



## **Circular No – 037/2024**

Date:07.06.2024

To

All Members of the Association

### **ONE MORE LETTER TO GOVERNMENT REQUESTING EXEMPTION OF IT AND ITES ESTABLISHMENTS FROM THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT**

1. The Association had taken up the matter with Government of Karnataka for continuing the exemption granted to IT & ITES Establishments from the provisions of the Industrial Employment (Standing Orders) Act. The letters addressed to the Secretary Department of Labour Government of Karnataka were circulated for information of members vide KEA Circular no. 12/2024 dated 01.02.2024 and subsequent circular no. 25/2024 dated 22.03.2024.
2. Now the exemption granted to the IT and ITES Establishments vide notification no. LD 194 LET 2016 dated 25.05.2019 expired on 24.05.2024 from the provisions of the above Act has expired on 24.05.2024.
3. The Association has once again taken up with the Government to exempt the IT and ITES Establishment from the applicability of the Industrial Employment (Standing Orders) Act for a further period of five years effective from 25.05.2024 or till the Industrial Relation Code is implemented.
4. Copy of the Association letter dated 31.05.2024 is enclosed for the information of the member.

**For KARNATAKA EMPLOYERS' ASSOCIATION**  
**Sd/**  
**[B C Prabhakar]**  
**President**

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# KARNATAKA EMPLOYERS' ASSOCIATION

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BASAVANAGUDI, BENGALURU - 560 004  
Reg. No. TU 507 / 20-3-1962

**B.C. Prabhakar, B.A., B.L.,**  
President

Date:31.05.2024

The Principal Secretary  
Department of Labour  
Government of Karnataka  
Vikasa Soudha  
Bengaluru

Dear Sir,

**Sub: Exemption of IT and ITES Establishments from the Provisions of the Industrial Employment (Standing Orders) Act**

1. The exemption granted to IT and ITES Establishment from the provisions of the Industrial Employment (Standing Orders) Act vide notification no. LD 194 LET 2016 dated 25.05.2019 expired on 24.05.2024.
2. The Association had already taken up the matter with the Government for exemption from the applicability of the Industrial Employment (Standing Orders) Act may be further extended from 25.05.2024 for a period of two years with a specific condition that if the Industrial Relations Code is implemented, the exemption granted to the IT and ITES Establishment stands withdrawn by its letter dated 29.12.2023. Copy of our letter dated 29.12.2023 is enclosed for your ready reference.
3. Karnataka in general and Bengaluru in particular is popularly known as IT&ITES hub of India. The Government of Karnataka recognising the importance and the contribution of the said industry to the State Exchequer and the employment generation potential has taken several measures for the growth of the said industry. On account of the said measures the Bengaluru continues to occupy dominant position in the IT & ITES industry not only in India but overseas also. Several measures taken by the Government of Karnataka has contributed to the continued growth of IT and ITES Establishments in Karnataka. IT and ITES Establishments have contributed substantially to the economy of the State. Many of the IT and ITES companies earn substantial foreign exchange and thus contribute to the national exchequer.

4. There is strong case for exempting the IT & ITES establishment from the provisions of the Industrial Establishment (Standing Orders) Act. Serious doubt is being expressed as to whether the Industrial Establishments [Standing Orders] Act is applicable to Information Technology and Information Technology Enabled Services Establishments.
5. The Act was brought into force mainly focusing on industrial establishments engaged in manufacturing activities to specify the terms of employment and also conditions of work etc., The Act envisaged to formulate a Standing Orders in line with the Model Standing Orders prescribed under the Rule and have it certified in accordance with the procedures laid down, involving Trade union / Representatives of workers.
6. The Act was enacted in the year 1946, to meet the then prevailing situations and problems of the workmen in industrial establishments particularly in Factories. The said Act did not envisage any new business segments of industry which has grown post-independence and the subsequent measures initiated by the Govt. of India and State Governments.
7. The definition of Industrial Establishment is defined under the Act to cover the Factories and Establishments defined under the Payment of Wages Act. But the applicability of Payment of Wages Act is only to those employees whose salary is upto Rs.24000 per month. As the salary levels are far higher, the Payment of Wages Act is not applicable to majority of the employees employed in the IT/ITES establishments.
8. The Information Technology/IT Enabled Services is knowledge-based industry and has to constantly operate with global requirements. The personnel engaged in IT/ITES/BPO sector are highly educated and skilled. The terms and conditions, the remuneration, benefits and working atmosphere are of the high order when compared to other sectors of industry particularly manufacturing industry. The persons engaged are governed by individual contracts. It is on these considerations doubt being raised as to the applicability of the Standing Orders Act to the IT&ITES establishments.
9. IT and ITES establishments, most of which are multinational, have extended their global employment policies and code of conduct to the employees in India. Most of the companies extend policies which have stood the test of time and which meet the legal requirement of different nations. They have inbuilt check and balances to prevent harassment or exploitation at any level. Most of the companies have the system of Ombudsmen where the employees are permitted to make direct complaint to him in the event of any harassment.
10. Even with regard to the employees who are not performing, as per the requirement of the company, the companies have put in place a system of performance

improvement wherein the employee is given a feedback about his deficiencies and given chance to improve himself under the guidance of a superior. It is only in cases where employee fails to come up to the expectation after undergoing performance improvement programme, the termination is generally done on objective consideration.

