



GSTIN : 29AABAK0318H1ZW

Off : 080 - 26613091 / 26607167
42103360 / 26761877

Email : kea@kea.co.in
Web : www.kea.co.in

KARNATAKA EMPLOYERS' ASSOCIATION

Date: 14-05-2020

CIRCULAR NO- 97/2020

To
All Members of the Association

LETTER BY EMPLOYERS TO GOVERNMENT

Several State Governments have amended their Labour Laws to attract investment as well as help existing industries to recover and expand after the lockdown.

Karnataka is also contemplating to amend various Labour Laws to make the State an attractive destination for investors as well as help existing industries.

KEA has already submitted a detailed note to the Government of Karnataka in this regard.

KEA now requests its members also to address individual letters to the Government of Karnataka for urgent modification in Labour Laws to enable the existing industries to quickly recover and expand and also attract new investments.

A sample letter to be addressed to the Principal Secretary, Industries & Commerce, Government of Karnataka is attached herewith.

Each member of KEA is requested to print the attached letter on their letterheads and send the duly signed letter to the Principal Secretary, Industries & Commerce, Government of Karnataka at the address given in the letter. A scanned copy of the letter may also be e-mailed to the Principal Secretary, Industries & Commerce, Government of Karnataka at prs-ci@kar.gov.in

Kindly request your other employer friends also to send a letter on their letter head on the same lines.

The letter may be sent / e-mailed immediately.

For KARNATAKA EMPLOYERS' ASSOCIATION

**sd/-
(B C PRABHAKAR)
PRESIDENT**

Date.....

To:
Principal Secretary,
Department of Industries and Commerce,
Government of Karnataka,
Vikasa Soudha,
Bengaluru

Respected Sir,

On behalf of our organization, we wish to bring to your kind notice the following issues pertaining to urgent reforms required in Labour Law provisions to enable revival of industries from the crippling after effects of COVID-19 lockdown.

It is extremely essential to amend the Labour Laws immediately to make it responsive to the emerging threats and opportunities. Our existing Labour Laws are archaic and have disabled us from quickly responding to changes. There is a widespread support for reforming Labour Laws – from Prime Minister to Chief Ministers of several states including Karnataka as this will enable attracting more investment as well as encouraging existing industries.

Uttar Pradesh (UP) has taken the lead by proposing to suspend all Labour Laws except 3 for a period of 1000 days. This move by UP has the potential to attract a huge chunk of investment. Other states are also following suit. It is our earnest request that Karnataka will also consider a similar legislation in order to remain competitive. However, if that is not possible, Karnataka may take steps to at least substantially amend Labour Laws so as to remain an attractive destination for new investment as well as existing industries such as ours to operate without hindrance.

Specifically, we request for the following provisions of various Labour Laws may kindly be amended to provide a helping hand to the industries.

I. INDUSTRIAL DISPUTES ACT, 1947:

A. Chapter V-B of the Industrial Disputes Act, 1947 needs to be deleted forthwith

Chapter V-B requires industrial establishments employing 100 or more workmen to seek permission of the Government for laying off, retrenching or closing down the establishment. A very elaborate procedure is prescribed for this purpose. As such, it becomes impossible to have flexibility of employment since every workman who works for 240 days will be deemed as permanent workmen. When such is the case, it is difficult to employ workmen. In fact, this is one of the reason for industry not expanding. India is the only country in the world where permission to close down an industrial establishment is stipulated. This creates scare amongst industrialists and therefore they would not think of expanding. The Government invariably refuses permission to lay-off, retrench or close as that would be a political decision. It is, therefore necessary to delete Chapter V-B of the Industrial Disputes Act, 1947 altogether.

B. Section 9-A and Schedule IV of the Industrial Disputes Act, 1947 needs to be deleted

Section 9-A requires 21 days' notice to be given to workmen even for effecting very minor changes notified in Schedule IV to the Industrial Disputes Act, 1947. Notices are required to be issued even for altering hours of work and rest intervals, starting and discontinuation of shift, classification by grades etc. Industry cannot run its business with issuing such kind of notices where the trade unions take the matter to conciliation and thereafter, the matter goes for adjudication all of which

takes years to complete. So, the change proposed cannot be implemented at all. Consequently, Schedule IV also needs to be deleted.

