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India: Industrial Employment Standing Orders Applicable to Haryana

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On July 24, 2019, the Government of Haryana issued a notification (no. 20934-70) clarifying that the Industrial Employment (Standing Orders) Act, 1946 ("IESO Act") is applicable to shops and establishments covered under the Punjab Shops and Commercial Establishments Act, 1958 as applicable to Haryana. The IESO Act inter alia applies to all establishments in Haryana which employs or employed 50 or more workmen in the preceding 12 months. This law aims at formally defining working conditions for workmen, thereby giving protection to workmen from possible arbitrary action by an employer.

By way of background, the IESO Act is applicable to shops and establishments in Haryana flowing from the Payment of Wages Act, 1936 ("PWA"). The Haryana Government had made the PWA applicable to all establishments in the State through a notification dated December 12, 2018, with effect from December 25, 2018. Thus, from a legal perspective, all establishments in Haryana with 50 or more workmen are covered under the IESO Act with effect from December 25, 2018.

Under the IESO Act, an establishment needs to submit draft standing orders to the labour authorities for certification within 6 months from the date the IESO Act becomes applicable, which will be approximately June 25, 2019. As of date, the Haryana Government has not issued any exemptions to the application of the IESO Act to any specific business sectors, including the IT / ITeS sector. In the circumstances, companies who meet the threshold requirement of 50 workmen will need to prepare their standing orders and submit them for certification with the labour authorities to be in compliance with the law.

Pending certification of the standing orders, the IESO Act states that the model standing orders as prescribed under the IESO Act Rules will apply to the concerned establishment. This again has legal implications for most companies, as the model standing orders have specific provisions relating to workmen classification, attendance, termination, and

misconduct, which may be different from the current practices followed by a company. These will need to be aligned in the draft standing orders that will be filed for certification.

If an employer does not submit draft standing orders for certification, a penalty up to Rs. 5000 may be imposed. If an employer does any act in contravention of the final certified standing orders, a penalty up to Rs. 100 may be imposed and in case of continuance of the offence, a further fine up to Rs. 25 per day may be imposed.

Once the standing orders are certified by the regulatory authorities, an employer is bound by the same, with any modifications to the standing orders being regulated by the law. This then curbs an employer's flexibility to sometimes operate. The model standing orders under the law are, in fact, somewhat archaic in nature, with most MNCs in India having evolved and exhaustive employment working conditions for their employees through employee manuals and handbooks. It is expected that this requirement in Haryana will receive pushback from the IT sector, which has significant business operations in Gurgaon. A similar reaction was seen from the IT sector in Bangalore, which resulted in the Karnataka Government granting an exemption from compliance with the IESO Act inter alia to the IT and ITeS sector provided the companies complied with specific employee-friendly conditions.

Pending any such official exemption by the Haryana Government, companies across all sectors in Haryana will need to be compliant with the IESO Act and have their certified standing orders in place.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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