

HR Law Hotline

December 08, 2020

COVID-19 LEAVE FOR EMPLOYEES IN BENGALURU

- Karnataka was one of the first states to take initiative on regulating provision of COVID-19 leaves to employees
- The Karnataka High Court has directed the state government to take certain decisions regarding employees required to undergo quarantine due to COVID-19 infection
- The state labour department issued a notification on provision of COVID-19 leaves to employees in private/ public establishments¹

The State of Karnataka has been one of the first Indian states to provide quarantine leaves to employees. On March 5, 2020 when the lockdown had not started in the country, the state labour department had issued a notification granting of 28 days paid leave to COVID-19 infected workers.

The state government has now issued another notification on November 6, 2020 requesting employers, as follows:

- Employers should not treat the period of quarantine of employees infected by COVID-19 as unauthorized absence
- Employers should enable the COVID-19 infected employees to utilize their leaves as per entitlement for the period of quarantine
- Where employees are not covered under the Employees' State Insurance Act, 1948 and are infected by COVID-19, employers should enable such employees to undergo quarantine with grant of leaves as per their entitlement
- Employers should facilitate the employees who are infected by COVID-19 and do not have any leave entitlements, to transfer of leaves from entitlement of other employees, to enable such employees to undergo quarantine
- Employers should allow employees who do not have any leave entitlement to avail leaves that would accrue to them in future
- Where the employer is unable to grant leaves to their employees and such employees do not have any leave entitlement, the employer and the employees should consult with each other for grant of special leaves and settle the matter amicably.

The notification, which is in local language (Kannada), has been issued in pursuance of the Karnataka High Court order in the matter *AITUC v. State of Karnataka*², where the Hon'ble Court, while deciding on the protection of workmen who are forced to undergo quarantine either by reason of COVID-19 infection or by reason of being primary contacts, stated:

"Though cannot direct the State Government to do something which cannot be done within four corners of law, the Government can always explore the possibility of issuing appropriate directions under the Provisions of the Disaster Management Act, 2005 (for short 'the said Act of 2005'). If a direction is issued under the said Act of 2005 that a primary contact of a person who is tested positive for Covid-19 or an employee who is himself infected with Covid-19, must remain in quarantine for a particular time period, it is obvious that the said period of quarantine cannot be treated as a period of leave or a period of unauthorized absence. We direct the State Government to take necessary decision in this behalf."

Therefore, the Hon'ble High Court in the aforesaid order insinuated that the Karnataka state government should use its powers under the Disaster Management Act, 2005 to assuage the situation of the employees compelled to undergo quarantine due to COVID-19 infection or due to their exposure to COVID-19 owing to contact with infected individuals.

ANALYSIS

Although the endeavour is laudable, the notification seems to be issued to basically comply with the Karnataka High Court order dated October 21, 2020. While the notification seeks to provide various options to employers to enable their employees to undergo COVID-19 quarantine, without any reference to any specific labour laws or an amendment to the Karnataka Shops and Commercial Establishments Act, 1961, the notification may likely be treated as an *advisory*. In any case, it is something that employers should proactively consider at least from the employer's duty of care perspective and to help prevent further spread of the Covid-19 pandemic.

— Santosh Gangavati, Sayantani Saha & Vikram Shroff
You can direct your queries or comments to the authors

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¹ <https://erajyapatra.karnataka.gov.in/WriteReadData/2020/1168.pdf>
² (WP 9009/2020) order dated October 21, 2020.

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