C. Section 33 of the Industrial Disputes Act, 1947 needs to be deleted

Section 33 of the Industrial Disputes Act, 1947 states that conditions of service should not be changed during conciliation proceedings and also calls for taking permission of the court to dismiss or to impose any punishment on certain workmen called as protected workmen. Even when proceedings are pending before the Labour Court, Industrial Tribunal or National Tribunal, protected workmen cannot be terminated without permission of the court. Till such time, permission is granted, full wages will have to be paid to such protected workmen. In respect of those not protected, approval need to be obtained. These are very cumbersome processes which should be eliminated, as there is a provision to challenge the order of dismissal. In fact, Karnataka High Court has clearly recommended more than once that Section 33 is superfluous. This provision is seriously affecting discipline in the industry, as the workers' leaders claim that no action can be taken against them because they are protected workmen. On account of this, there is gross violation of discipline in industry, apart from huge loss of production. Moreover, after insertion of Section 2(A) to the Central Act and insertion of Section 4(A) by Karnataka, the provision relating to Section 33 is no more required as the dismissed workmen can directly raise dispute before Labour Court challenging the dismissal.

D. Section 33-A of the Industrial Disputes Act, 1947 needs to be deleted

This is because once Section 33 is deleted, Section 33-A becomes redundant.

E. Section 17-B of the Industrial Disputes Act, 1947 needs to be deleted

There are a number of Court Awards, which on the face of it, are totally opposed to provisions of law. This is because, only civil judges are posted as Labour Court judges, who would not know elementary industrial law resulting in a number of wrong awards granting reinstatement in service. When employer challenges this, he is required to pay wages to workmen concerned in the dispute. Once the employer succeeds in the High Court, there is no way to recover the said amount. In appropriate cases, the Hon'ble High Court has the power to order payment of wages or part of wages to the workmen concerned in the dispute and therefore Section 17-B is superfluous.

F. Section 34(1) of the Industrial Disputes Act, 1947 to be amended to read as under:

"No court shall take cognizance of any offence punishable under this Act unless the complaint is filed by the Government."

G. Notification dated LAW 164 LCE 2014 dated 22.01.2015 issued by the Government of Karnataka may be withdrawn

The Government vide this notification has conferred the power of a Labour Court to all the Principal District and Sessions Judges, many of whom are delegating to Additional District and Sessions Judges. On account of this, the Judges who do not have knowledge of labour laws adjudicate labour disputes. Prior to this notification, only Labour Court / Industrial Tribunal adjudicated labour dispute. As such, there is absolute urgent need to withdraw the notification.

II. FACTORIES ACT 1948:

- A.** Definition of Factory should be amended to cover the manufacturing unit employing 20 workers with working with aid of power or employing 40 workers if working without the aid of power.
- B.** Permit 12 hour work in a day with 4 hours of overtime with single wage.
- C.** Providing 12 hour shift with 2 breaks and providing spread over of up to 13 hours

III. CONTRACT LABOUR (REGULATION & ABOLITION) ACT 1970:

- A.** The Act should be made applicable to the establishment and the contractor employing 50 or more contract labourers instead of the existing number of 20 contract labourers.
- B.** A deeming provision to be inserted to stipulate that if the certificate of registration or the license is not issued within the stipulated period it shall be deemed that unconditional registration/license stands granted as applied for.
- C.** Introduce the "Contract Employer" definition and make Contractors accountable.
- D.** To exclude knowledge workers / high salary paid employees from the purview of the Act.
- E.** To exclude IT / ITES / BPO Knowledge based industry from the purview of the Act in so far as knowledge workers are concerned.

