are made effective. This would mean that the exemptions given, are of a temporary nature, until the future labour laws of India come into effect.

The exemptions are a welcome move by the authorities for companies in the IT/ITes space since some level of flexibility is needed for this industry to function, considering their nature of work.

² June 10, 2024



Rates of damages reduced under the Employees' Provident Funds and Miscellaneous Provisions Act

The Ministry of Labour and Employment ('MLE') has issued a notification³ on the penal damages payable by employers defaulting in the payment of provident fund, pension, and insurance contributions with the objective of rationalising and simplifying the calculation of damages due.

As per the existing provisions under Para 32A, penalty is leviable in a graded manner, ranging from 5% to 25% p.a. prescribed under the Paragraph 32A(1), Paragraph 5(1) and Paragraph 8A of The Employees' Provident Funds Scheme, 1952, The Employees' Pension Scheme, 1995 and The Employees' Deposit Linked Insurance Scheme, 1976 respectively.

Based on the present notification, the rate of damages payable will be uniform @1% per month of default or part thereof irrespective of the duration of default.

It may be noted that there has been no change to the limit set for overall quantum of damages payable by the employer. i.e. overall damages payable by the defaulting employer shall not exceed the total amount of arrears. The amendment as mentioned above will be effective prospectively i.e. from the date of its notification in the Official Gazette i.e. 15 June 2024.

Impact of the notification:

The changes in the damages rates as mentioned above is a welcome move by MLE. This would ensure that employers are subject to damages in line with the period of default. It would also help in rationalising and simplifying the way in which the damages are being computed currently. The 1% rate per month for default would apply prospectively i.e. on or after 14 June, 2024. This means that the old provisions will apply for any default made prior to 14 June. To assess the rate for damages applicable, one would need to check the default period.

• Timelines for mandatory seeding of Aadhaar for filing of ECR extended

The EPFO had granted an extension⁴ for mandatory seeding of Aadhaar for filing of ECR up to 30 June 2024 in respect of:

- certain class of Establishments i.e. Beedi making, Building and Construction and Plantation Industries (Tea, Coffee, Cardamom, Pepper, Jute, Rubber, Cinchona, Cashew nuts etc.); and
- for North-eastern Region comprising of States of Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland & Tripura.

The EPFO had clarified that this relaxation was being given as a last time measure and no further request would be entertained further. This was a move towards EPFO's overall target to achieve 100% Aadhaar-UAN seeding by the stipulated date, i.e. 30 June 2024.

³ June 14, 2024

⁴ June 5, 2024



Karnataka Government releases draft bill on social security and welfare measures for Platform-based Gig-workers

The Karnataka state budget presented on February 16, 2024, had a mention that a new bill would be introduced for platform-based gig workers. By way of a Public Notice⁵, the Government of Karnataka has now published the draft bill called The Karnataka Platform based Gig Workers (Social Security and Welfare) Bill, 2024 ('Bill').

The Bill aims to protect the rights of platform-based Gig workers, to place obligations on aggregators in relation to social security, occupational health and safety. It introduces transparency in automated monitoring and decision-making systems. It also provides dispute resolution mechanisms.

Once effective, the ambit of this Bill would cover aggregators providing any one or more services specified in the Schedule-I as listed below :

1. Ride sharing services
2. Food and grocery delivery services
3. Logistics services
4. e-Market place (both marketplace and inventory model) for wholesale/ retail sale of goods and/or services Business to Business / Business to Consumer (B2B/B2C)
5. Professional services provider
6. Healthcare
7. Travel and hospitality
8. Content and media services

With respect to beneficiaries, the covered persons would be platform-based gig worker, as defined in the Bill. A Gig worker has been defined as a person who performs work or participates in a work arrangement that results in a given rate of payment, based on terms and conditions laid down in such contract and includes all piece-rate work, and whose work is sourced through a platform, in the services listed above.

Key aspects of the Draft Bill:

1. Establishment of gig workers welfare board
2. Registration of gig/platform workers and aggregators
3. Deposit of welfare fee by aggregator
4. Constitution of a welfare fund
5. Redressal of grievances
6. Obligations on the aggregators
7. Penalties within the range of INR 5000-INR 1,00,000

The Bill has been published inviting objections/ suggestions from persons likely to be affected within a ten working day timeline. The objections or suggestions which may be received by the State Government from any person with respect to the said draft before the expiry of the period would be considered by the State Government.