11. The IT and ITES Establishments extend service conditions including salary which compares favourably with the best in India. Many of the companies are extending and providing more benefits than what is contemplated under the statutory provisions. For example, most of the companies in addition to the PF and Gratuity have also created Superannuation Funds either with some contribution from the employees or without contribution from the employees and also obtain group insurance policies to cover risk which may arise out of the scope of the employment. The IT and ITES establishments extend several non-statutory benefits to retain the talent and to reduce the rate of attrition.
12. The IT and ITES companies operate to the requirement of overseas clients. It is, therefore, necessary for them to permit their employees to have flexi timings.
13. The Model Standing orders attached to the Act appears to have been drafted having regard to the requirement of manufacturing industry and the blue-collar staff.
14. The Certifying Officer is required to conform to the items in the Model Standing order. Here is a situation of conflict between the statutory provisions and the requirement of the sophisticated industry like IT and ITES. The Model Standing Orders has not been designed having regard to the requirement of an establishment which employs highly educated and professionals. The employees are highly career oriented and would like to contribute their best. The provisions in the Model Standing Order may serve as a demotivating factor to the employees and employers.
15. Flexible manpower is the requirement of IT and ITES. The classification given in the Model Standing orders will not meet the requirement of the IT and ITES establishment. Fixed Term employment and contract employment are necessary in IT and ITES having regard to the high rate of attrition which would continue to be one of the serious problems of the IT and ITES industry.
16. The clause relating to termination of contract of employment is necessary and the existing provision in the Model Standing Orders is not adequate and the Certifying officers change these provisions in exercise of their power conferred under the Act. The IT and ITES companies have put in place an objective system for assessment of performance and for providing opportunity to the employees to improve their performance. The establishments should have authority to discard the employee who fails to improve the performance despite opportunities being given. Simple

termination clause as per the terms of appointment without attaching any stigma which may not affect career prospects of the employee.

17. The Model Standing orders stipulate that wage rates are to be notified. In IT and ITES establishment the professionals are paid salary and wages depending upon their experience, skill and performance. Generally, the employees are well paid. The payment is related to their contribution to the company. The salary payable, therefore, varies from person to person. It is not uniform like minimum wages or wages paid in terms of the settlement with the unions. It is confidential information between the company and the employees concerned. It cannot be notified. Such notification would only create multiple problems for the company as well as the employees. Even the employees themselves may take serious objection of revealing the information which is purely their personal.
18. The IT and ITES companies not only operate from different location within the country but, they depute or transfer their employees out of country to meet company's requirement or requirement of the client. The transfer clause in the Model Standing Order is restricted to the transfer within the organization from one department to another or to another establishment of the company in the same location. The certifying officers generally object to the inclusion of transfer outside the state.
19. The nature of the misconduct which may arise for consideration in Software industries is entirely different. The nature of misconduct being different elaborate procedure contained in Model Standing Orders may not be necessary.
20. The age of retirement fixed under the Model Standing Order is on higher side having regard to the nature of the industry. The need is lower age of retirement and higher terminal benefits which the software industry is already providing by way of superannuation fund etc., in addition to provident fund and gratuity.
21. The provisions relating to shift working and notice of change in shift working are difficult to be implemented particularly in the establishment which caters to the requirement of overseas clients. The IT and ITES establishments need to have flexi working time. The requirement of the establishment is that the employees should complete the work in time frame and as per the requirement of the clients both within the country and overseas. The IT Companies generally do not insist their employees to adhere to the fixed working hours. The employees should put in the minimum hours of work per day and complete the assigned task. The working hours etc., cannot be with regard to any specified period per day like Morning 8 to 5 PM etc., they need flexibility.
22. On total consideration of all the above, the Association reiterates its suggestion to the Government to exempt the IT & ITES Establishments from the applicability of

the Industrial Employment (Standing Orders) Act for a further period of five years from 25.05.2024 or till the Industrial Relations Code is implemented.

23. The Association, therefore, once again requests the Government to consider the above and issue appropriate orders exempting IT and ITES Establishments from provisions of the Industrial Employment (Standing Orders) Act expeditiously.

**For Karnataka Employers' Association**

*B. C. Prabhakar*

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**President**

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