

Termination Requirements Under New Shops and Establishments Act

These days, everyone is witnessing major reforms happening in Indian labour laws in order to strengthen the workforce community and to replace the archaic regulations which does not fit in the current regime. One of such reforms is the enactment of new Shops and Establishments Act (“**S&E Act**”) on the lines of Model Shops and Establishments (Regulation of Employment and Conditions of Service) Bill, 2016 (“**Model S&E Act**”). There were three major reasons behind introducing this Model S&E Act; first, it modernizes existing legal provisions; second, it is intended to simplify business operations; and third, it is an effort to harmonize national legislation.

Significant reforms that have been introduced in the S&E Act for workers includes working hours, regulations related to women employment, limit on working overtime and appointing facilitators to enforce the provisions of the S&E Act. A substantial increase in penalties has been made under the new legislation to ensure that they are an effective deterrent.

Some of the States such as Maharashtra, Gujarat and Uttarakhand have also notified their S&E Act on the same lines proposed by Model S&E Act.

As we all understand that the S&E Act is the primary law governing the employment conditions of workforce working in a shops and commercial establishment. Such employment conditions *inter-alia* includes leaves, working hours, overtime and termination of employment (cause/no-cause), etc. Though these new clauses seem to provide better results however, at the same time, it has excluded certain important requirements which may adversely impact the employees.

These excluded requirements, *inter-alia*, include the termination notice (cause or no-cause). That means, new S&E Act does not provide the requirement of serving notice (or payment in lieu of notice) at the time of no-cause termination/resignation. It is silent on the termination on the ground of misconduct as well. Exclusion of these provisions from the S&E Act have increased the ambiguity as the



Rudra Srivastava
Partner
E: rudra@singhania.in



Bhanu Hairsh
Senior Associate
E: bhanu@singhania.in

Standing Orders Act and Industrial Disputes Act, 1947 does not apply in all cases. In such cases, the employee not covered under the Standing Orders Act and Industrial Disputes Act may be terminated at the will of the employer, and they may not be able to even seek legal aid under the S&E Act.

Till the time, this loophole has not been recognized by the Government and necessary amendments are made in the Model S&E Act (especially in the S&E Act of Maharashtra, Gujarat and Uttarakhand), the employees should be diligent while signing the employment agreements and do negotiate with the employer to include both sides of notice requirements and for categorically specifying grounds of misconduct and the process of termination (including inquiry procedure).

© 2019 All rights reserved. This article is for information purposes only. No part of the article may be reproduced or copied in any form or by any means [graphic, electronic or mechanical, including photocopying, recording, taping or information retrieval systems] or reproduced on any disc, tape, perforated media or other information storage device, etc., without the explicit written permission of Singhania & Partners LLP, Solicitors & Advocates ("The Firm").

Disclaimer: Though every effort has been made to avoid errors or omissions in this article, errors might creep in. Any mistake, error or discrepancy noted by the readers may be brought to the notice of the firm along with evidence of it being incorrect. All such errors shall be corrected at the earliest. It is notified that neither the firm nor any person related with the firm in any manner shall be responsible for any damage or loss of action to anyone, of any kind, in any manner, therefrom