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Analysing developments impacting business

STANDING ORDERS FOR COMMERCIAL ESTABLISHMENTS: HARYANA GOVERNMENT

31 July 2019

On 24 July 2019, the Government of Haryana, through the Labour Commissioner, Haryana (Government), issued guidelines (Guidelines) wherein it has clarified that the Industrial Employment (Standing Orders) Act, 1946 (IESO Act) is applicable to shops and establishments covered by the Punjab Shops and Commercial Establishments Act, 1958 (as applicable to Haryana).

Background

The Payment of Wages Act, 1936 (PoW Act) defines 'industrial or other establishment' to mean establishments relating to motor transport or air transport services, dock, wharf, jetty, inland vessel, mine, quarry, oilfield, plantation, production or manufacture of articles for their use / transport / sale, construction / development / maintenance of buildings etc, and any other establishment which the appropriate government may, having regard to the nature thereof and other relevant circumstances, specify. This means that in order for the PoW Act to be applicable to shops and establishments, the appropriate government must issue a notification to that effect. The Government did this through a notification dated 12 December 2018, which was published in the official gazette on 25 December 2018 (Haryana Notification).

It may be noted that Haryana is one of the few states which have extended the applicability of the PoW Act to shops and establishments. Similar notifications have been issued by Maharashtra, Karnataka and Tamil Nadu in the past.

Clarification

It may be noted that the IESO Act applies to all industrial establishments in Haryana employing 50 or more workmen on any day in the preceding 12 months. The term 'industrial establishment' has been defined under the IESO Act to *inter alia* mean an industrial establishment as defined in Section 2(ii) of the PoW Act.

This part of the definition of 'industrial establishment' has been relied by the Government in the Guidelines. Accordingly, it has been clarified that all shops and establishments employing 50 or more workmen shall be bound by the IESO Act with effect from the date on which the PoW Act became applicable to them (i.e. 25 December 2018). This means that within 6 months from the date the IESO Act became applicable (i.e. until 25 June 2019), such shops and establishments would be required to submit draft standing orders to the appropriate authority for certification. If this procedure is not followed, the model standing orders would apply to such establishments until the draft standing orders are certified. These model standing

orders lay down various provisions regarding the terms and conditions of employment, notably the procedure for disciplinary inquiry and the entitlements of fixed-term contract workers.

In addition to the above, the Government provides in the Guidelines that since the term 'industrial establishment' as defined in the IESO Act also covers the establishment of an entity which, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen, the IESO Act will also apply to every contractor having 50 or more workmen. The Government has emphasised that while there is a specific legislation to deal with contract workers i.e. Contract Labour (Regulation and Abolition) Act, 1970 (CLRA), the provisions of the IESO Act would not lose effect as the provisions relating to the service conditions as specified in the model standing orders under the IESO Act are more comprehensive than those contained in the CLRA.

After clarifying the above aspects, the Government has, in the Guidelines, directed the Labour Commissioners in the state of Haryana to consider this while issuing registration certificates and licenses under the CLRA, the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1959 and the Motor Transport Workers Act, 1961.

Comments

The Guidelines are important as several companies, especially those in the information technology sector argue that the IESO Act should not apply to them as they have policies and procedures which are significantly more advanced and robust than those put in place by factories and other industrial establishments, and it is the latter class of establishments that the Parliament intended to cover under the statute. Such concerns were raised in Karnataka, which prompted the government to issue a notification granting exemption to knowledge-based industries from the provisions of the IESO Act.

The industry's response to the Guidelines is yet to be seen, although it is likely that technology driven companies based out of Gurugram and other locations in Haryana may press for exemptions similar to those granted in Karnataka.

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