

HR Law Hotline

November 11, 2015

STATE GOVERNMENT RECOMMENDS 'BEST PRACTICES' FOR SAFETY OF WOMEN EMPLOYEES IN INDIA'S TECHNOLOGY SECTOR

- State Government of Karnataka has issued a circular prescribing certain good practices for India's information technology sector with respect to safety of women employees working at night.
- The circular reiterates the employer's statutory obligations with respect to safety of women employees.

INTRODUCTION

In the wake of a recent rape incident in Bangalore involving an employee of an outsourcing service provider, the State Government of Karnataka has issued a circular emphasizing on the requirement for information technology ("IT"), IT enabled services ("ITeS") and Business Process Outsourcing ("BPO") companies to comply with the conditions prescribed under the state-specific labour law¹ for engaging women employees at night. The circular dated October 15, 2015 ("Circular") also prescribes good practices that can be followed by organizations for ensuring safety of women.

BACKGROUND

The Karnataka Shops and Commercial Establishments Act, 1961 defines 'night' as the period between 8:00 pm and 6:00 am and prohibits employers from requiring/allowing women to work at night. The phenomenal growth of the IT/ITeS sector in India coupled with a demand for gender parity, led to an amendment of the statute in 2002, enabling IT/ITeS companies to apply to the labour authorities to obtain an exemption from the prohibition.

The exemption granted by the authorities is conditional upon the employer ensuring that certain mandatory requirements are strictly adhered to. Such requirements, *inter alia*, include:

- Providing transport facilities from the residence to workplace and back, free of cost and with adequate security.
- Employing women employees in night shifts on a rotation basis.
- Posting adequate number of security guards during night shift.
- Conducting pre-employment screening of the antecedents of all drivers employed on their own.
- While hiring drivers through outsourcing, ensuring that the collection of bio-data and pre-employment screening of the antecedents of the drivers is carried out by the service providers.
- The schedule of route of pickup and drop to be decided by the supervisory office of the company only.
- Careful selection of routes to be made in such a way that ordinarily no women employees shall be picked up first and dropped last.
- The company to provide security guards at work place and for night shift vehicles when women employees are being picked up first or dropped last.
- Submission of a quarterly report to the labour department regarding compliance of the conditions set forth under the exemption obtained.

Any violation of the aforementioned requirements would attract penalty under the law and withdrawal of the exemption granted.

THE 'GOOD PRACTICES'

In addition to the aforementioned mandatory conditions which were prescribed in 2002, the Circular lays down certain 'good practices' such as:

- Conducting induction on women's rights for safe transport and their duties towards safe travel.
- Women employees to be escorted from drops starting at 6:45 pm to 6:00 am to avoid issues in case of traffic jams or similar issues.
- Individual SMS to be sent for each trip with details of the vehicle, driver and approximate pick up time.
- Each trip sheet for escort duty to carry a special prominent sticker marking it as a critical trip and cabs shall be allowed to proceed for drops only after transport checks have been done to ensure that the women employees are escorted.

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- At the end of each escort, women employees to sign off on safe arrival.
- Women employees not to be allowed to sit in front seat.
- Women employees to be empowered to refuse boarding a cab if they feel uncomfortable for any reason.
- Women employees to be mandated to report any concern immediately.
- Special care to be taken for cab routing and occupancy for transportation of pregnant women.
- Regular briefings to transport agencies, drivers, and security escorts on importance of safety and other guidelines.
- Incorporating guidelines on background verification of drivers employed by transport providers.
- Regular / random breathe check of drivers to avoid drunken state.
- Designated supervisors of the company/ service providers to randomly inspect vehicles on various routes.
- Company to have a control room/ travel desk for monitoring the vehicle movements.

The Circular also provides for appointment of a senior executive as the '*Women's Safety Officer*' to oversee the transport and security arrangements for women employees.

ANALYSIS

The incidents of sexual assault of women in the recent past have led the State Government to issue the Circular not just to remind employers of the existing law but also to introduce best practices. Since the practices have not been built into the legislation by way of an amendment, it is unclear whether these new 'good practices' are mere recommendations or are intended to be legally enforced.

The labour authorities are also aiming at conducting awareness programmes for companies, specially startups and newer firms on the mandatory requirements under law for ensuring women safety and the need for compliance². Provisions to ensure better protection of women at night shifts (in factories) are also one among the latest changes proposed in the Factories Amendment Bill³. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 also aims at protecting women from sexual violence at the 'workplace' which also includes transportation provided by the employer to cover the travel "arising out of or during the course of work".

In addition to the mandatory requirements under law, the National Association of Software and Services Companies (NASSCOM); an industrial body for software and IT/ITeS companies in India, has also laid down certain good practice recommendations towards ensuring safety of women employees. Such guidelines *inter alia* include permitting only authorized vehicles with valid stickers to enter the premises after due inspection by security guards; monitoring cabs ferrying women workforce using global positioning systems (GPS); boarding and de-boarding to be done in secure and well-lit areas; effective checks and controls on vehicle movement to be carried out in order to check any unwarranted activities of cab drivers, such as picking up strangers and staying away from the designated routes; 24x7 emergency helpline number and other important numbers to be displayed in cabs; self-defense training for women employees by professional trainers to help them get trained in handling emergency situations; training drivers etc.

With the galore of opportunities for women in every sector of the Indian economy backed with the need of ensuring their safety at work, it is time that employers join hands with the law enforcement authorities and industry bodies to work towards achieving a safe, progressive and healthy work environment for women.

– **Preeetha S, Veena Gopalakrishnan & Vikram Shroff**

You can direct your queries or comments to the authors

¹ The Karnataka Shops and Commercial Establishments Act, 1961

² <http://timesofindia.indiatimes.com/city/bengaluru/Labour-dept-finds-it-hard-to-regulate-safety-norms-in-IT-BT-companies/articleshow/49652681.cms>

³ <http://www.livemint.com/Politics/tFEKDGAIU707TrL5tw5q3N/Latest-labour-law-changes-stress-on-womens-safety.html>

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