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Analysing developments impacting business

FACTORIES (KARNATAKA AMENDMENT) BILL, 2023: KEY LEGISLATIVE AMENDMENTS TO THE WORKING STRUCTURE OF FACTORY-BASED WORKFORCE

6 March 2023 **Background**

With an aim to bring in gender parity among factory workforce and create more employment opportunities for women, the Karnataka legislature passed the Factories (Karnataka Amendment) Bill, 2023 (2023 Amendment) to amend the Factories Act, 1948 (Factories Act) in its application to the state of Karnataka. The said amendment also brings about a change in the provisions relating to daily working hours, interval for rest and additional wages for overtime work under the Factories Act. It may be noted that the amendment will be in force immediately upon its assent by the Governor of Karnataka, which is awaited at the time of preparation of this update.

Allowing women workers to work night shifts

The 2023 Amendment has relaxed the restriction imposed on women workers to work night shift in factories by introducing a proviso to Section 66 of the Factories Act (as applicable to state of Karnataka). The said proviso permits employers to engage women workers in a factory between 7 PM and 6 AM, subject to the fulfilment of certain conditions including:

- obtaining prior written consent of such women workers;
- incorporating a mechanism for addressing sexual harassment complaints at the workplace (along with ensuring absence of hostile working environment);
- providing proper lighting and CCTV coverage within and around the factory premises;
- providing transportation facilities (with each transportation vehicle being equipped with CCTV camera and GPS) and sufficient number of rest rooms to women workers;
- ensuring that the women workers are employed in a batch consisting of at least 10 women workers;
- ensuring that at least one-third of the strength of supervisory staff during the night shift is female; and
- providing female security at entry and exit points in the factory.

The said amendment is in furtherance to the notification dated 20 November 2019 (Notification) passed by the Government of Karnataka wherein women workers were permitted to work in factories during night shifts (between 7 PM and 6 AM) irrespective of the restriction postulated under the Factories Act. The Notification was passed against the backdrop of the judgment of Hon'ble Madras High Court in the decision of Vasantha R v Union

of India [(2001) 1 ILLJ Mad] (Judgment) which held Section 66(1)(b) of the Factories Act (restriction on women employees to work in factories except between 6 AM and 7 PM) as unconstitutional. We examined the Notification and Judgment in our [ERGO](#) dated 27 November 2019.

Other amendments

In addition to the above crucial amendments to the Factories Act, the following changes have been brought in the Factories Act (as applicable to state of Karnataka):

- **Daily hours:** Pursuant to the 2023 Amendment, the state government has been empowered to extend the daily maximum hours of an adult worker up to 12 hours a day (inclusive of interval for rest in any day), as against the current limit of 9 hours in Factories Act (exclusive of rest interval). Such notification can be published by the Karnataka government vis-à-vis any group / class of factories on certain conditions and pursuant to obtaining written consent of the workers, subject to the condition that the total working hours do not exceed 48 hours in any week.
- **Intervals for rest and spread over:** In furtherance of introduction of flexibility in working hours (as mentioned above), the state government has been empowered to extend total working hours of a worker to 6 hours (without an interval) and the spread over to 12 hours (inclusive of interval for rest) as opposed to a maximum of 10 and a half hours under the Factories Act.
- **Overtime:** Pursuant to introduction of flexibility in working hours by amending Section 54 of the Factories Act (applicable to State of Karnataka) and with an aim to reduce working week from 6 days to 4-5 days in a week, categories have been created for workers working overtime vis-à-vis entitlements of overtime pay. The 2023 Amendment amends Section 59 wherein the entitlement to overtime pay now exists for workers who are employed on a 5-day working week basis and who work for more than 10 hours in a day or 48 hours in a week. In case of a 4-day working week, overtime will be available to a worker if he / she / they work for more than 11.5 hours in a day. Section 65 is also amended to increase the limit of permissible overtime hours in a quarter from 75 hours to 145 hours.

Comment

The measures taken by the Government of Karnataka as discussed above aim to fulfill the objective of affording flexibility in working arrangements and generating more employment opportunities for women in manufacturing establishments.

As regards the conditions set out in the 2023 Amendment for engaging women in night shifts, it is argued that the employer cannot be expected to maintain a certain number of female workers in the night shift when there is no need to have all of them in the said shift, or to comply with the requirement when adequate number of women may not be present in the relevant role for which night shift operations are carried out. Similarly, the actual deployment of female security staff would depend to some extent on the on-ground realities including the general enrolment of female security staff by contractors in the relevant region. Perhaps, the industry would benefit from appropriate clarifications from the state government as regards strict adherence to some of these conditions that seem to entail practical difficulties in terms of implementation.

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