

The “Shift” shifts.

written by Rajashree Devchoudhury | November 3, 2020



Women to Work Night Shifts: Karnataka Government Liberalises Norms for Women
“Equality is leaving the door open for anyone who has the means to reach it; equity is ensuring there is a pathway to that door for those who need it” – Caroline Belden

The aforementioned aptly encapsulates the measures taken by the Karnataka State Government pertaining to the employment of women during night time. Vide the recent notification dated October 19, 2020, Section 25 of the Karnataka Shops and Commercial Establishments Act, 1961 (‘Act’) has been substituted by the Karnataka Shops and Commercial Establishments (Amendment) Act, 2020 (‘Amendment Act’).^[1] The Amendment Act has laid down certain stipulations for employers in order to regulate the working conditions of women employed during night shifts in shops and commercial establishments within the state of Karnataka.

Background

The erstwhile Section 25 of the Act prohibited the employment of women and young persons during night time, i.e. after 8 p.m. and before 6 a.m.^[2]; however, proviso of the said section permitted the state government to exempt organizations/establishments rendering service related to Information Technology (“IT”) or Information Technology enabled service (“ITES”) from the provisions of the section subject to the condition that the organisations/establishments provide facilities of transportation and security to such women employees and subject to any other condition as may be specified by the state government by a notification.

Further, it is pertinent to note here an exemption to Section 25 of the Act could be found under Rule 24-B of the Karnataka Shops and Commercial Establishment Rules, 1963^[3] (‘Rules’), which allowed IT or ITES establishments to assign night shifts to those women who were willing to work during night hours. The exemption under Rule 24-B was further contingent upon approval of the same by the jurisdictional Labour Commissioner, or Deputy Labour Commissioner, provided there are at least 5 women per night shift.

Current Amendment

The new Section 25 of the Amended Act, titled ‘*Regulation of Employment of Women during Night*,’ lays down certain conditions to be followed by employers having women employees willing to work at night in a shop or commercial establishment situated in the State of Karnataka. Failure by employers to

comply with the stipulated regulations will result in the cancellation of their registration certificate under the Act. The conditions set forth in the new Section 25 are as follows:

1. The labour regulations stipulated under Sections 7 (Daily And Weekly Hours), 8 (Extra Wages For Overtime Work), 9 (Interval For Rest), 10 (Spread Over) and 12 (Weekly Holidays), of the Act shall continue to apply for women employees willing to work during night shift;
2. Willingness of women employees to work at night must be obtained by the employer in writing;
3. The establishment shall provide transport facilities from the residence of the woman employee to the workplace and back free of cost and with adequate security. Such transport facility must have GPS for tracking and monitoring;
4. Employment of women employees shall be on rotation basis;
5. Adequate number of security guards shall be posted during the night shift;
6. Sufficient rest rooms, electricity, latrines lockers, dispensary facility and washing facilities with adequate water supply shall be provided separately for women employees so as to secure their privacy;
7. The establishment shall bear the cost of crèche obtained by the women employees from voluntary or other organisations;
8. The establishment shall obtain the bio-data of each driver and conduct pre-employment screening of the antecedents of all drivers employed on their own;
9. Further, with respect to any driver employed through outsourcing/ service provider, the establishment shall ensure to its satisfaction that the collection of bio-data and conduct pre-employment screening of the antecedents of the drivers is carried out by the service provider;
10. The schedule of route of pick-up and drop shall be decided by the supervisory office of the company/ establishment only. In case of exigencies, change of drivers/routes/shifts shall be allowed only with the prior knowledge of supervisory officers/employees;
11. The telephone number, particularly mobile phone numbers, email ID and address of the women employees shall not be disclosed to any unauthorised persons;
12. Careful selection of routes shall be made in such a way that no women employees shall be picked up first and dropped last;
13. The employer shall provide security guards at the work place and night shift vehicles when women employees are being picked up first or dropped last;
14. The designated supervisors of the company or service provider shall randomly check the vehicles on various routes;
15. The establishment shall have a control room/travel desk for monitoring movement of vehicles;
16. A mobile app may be developed and adopted by the establishment through which the women employee can contact the concerned at the time of emergency by giving signal; and
17. Any other condition that may be prescribed from time to time.

Observations

The Amendment Act brings in both pros and cons for both, women employees working in establishments under the Act, as well as for employers.

Some of the pros are as follows:

1. Employers in establishments of IT or ITES employing women willing to work at night will no longer be required to apply for permission for the same from the Labour Commissioner or Deputy Labour Commissioner, thereby saving save such employers the time and costs required for the procedure stipulated by

Rule 24-B of the Rules.

2. Women employees will now have as much flexibility in terms of their working hours as their male counterparts.
3. The requirement that employers shall bear the cost of childcare obtained by the women working night shifts under the amended Section 25(1)(g) will also ensure that women with children will be able to make appropriate arrangements for their care without being burdened with excessive financial costs relating to the same.
4. Employers having business outside India and particularly, in different time-zones will now be able to work more efficiently with their foreign counterparts/partners/clients as their women employees will now be able to work at night as well. They will thus be able to operate at full strength irrespective of their working hours.
5. The punishment for employers who do not ensure that the conditions stipulated by Section 25 have been met whilst having women employees working at night is cancellation of their registration certificate. This will ensure good working conditions and safety for women working night shifts.
6. Discrimination in employment between men and women due to the prior bar on night shift work for women should lessen due to this amendment.

Some of the cons brought in by the amended section 25 are as mentioned below:

1. It might increase the cost on part of the employers to hire women working in night shifts, as the employer now will be required to hire security guards to be deployed both at the place of work and in the vehicles for transportation.
2. Additionally, the requirement on part of the employers to bear the cost of crèche facilities for the women employees if obtained by the women employees may act as an aversion for the employers as it creates an added liability on them.
3. The increase in the cost factor for employers employing women employees for night shifts might act as a deterrent for employers to employ them.
4. Furthermore, the safety of the women employees working in the night shift will act as an added responsibility for the employers.

Conclusion

The Amendment Act has thus removed the bar on women being permitted to work at night in the establishments covered by the Act. The newly inserted Section 25 seeks, instead, to regulate the working conditions of women employees willing to work during the night, and in this regard has stipulated certain conditions to be met by employers. This move is one that follows last year's Karnataka State Government Notification,^[4] which allowed women workers to be assigned night shifts by factories registered under the Factories Act, 1948. In the coming times, it would be interesting to observe how employers respond to these amendments.

[1] <https://erajyapatra.karnataka.gov.in/WriteReadData/2020/1091.pdf>

[2] Section 2(m) of the Act defines "night" as a period of at least twelve consecutive hours which shall include the interval between 8 P.M. and 6 A.M.

[3] <http://karlabour.in/sahayoga/template/default/images/pdf/39.pdf>

[4]

<https://sharphrdservice.com/wp-content/uploads/2017/04/Employment-Of-Women-In-Factories-In-Night-Shifts-In-Karnataka.pdf>

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