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Analysing developments impacting business

GUJARAT SHOPS AND ESTABLISHMENTS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT 2019

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Introduction

The Gujarat Shops & Establishments Act 1948 (Old Act) stands repealed with the notification of the Gujarat Shops and Establishments (Regulation of Employment and Conditions of Service) Act 2019 (New Act) on 1 May 2019 (Effective Date) by the Government of Gujarat.

The New Act however, does not repeal the Gujarat Shops and Establishments Rules 1962 and the Rules will have the same effect, as if made under the New Act, unless they are inconsistent with the provisions of the New Act or superseded by any other new rules in the future.

Amendments

The key highlights of the New Act are:

- Applicability: The New Act applies to establishments having 10 or more workers and not to smaller establishments. The only requirement for establishments with less than 10 workers is to intimate the Inspector (appointed under the New Act) of commencement of business, as and when started. This is contrary to the Old Act which applied to all applicable establishments irrespective of their headcount.
- Definitions:
 - Employer: The definition of 'employer' has been expanded under the New Act to specifically include (i) a partner, in case of a firms or members in case of associations, (ii) directors, in case of a companies, and (iii) designated persons in case of Government owned or controlled entities.
 - Establishment: The definition of 'commercial establishment' has been replaced by "establishment" and has now been redefined to include residential hotels, restaurants, eating houses, theatres and other places of public amusement of entertainment. Such establishments were specifically excluded from the definition of 'commercial establishment' under the Old Act.
 - Employee: The definition of 'employees' has been replaced by 'workers' and which covers persons doing any work whether manual, skilled, unskilled,

technical, operational or clerical against a certain compensation but does not include an apprentice under the Apprentices Act 1961.

- Wages: The definition of 'wages' now includes house rent allowance along with the other components as stipulated under the Payment of Wages Act 1936.
- Registration Certificate: The requirement of periodic renewal of the certificate of registration has been done away with under the New Act. A registration certificate issued under the New Act shall remain in force from the date of issue unless any change in ownership or nature of business takes place. In such case, the employer shall have to obtain a fresh registration certificate. This may be borne in mind when working on a M&A transaction involving an enterprise registered under the New Act.
- Cancellation of registration: A new provision has been introduced in respect of cancellation of registration. The jurisdictional Inspector may cancel the registration of an establishment if such registration is obtained through misrepresentation, suppression of material facts, by submitting false declarations or forged documents or by fraud.
- Opening and closing hours: The New Act provides that opening and closing hours of establishments shall vary depending upon where they are located. For example, establishments located in the Municipal Corporation Area or on a National Highway or within a hospital or petrol pump may be open 24 hours while establishments in a Municipality Area or a State Highway may be open except between 2 am and 6 am. For other establishments, not covered in the areas outlined in the Act, they may be open other than between 11 pm and 6 am. The New Act also allows the Government the ability to curtail such timings based on traffic, public health, public safety, public nuisance etc.
- Notice for closure of establishment: An employer is now required to notify the jurisdictional Inspector within 30 days of closure of business, as opposed to ten days prescribed under Old Act.
- Leaves: The mechanism provided under the Old Act for the surrender of accumulated leave (akin to encashment) upon taking leave of 21 days or more has now been done away with. Under the New Act, every worker who has worked for a period of 240 days or more in an establishment shall be allowed paid leave for a number of days calculated at the rate of 1 day for 20 days of work performed during the previous year. This is in contrast to the Old Act which provided earned leave of 21 days in the case of an employee who had completed 240 day of work. Provisions in relation to sick leave and casual leave remain unchanged.
- Wages for overtime: Wages for a worker working more than 48 hours a week has been increased to twice his ordinary rate of wages unlike the Old Act where the rate was one and a half times his ordinary rate of wages. Further, a maximum cap of 125 hours has been placed in respect to the total number of overtime hours permissible for an employee in a period of 3 months.
- Prohibition of discrimination against women: A new provision prohibiting discrimination against women workers in matters of recruitment, training, transfers or promotion or wages has been introduced. Additionally, it provides that woman workers are allowed to work only between 6 am and 9 pm. However, they may be allowed to work beyond these hours, subject to their prior consent and where the Inspector is satisfied that the provisions of shelter, rest room, night creche, ladies lavatory, adequate protection of dignity, honour and safety, protection from sexual harassment, and their transportation from the shop or establishment to the door step of their residence exists.

- Welfare measures: The New Act creates a specific obligation on the employer to take measures for prevention of accidents. Additionally, it provides that every shop or establishment where 30 or more women workers are employed, shall provide and maintain a suitable room (or rooms), as a creche for children of such workers. It further provides, that if a group of shops or establishments decide to provide a common creche within a radius of 1 kilometre from their respective establishments, it shall be permitted by the Inspector by way of a separate order.
- Records and Registers: Records and registers can now be maintained electronically as well, by the employers.
- Penalties: The New Act provides for enhanced penalties with a maximum fine of INR 50,000 and if the contravention leads to any accident, with imprisonment of up to 6 months.

Comment

- Given that the Old Act was based in many ways on the provisions of the Bombay Shops and Establishments Act 1948, it is not surprising that the New Act is very similar to the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act 2017.
- The fact that the New Act does not apply to very small establishments is a major compliance relief to smaller and newer establishments.
- While the New Act provides for flexibility in terms of the opening and closing hours to establishments located in different areas, a specific 'working hours' exemption, could have been granted to establishments operating in certain sectors, such as information technology where it is common to find establishments working 24 hours a day. In general, it also appears that the timings provided in the New Act are longer than those provided in most other states.
- The New Act also provides for the benefit of women workers by firstly providing them flexibility in being able to work for longer hours provided adequate safety measures have been provided and by providing for creche facilities in establishments above a certain size. Unlike the provisions of the Maternity Benefit (Amendment) Act 2017, the requirements in the New Act appear to be more practical as they allow multiple establishments to come together and provide for a common creche facility.
- Despite such reforms having been introduced, the New Act appears to omit introducing new provisions for a few old provisions:
 - Notice Period: The New Act does not specify the minimum statutory notice period which may be issued by an employer during termination as opposed to the Old Act which provided for a notice period of 30 for employees who have been in the service of the employer for not less than a year. Given such ambiguity, establishments may consider issuing a notice of termination in accordance with the provisions of the Old Act. Moreover, the Industrial Disputes Act 1947 also provides for a minimum notice period during termination.
 - Exemptions: Various exemptions under the Old Act were granted to specific organizations and classes of employees. The New Act, in repealing the Old Act, provides that any law or requirement introduced under the Old Act shall, unless it is inconsistent with the provisions of the New Act or superseded by any other requirement in the future, be deemed to have been made under the provisions of the New Act. Thus, it will need to be seen whether the exemptions provided under the Old Act would continue to be extended or whether these would lapse.

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