IV. Industrial Employment (Standing Orders) Act 1946

- A.** The Model Standing orders be made applicable to all the establishments automatically once the number of workmen employed reaches the stipulated strength of 50 workmen and declared as deemed Certified Standing Orders, as done in the state of Maharashtra. The existing model Standing Orders is outdated and it should be updated to suit the present day requirement.
- B.** Fixed term employment and Part Time Employment should be introduced in the model standing orders.
- C.** Age of retirement should be retained at 58 years only.
- D.** The Industrial Tribunal should be re-notified as Appellate Authority under the Act.

V. Sexual Harassment of Women At Workplace (Prevention, Prohibition And Redressal) Act, 2013

The Act provides for Appeal against the recommendations of the Internal Complaint Committee and also the decision of the Disciplinary Authority. The Rules framed under the Act provide that the Appeal may be filed before the Appellate Authority notified under the Industrial Employment (Standing Orders) Act, 1946.

In Karnataka Appellate Authority under The Industrial Employment (Standing Orders) Act, was originally Industrial Tribunal. Subsequently, the Government changed the Appellate Authority and the Additional Labour Commissioner was notified as Appellate Authority. The said position continues even now.

In other States, the Appellate Authority under the Standing Orders is Industrial Tribunal.

The Association suggests that the Industrial Tribunal be notified as the 'Appellate Authority' under the Industrial Employment (Standing Orders) Act.

This will not only ensure judicial scrutiny of Appeals against the Standing Orders certified by the Certifying Officer, but would also ensure that the Appeal under the SHWW Act, which is a very sensitive issue decided by the Judicial Authority instead of Administrative Authority.

VI. The Karnataka Shops and Commercial Establishment Act

- A.** Flexi working hours should be introduced as done in Tamil Nadu to facilitate particularly the IT and ITES establishment to conform to the working hours of the overseas establishments. In Tamil Nadu the Shops and Commercial Establishment Act is amended to facilitate to work up to 10 hours in a day subject to 48 hours in a week.
- B.** The working hours of Women employees during night shifts may be regulated by laying down the rules instead of each I.T. company obtaining permission. The department may ensure full compliance with the safety and security arrangement made for the women employees.
- C.** Self-certification should be introduced and the procedure of submitting returns etc., should be deleted.

- D.** The over time limit may be revised from 50 hrs for three consecutive months to 150 Hrs per quarter i.e. 2 hours every day and payment of double wages.

VII. General

- A.** Maintenance of all records in software should be permitted and e-filing of the returns may be introduced.
- B.** Self-Certification by the employer should be introduced for all legislations.
- C.** The Minimum Wage revision should be in tune with the neighboring State. Any drastic increase would affect viability of the industry resulting in closures and unemployment.

VIII. Lockdown period and wages ie 25.03.2020 to 17.05.2020

- A.** During lockdown period, the establishments and factories who could not operate, the said period should be allowed to be treated as Lay Off as per Section 25C of the ID Act on the ground of natural calamity and paid 50% of the basic and DA. Further, post lockdown period, the establishments and factories should be allowed to Lay Off depending upon various situations on the grounds of natural calamity. In the case of factories employing more than 100 workers requirement of permission should be exempted both for lockdown period and post lockdown period for a period of 1 year.
- B.** If any employer is unable to pay wages for no work days of lockdown period, no show cause notice and no prosecution should be initiated.
- C.** If an employer wants to treat no work days of lockdown period as leave with wages at credit or leave on loss of pay, the same should be allowed.

- D.** In case of essential services and other industries allowed to resume work, there are instances where workers have not resumed work due to some apprehensions. Government and Labour Department should convince them to resume work. Workmen who do not report shall not be eligible for wages on principle of 'no work no pay'. Besides, disciplinary action should be allowed
- IX.** Freeze DA and revision of minimum wages for the next one year at the level of March 2020.
- X.** Take immediate steps to revive the industries after lockdown by relaxing compliance requirements under various Acts for the next 12 months.
- XI.** All licenses under various Labour Legislations may be deemed to be valid for next 12 months.
- XII.** Freeze all inspections, notices and proceedings against Labour Law violations.
- XIII.** Increase the maximum limit of 33% workforce to at least 50% of the workforce after the reopening of the industry to allow increase in production of goods and services to optimum level.

We request your good-self to consider the suggestions and initiate appropriate action.

For