

STANDING ORDERS NOW APPLICABLE TO IT/ITES ESTABLISHMENTS IN KARNATAKA AND ALL COMMERCIAL ESTABLISHMENTS IN HARYANA



ATUL GUPTA
PARTNER, TRILEGAL

Employers in Karnataka and Haryana need to be mindful of the additional compliance obligations, as the exemption to IT/ITES companies under the Industrial Employment (Standing Orders) Act, 1946 (SO Act) has not yet been renewed in Karnataka and the SO Act has also been extended to commercial establishments in Haryana.

The SO Act was enacted in the pre-Independence era to ensure that employers formally define service rules (called standing orders) covering matters like the classification of employees, working hours, attendance, leave, termination, suspension, dismissal for misconduct, redressal for unfair treatment, etc. To ensure that the service rules are not one-sided, these have to be finalised after consultation with the representatives of trade unions/workmen and also affirmed by a State-appointed certifying officer. In most States, this law applies to the 'industrial establishments' which employ/had employed 100 or more workmen on any day in the last 12 months. In some States (such as Haryana and Karnataka), this threshold has been decreased to 50 or more workmen.

The SO Act does not directly define 'industrial establishments' and instead relies on the definition of this term under the Payment of Wages Act, 1936 (**PW Act**). The PW Act defines 'industrial establishments' primarily to mean factories, mines, plantations, etc., but in some states (such as Haryana and Karnataka), this definition has been expanded to include 'commercial establishments' as well through a government notification. Due to this, the SO Act too has become applicable to commercial establishments in these states.

1. IT Companies, Start-ups, KPOs, BPOs, etc. in Karnataka to now comply with the SO Act

Although the SO Act is applicable to commercial establishments in Karnataka, Information Technology (**IT**) and IT-enabled service (**ITES**) companies in the State historically enjoyed a blanket exemption until 2011. For a brief period thereafter, labour authorities required IT/ITES companies to comply with the SO Act. While some companies chose to comply at that stage, the general sentiment in the IT industry was that the SO Act was outdated, and not conducive to the functioning of the industry. Based on industry representations, on 25 January 2014, the Karnataka government renewed the exemption granted to IT/ITES companies from the SO Act on a conditional basis for another five years, i.e., till 24 January 2019. This exemption also covered animation, gaming, computer graphics, telecom, start-ups, BPOs, KPOs, and other knowledge-based industries (all such organisations and IT/ITES companies are referred to as **Exempt Establishments**). However, in order to avail the exemption, the Exempt Establishments had to comply with four pre-conditions namely, constituting an internal committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, establishing a grievance redressal committee, reporting disciplinary actions to the authorities and submitting to information demands from the authorities. To refer to our earlier updates discussing these developments and requirements, click [here](#) and [here](#).

With the expiry of this exemption on 24 January 2019, Exempt Establishments now have to comply with the SO Act, which means, that they would need to draft and obtain certification of standing orders. In the absence of certified standing orders, the '*model*' standing orders prescribed under the rules of the SO Act would apply to these establishments. The model standing orders would, in fact, prevail over internal contracts and policies, and organizations would therefore, need to be mindful of the specific processes and obligations set out in the model SO, especially on matters of employee termination and discipline.

While IT companies' representative body, National Association of Software & Service Companies (**NASSCOM**) recently made a formal representation to the Karnataka government for continuing the exemption, trade unions representing IT workers have been opposing such a move, arguing that several Exempt Establishments did not properly comply with the four pre-conditions during the earlier five-year exemption period. It remains to be seen whether the Karnataka government will renew the exemption again. Meanwhile, such establishments should take note of the provisions of the model standing orders. Although the statutory penalty for failing to get standing orders certified is a nominal amount (INR 5,000/USD 70 for the first offence, and INR 200/USD 3 for every day after the first offence during which the offence continues), employers need to be wary that if the procedures prescribed under the model/certified standing orders are not complied with, then the workmen could challenge any disciplinary or other action taken against them as illegal.

2. Commercial Establishments in Haryana now covered under the PW Act and the SO Act

The Haryana government has passed a notification dated 12 December 2018 (published on 25 December 2018), to extend the definition of '*industrial establishments*' under the PW Act to commercial establishments as well. While the provisions prohibiting deductions from wages applied earlier too, with this development, commercial establishments will now have to comply with all the requirements under this law, such as, following timelines for payment of wages, obtaining prior approval from the government for imposing fines for misconduct, maintaining various records and registers, displaying notices, etc.

Further, due to this notification, the SO Act will also now apply to commercial establishments in Haryana. Thus, within six months of the applicability, i.e., by 25 June 2019, shops and commercial establishments in Haryana with 50 or more workmen would need to apply for certification of standing orders. They would also have to comply with all the other obligations under the SO Act (as discussed above).