

New notification in Karnataka allowing 24x7 operations

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As a step towards reviving the economy, the Government of Karnataka has issued a notification on 2 January 2021 (**2021 Notification**) to allow all shops and commercial establishments in Karnataka employing 10 or more persons to operate 24x7 (subject to certain conditions). The 2021 Notification is effective for a period of 3 years from 7 January 2021.

Some of the key requirements under the 2021 Notification are:

- The working hours of persons should not exceed 8 hours in any day and 48 hours in any week. The period of work including overtime must not exceed 10 hours in any day and the total overtime hours should not exceed 50 hours in a continuous period of 3 months;
- Additional staff must be appointed to allow every employee to avail one weekly holiday on a rotation basis;
- Written consent from women employees should be obtained if they are required to work after 8:00 PM and before 6:00 AM. Adequate protection and transport arrangements should be provided to women;
- Wages and overtime pay should be credited to the savings account of employees in accordance with the Payment of Wages Act, 1936;
- Restroom, washroom, safety lockers and other basic amenities should be provided to employees;
- An internal committee as prescribed under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 should be constituted.

The conditions in the 2021 Notification are in addition to those stipulated under the Karnataka Shops and Commercial Establishments Act, 1961 (**Karnataka S & E Act**); Employees' Compensation Act, 1923. 2021 Notification also prescribes penal action against the employer/manager for violating the provisions set out in the notification.

While the 2021 Notification seems to have been enacted with the objective of assisting employers in handling the financial loss that has occurred due to COVID-19 lockdown, clarity is required on some of the following issues:

The Karnataka Government allows shops and commercial establishments to remain operational 24x7 for a period of 3 years, subject to certain conditions.

1 Ambiguity on working hours

The 2021 Notification stipulates that one of the conditions to operate 24x7 is that work beyond 8 hours in a day and 48 hours in a week will be regarded as overtime. This conflicts with the existing provisions (Section 7 and 8) under the Karnataka S & E Act which stipulate a 9-hour standard workday without any overtime payment for up to 9 hours of work.

The 2021 Notification has been issued under Section 11 (opening and closing hours) and Section 12 (weekly holidays) of the Karnataka S & E Act, and seems to be altering the statutory working hours stipulated in Section 7 of the Karnataka S & E Act. This is likely to result in the validity of the 2021 Notification being questioned in the future, unless the conditions are amended.

2 Whether the new notification overrides the existing exemptions?

Prior to the 2021 Notification, IT and ITes establishments, medicine shops, establishments for retail sale of petrol, residential hotels and a host of other establishments listed under Section 3 of the Karnataka S & E Act were exempted from Section 11 (opening and closing hours) and Section 12(1) (weekly holidays) of the Act, which enabled them to run their operations 24x7. Apart from complying with the Karnataka S & E Act, there were no other conditions for most such establishments operating 24x7.

The 2021 Notification does not provide clarity on whether establishments already exempted under Section 3 of the Karnataka S & E Act would need to comply with the conditions provided in the 2021 Notification.

3 Conflict with 2019 notification

The Karnataka Government had issued a similar notification in 2019 allowing conditional operation of shops and commercial establishments 24x7, which was meant to operate till 14 November 2022 (**2019 Notification**). The 2019 Notification sets out that the period of work including overtime should not exceed 10 and half hours a day and 57 hours in a week which is different from the provisions under the 2021 Notification and the Karnataka S & E Act. Also, as the term of the 2019 Notification has not yet expired, the timing of releasing the 2021 Notification with a slight deviation on overtime cap creates some ambiguity.

We have been in dialogue with relevant authorities to highlight many of these ambiguities and it is hoped that the government will provide clarifications addressing these issues through a revised or amended notification.

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