

HR Law Hotline

June 13, 2024

EXEMPTION FROM LABOUR LAW ON STANDING ORDERS FOR TECHNOLOGY SECTOR IN BENGALURU

- The Karnataka State Government has renewed the IESO Act exemption for IT and ITeS companies (along with certain other knowledge based sectors) for five years.
- The technology sector in Bengaluru was exempted from this law since 1999. The previous exemption had expired on May 24, 2024.
- As a result of the new notification, IT and ITeS companies in the State of Karnataka (Bengaluru) will not be required to comply with the IESO Act until June 2029, provided that certain conditions are complied with by the employer.

The exemption has been granted for five years as per the notification issued by the State Government of Karnataka on June 10, 2024 ("Notification"). The Notification reinforces the Karnataka State Government's objective to support and promote the growth of technology and related sectors in the State. This may attract the IT/ITeS companies to seek haven in the technological capital of India - Bengaluru.

BACKGROUND

The IESO Act was enacted in pre-independence era (1946) envisaging the challenges that employment relationship might confront in the industrial establishments such as factories, mines, plantations etc. In this regard the IESO Act provided to define the conditions of employment applicable to workmen (non-managers) in these sectors.

The recent notification issued by the Karnataka government on June 10, 2024, extends a longstanding exemption for the state's IT sector from the Industrial Employment (Standing Orders) IESO Act, 1946 (the "IESO Act"). The IESO Act was originally intended for industrial establishments like factories, mines, and plantations. It aimed to clearly define and communicate employment conditions in the standing orders for workers in these sectors. The IESO Act mandates employers to draft and publish these standing orders following a specific format, obtain approval from employee representatives, and finally secure certification from the labour department. These standing orders typically encompass essential terms and conditions of employment, including work hours, wage rates, shift work arrangements, leave and holiday policies, termination procedures, and disciplinary actions for misconduct. Notably, until an establishment receives certification for its standing orders, standardized *model provisions* outlined in the IESO Act automatically apply.

Recognizing the unique characteristics of the IT industry, the Karnataka government took the initiative to exempt IT and ITeS (Information Technology Enabled Services) sectors from the IESO Act in 1999. This exemption has been instrumental in fostering the state's IT sector and has been renewed on several occasions. The most recent iteration of this exemption expired on May 24, 2024. The June 10th notification signifies the continuation of this exemption for a period of five years, providing much-needed stability and promoting continued growth within Karnataka's IT industry.

THE EXEMPTION

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

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

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The exemption is subject to each employer complying with the following conditions:

1. The employer is required to constitute an Internal Committee (“**IC**”) 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.
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.

The Notification remains silent on penalties that failure to comply with the afore-mentioned conditions may result in. However, considering the employee beneficial nature of IESO Act, the labour department may penalize the employers by withdrawing or cancelling the exemption in case of non-compliance with afore-mentioned conditions. Additionally, this may potentially trigger the application of the IESO Act to the defaulting establishment.

Finally, the notification also clarifies that upon the implementation of the new Industrial Relations Code, 2020, these industries will no longer be exempt from its provisions, and the code will be universally applicable. This also hints towards the government’s intention to role out the new Industrial Relations Code and avoid any sort of ambiguity or interpretation issues regarding applicability standing orders.

ANALYSIS

The continuation of the exemption from the IESO Act for Karnataka’s IT sector can be viewed as a strategic decision made within the context of India’s evolving technological landscape. The 1990s marked the beginning of a significant technological shift in India, with Bengaluru emerging as a prominent hub. This trend continued to gain momentum in subsequent years, fueled by healthy competition among various state governments vying for investment opportunities. Bengaluru’s position is solidified by its ranking of 56th among the top 100 Science and Technology Clusters globally according to WIPO’s Global Innovation Index¹, and its contribution of 42% to India’s IT exports in 2022-23.²

The Karnataka government’s industry-friendly approach, characterized by favorable policies and regulatory frameworks, has been instrumental in maintaining the state’s leadership role within India’s IT and ITeS sectors. The cumulative foreign direct investment (FDI) inflows into Karnataka represent a substantial portion of India’s overall FDI. Additionally, Karnataka holds the distinction of being India’s largest software exporter, with a particular focus on electronics and computer software exports. It is noteworthy that the state also houses approximately one-third of India’s entire IT workforce.

Considering the substantial presence of IT and ITeS companies operating in Bengaluru, the continued exemption from the IESO Act signifies a prudent and progressive move by the state government. This decision aligns with the government’s dual objectives of enhancing the ease of doing business in India and fostering employment generation within Karnataka. Furthermore, the exemption grants flexibility to exempted establishments in determining and implementing policies, processes, frameworks, and facilities that meet international standards and are benchmarked against market practices. This may include flexible work hours, work-from-home options, and paternity leave policies.

While the extension of the exemption has not garnered widespread support from employee unions, who voiced their opposition in March of this year, the government has endeavored to strike a balance between employee rights and fostering a business-friendly environment in Bengaluru, which is home to the largest concentration of high-growth companies in India.³ This objective is further underscored by the explicit inclusion within the notification, stating that upon the implementation of the Industrial Relations Code, 2020, it will be universally applicable across all industries without any exemptions.

The notification outlining the exemption from the IESO Act for Karnataka’s IT sector incorporates specific conditions designed to safeguard the interests of employees. The first two conditions, pertaining to the establishment of an Internal Complaints Committee (ICC) and a Grievance Redressal Committee (GRC), are already mandated by existing legislation – the Sexual Harassment IESO Act and the Industrial Disputes IESO Act, 1947, respectively. However, the third and fourth conditions, requiring notification of disciplinary actions and submission of employee service condition information, lack explicit coverage within specific labour laws, with the potential exception of situations involving retrenchment. The implementation of these latter conditions may therefore present some legal and practical challenges. It is nonetheless evident that the government’s intention in outlining these four conditions within the notification is to ensure a balance between the exemption and continued adherence to crucial labour regulations. This approach emphasizes that the exemption from the IESO Act does not absolve employers of their obligations under other important labour laws.

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¹ www.wipo.int/export/sites/www/global_innovation_index/en/docs/2023/in-bengaluru.pdf

² timesofindia.indiatimes.com/city/bengaluru/ktaka-it-exports-jump-27-to-rs-3-2l-cr-make-for-42-of-indias-total-share/articleshow/105609980.cms

³ www.ft.com/content/022aa805-3699-4bac-a845-81c95d015bc2

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