

Karnataka exempts IT/ITeS establishments from the Industrial Employment (Standing Orders) Act, 1946

In a recent move that has significant implications for the Information Technology (“IT”)/ IT-enabled services sector (“ITeS”) and start-ups in Karnataka, the state government has once again exempted certain categories of establishments from the applicability of the Industrial Employment (Standing Orders) Act, 1946 (“**Standing Orders Act**”). The notification dated June 10, 2024, marks a continuation of the previous exemptions in this respect that have sparked debates and discussions in the past surrounding labour laws and employee rights within the industry.

Needless to mention, this move comes at a time when the IT sector plays a crucial role in the state’s economy. This employment law prism seeks to understand the rationale behind the exemption, the conditions attached to the same and its potential impact on workplace dynamics.

Background

The Standing Orders Act, enacted in the pre-Independence era, mandates employers in ‘industrial establishments’¹ to define employment conditions in the form of standing orders. It applies to every industrial establishment wherein 100 (one hundred) or more workmen are employed (*the workmen threshold may vary state-wise*). The standing orders *inter alia* covers aspects such as work hours, shift work, attendance, absences, leaves, holidays, termination, and dismissal.

The government of Karnataka extended an exemption for select establishments, including IT/ITeS establishments, initially for a period of 2 (two) years, which was thereafter repeatedly renewed for 5 years each. The latest exemption was issued on May 25, 2019, and expired on May 24, 2024.

Upon expiry of the exemption on May 24, 2024, in view of the provisions under the upcoming Industrial Relations Code 2020 (“**IR Code**”) which seeks to extend the applicability of standing orders to the services sector and given stiff oppositions from trade unions, there was uncertainty as to whether the exemption would come through this year². However, much to the relief of IT/ITeS establishments, start-ups and certain other categories of establishments, the state government has once again exempted these establishments from the applicability of the Standing Orders Act for a further period of 5 (five) years, expiring on June 9, 2029 (“**Standing Orders Exemption**”).

Conditions to the Standing Orders Exemption

The Standing Orders Exemption applies to IT/ITeS establishments, startups, animation, gaming, computer graphics, telecom, business process outsourcing, knowledge process outsourcing, and other knowledge-based industries (“**Covered Employers**”).

¹ Section 2(e) of the Industrial Employment (Standing Orders) Act, 1946

² https://www.business-standard.com/industry/news/industry-not-in-sync-with-k-taka-it-union-s-demands-to-end-labour-exemption-124032400251_1.html

In order to avail the exemption provided under the Standing Orders Exemption, Covered Employers will need to fulfil the following 4 (four) conditions:

1. constitute an internal complaints committee in accordance with the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 and the rules thereunder;
2. set up a grievance redressal committee with equal number of representatives from employers and employees to handle any employee grievances within a reasonable time frame;
3. notify the jurisdictional Deputy Labour Commissioner and Commissioner of Labour in Karnataka about cases of disciplinary action, such as suspension, discharge, demotion, termination, dismissal, etc.;
4. promptly submit to the jurisdictional Deputy Labour Commissioner and Commissioner of Labour in Karnataka any information requested regarding the conditions of service of employees, within a reasonable timeframe fixed by the authority.

The Standing Orders Exemption however makes a clear call-out that once the IR Code is implemented, the same will override and supersede the Standing Orders Exemption in Karnataka. This essentially means that once the IR Code is brought into force by the central government, the requirement to adopt standing orders would re-enter the arena as far as the Covered Employers are concerned, unless a new exemption in this respect comes through.

Standing Orders applicability to services sector under the IR Code

The IR Code extends the applicability of standing order related provisions to IT/ITeS establishments and also provides for a model standing orders specific to the services sector³ which needs to be adopted by them. However, the certification threshold for standing orders under the IR Code has been increased from 100 (one hundred) (50 (fifty) in some states) to 300 (three hundred), allowing smaller organizations with greater flexibility to set out their own terms and conditions of employment⁴. The IR Code also seeks to simplify the process of adopting standing orders, by providing that once an employer adopts standing orders as applicable to their establishment, it will be deemed certified. It also appears that under the IR Code, employers will be given a period of 6 (six) months from the date of commencement of the IR Code to prepare the draft standing orders.⁵

Conclusion

Although the Standing Orders Act was enacted with the objective of creating uniformity in service conditions within establishments on a wider scale, this had resulted in a conundrum as a 'one size fits all' approach does not work for different types/classes of establishments or concerns.

In fact, the draft model standing orders framed by the respective state governments contain various provisions which do not really align with the dynamic and innovative nature of modern technology companies. These regulations which were designed with traditional manufacturing and industrial settings in mind do not also adequately address the unique challenges and work environments prevalent in the IT/ITeS sector. Technology companies, known for their agile work practices, flexible schedules and emphasis on creativity and collaboration, often used to find themselves constrained by rigid and outdated labour laws.

As the industry continues to evolve at a rapid pace, there is a growing need for a regulatory framework that acknowledges the distinct characteristics of modern workplaces and promotes a balance between operational efficiency and employee well-being. The continued exemption of IT/ITeS establishments, start-ups and others in Karnataka from the Standing Orders Act marks a significant step towards fostering a business-friendly environment and promoting innovation in the state's burgeoning technology sector.

It however remains to be seen as to whether the enactment of the labour codes will impact this exemption in the future. Irrespective, employers should use this flexibility to optimize their operations, attract top talent and drive economic growth while maintaining its focus on employee welfare and organizational agility. Further, given that trade

³ Available here: <https://labour.gov.in/whatsnew/draft-model-standing-order-service-sector>

⁴ Section 28 of the IR Code

⁵ Section 30 of the IR Code

unions have already raised concerns about Covered Employers failing to fulfill the pre-conditions attached to the exemption previously, regulators are likely to closely monitor compliance and any violations could potentially lead to non-applicability of the exemption.

Employment Practice

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JSA also has significant experience in assisting employers to ensure that they provide focused and proactive counselling to comply with the obligations placed on employees under the prevention of sexual harassment regime in India. We advise and assist clients in cases involving sexual harassment at the workplace, intra-office consensual relationships, including drafting of prevention of sexual harassment (POSH) policies, participating in POSH proceedings, conducting training for employees as well as Internal Complaints Committee members, and acting as external members of POSH Committees.



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