

HR Law Hotline

August 14, 2012

LABOUR LAW ON STANDING ORDERS EXTENDED TO IT AND SOFTWARE COMPANIES IN BANGALORE

The State Government of Karnataka has extended an archaic labour statute to information technology ("IT"), IT enabled services ("ITeS") and software services companies located in Bangalore, India's IT capital and a hub for the world's leading software companies. The statute is a central enactment called the Industrial Employment (Standing Orders) Act, 1946 ("**Standing Orders Act**"), which, inter alia, requires the employer to define and publish uniform conditions of employment. Seemingly, the State Government has taken this step in light of certain objections raised by support groups for women employees and the fact that the IT/ITeS industry enjoyed the exemption for over 11 years.

BACKGROUND

The Standing Orders Act requires employers in industrial establishments 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), have it approved by the representatives of the employees and finally certified by the labour department. As per the enactment, the standing orders should contain terms of employment including, hours of work, wage rates, shift working, attendance and late coming, provision for leaves and holidays and termination or suspension/dismissal of employees.

The State Government of Karnataka, in the year 1999, had exempted companies in the IT and ITeS sectors from the applicability of the Standing Orders Act for 2 years. The exemption continued to be extended thereafter, every 2 years, until August 2011. The State Government has not issued a similar extension thereafter.

APPLICABILITY OF THE STANDING ORDERS ACT

At the first instance, the Standing Orders Act is applicable to 'industrial establishments'¹ employing a minimum of 100 workmen². Certain State Governments, such as the Governments of Maharashtra and Karnataka, have enhanced the scope of the statute and made it applicable to establishments employing 50 or more employees. Further, in Maharashtra, the Bombay Shops and Establishments Act, 1948 specifically extends the applicability of the Standing Orders Act to all shops and commercial establishments. While the labour department is applying the Standing Orders Act to commercial establishments in the State of Karnataka, there appears to be some ambiguity on the basis on which the statute has been made applicable to commercial establishments such as IT and ITeS companies- which may not fall within the definition of 'industrial establishment' and which are already governed under a local labour law i.e., the Karnataka Shops and Commercial Establishments Act, 1961.

ANALYSIS

On account of the State Government's refusal to renew the exemption allowed to IT/ITeS companies, all such companies having more than 50 workmen, are required to comply with the provisions of the Standing Orders Act. This would result in a need to draft and submit their standing orders and apply to the labour department for certification, unless a specific exemption from such compliance is obtained from the State Government.

Industry groups have been making representations to the State Government for extending the exemption, contending that the statute is timeworn and does not envisage the circumstances and situations of a globalized economy. Companies operating in the IT/ITeS sectors believe that the Government's decision in this respect is retrograde and could expose them to complicated and unnecessary procedures and compliance hassles, that could consequently result red-tapism and bring in the 'inspector raj' culture. The provisions in the Standing Orders Act requiring companies to consult with and obtain the approval of the employees or their representatives on the contents of the standing orders could encourage union activity in an industry that is significantly free of labour groupings.

The statute also requires companies to have the standing orders certified by the labour department and the same may not be modified or amended without the specific consent of the labour department and the employees and/or their representatives. Therefore, compliance with the statute brings with it significant inflexibility in amending and modifying the standing orders so as to adapt to the needs of the globalized economy and the changing work culture. Also, the format of the model standing orders prescribed under the statute is outdated and contains certain obsolete terms that may not be relevant or conducive to companies in the IT/ ITeS sector, who already have detailed policies in their employee handbook and code of conduct.

The State Government has however indicated that it is willing to consider exempting companies in the IT/ITeS sector, upon specific applications being made in this respect, from compliance under the Standing Orders Act, on a case to case basis.

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¹ The term 'industrial establishment' under the Standing Orders Act, read in conjunction with the Payment of Wages Act, 1936 means (i) a factory as defined in the Factories Act, 1948; (ii) a railway as defined in the Indian Railway Act, 1890; (iii) tramway service, or motor transport service engaged in carrying passenger or goods or both by road for hire or reward; (iv) air transport service other than such service belonging to, or exclusively employed in the military, naval or air-forces of the Union or the Civil Aviation Department of the Government of India; (v) dock, wharf or jetty; (vi) inland vessel, mechanically propelled; (vii) mine, quarry or oil-field; (viii) plantation; (ix) workshop or other establishment in which articles are produced, adapted or manufactured, with a view to their use, transport or sale; (x) establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operation connected with navigation, irrigation, development or maintenance of buildings, roads, bridges or mission and distribution of electricity or any other form of power is being carried on; (xi) any other establishment or class of establishment which the appropriate Government may, having regard to the nature thereof, the need for protection of persons employed therein and other relevant circumstances, specify, by notification; and (xii) the establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen.

²As defined under the Industrial Disputes Act, 1947 i.e., a is a person employed in an industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, excluding an employee in a managerial or administrative capacity; or in a supervisory capacity, drawing wages exceeding INR 10,000 (~US\$ 200) per month.

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