⁵ June 29, 2024



Impact of the notification:

This Bill is aimed at protecting and providing social security to platform-based gig workers in Karnataka. The Bill has covered more aspects than the one passed by the Government of Rajasthan and seems more detailed in nature. It brings in aspects of transparency in the process of collection of funds as well as on the settlement of disputes.

Some concerns with the Bill include the definition of aggregator which widens the ambit of the making it applicable to aggregators operating across states through intermediaries. Further, the definition of gig work seems to be an attempt to overrule what is provided under the Code on Social Security, 2020, passed by the Parliament of India. There is a specific removal of the term 'outside of the employer-employee relationship' in the definition. There is also a lack of clarity on the term 'reasonable working conditions' and what added obligations, if any, would the aggregators be liable for. Additionally, the Bill states that a platform based gig worker may refuse or reject, with 'reasonable cause', a specified number of gig work requests per week, without any adverse consequences. There is lack of clarity on constitutes 'reasonable cause' as well.

With respect to the continuation of the Bill once the Labour Codes come into effect, Section 32 of the Bill states that the provisions of the Bill shall be in addition to, and not in derogation of, any other law for the time being in force. If that is the case, then we could see a situation where we have both Central and State legislations on a particular subject leading to questions on which one would prevail.

This would be an area that would need further clarification from the authorities once the Act is passed by the Karnataka State Assembly.

As per media reports, the Bill would be placed for discussion during the monsoon session of the Karnataka Assembly. Hence, this would be a space to watch.



All shops and Commercial Establishments to be open on all 365 days and operate 24 hours in Chandigarh

By a notification⁶, the Administrator, Union Territory, Chandigarh has exempted all shops and commercial establishments registered in the Union Territory, Chandigarh from the operation of provisions of Section 9, Section 10 (1) and section 30 of the Punjab Shops and Commercial Establishments Act, 1958, ('PSE Act') subject to the following conditions:

- The shops and commercial establishments registered in the Union Territory, Chandigarh are permitted to keep open on all 365 days and operate 24 hours. They shall be responsible for compliance of provisions of PSE Act.
- Every employee working in the said shops and establishments shall be given a weekly rest day without making any deduction from his/her wages. Further, a list of the timetable of such holidays for a month will be placed on the notice board in advance.
- Compliance with working hours (daily & weekly), spreadover, rest period, provision of holidays, overtime pay.
- If any shop or establishment remains open after 10.00 pm on any day, adequate safety and security arrangements shall be ensured for all employees and visitors by the management.
- Special provisions for women:
 - The female employees will not be allowed to work after 8.00 P.M. and in case the female employees are allowed to work after 08.00 P.M, their written consent will be taken.
 - Provision of adequate safety and security arrangements of female employees
 - Ensure female employees reach their homes safely after their work is over.
 - Provision of separate locker, security and rest rooms at the workplace.
 - Protection for women from Sexual Harassment at workplace- adequate security and proper transport facility to the women, ensure women employees board the vehicle in the presence of security guard, maintenance of the Boarding Register or computerised record consisting of the Date, Name of the Model & Manufacturer of the Vehicle, movement register etc., an annual self-defense workshop/training for women employees.
- Compliance with the Maternity Benefit Act, 1961 and the provisions of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986.

In case of violation of any of the above terms and conditions, or any other provision of the Act, the exemption would be cancelled after giving a due opportunity of being heard by the Competent Authority. This exemption will remain in operation with regard to Sections 9, 10(1) and 30 for a period of 1 year, unless it is revoked.

Impact of the notification:

With this notification coming into effect, establishments in Chandigarh may remain open 24/7 on all days of the year, subject to compliance with overtime payment, provision of weekly holiday, observance of working hours, etc. While this can be seen as a relaxation for a period of 1 year in Chandigarh, companies would need to ensure compliance with safety and prevention of discrimination against female employees to enjoy these exemptions.

⁶ June 25, 2024

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