

## SHOPS AND ESTABLISHMENTS LAW IN KARNATAKA



The regulation of employment and service conditions in India is governed by laws enacted by Parliament as well as the respective state legislatures. Different states have enacted laws applicable to the shops and establishments specific to their states. Although the shops and establishment legislations in each state are similar, there are some differences in their applicability and conditions.

This primer covers the laws governing the employment and service conditions in the state of Karnataka.

1. **What is the law governing the shops and commercial establishment activities in Karnataka, India?**

The Karnataka Shops and Commercial Establishments Act, 1961 (**S&E Act**) and the Karnataka Shops and Commercial Establishments Rules, 1963 (**S&E Rules**) govern the shops and commercial establishments in the state of Karnataka.

2. **What is the object of the S&E Act?**

The object of the S&E Act is to provide for the regulation of conditions of work and employment in shops and commercial establishments in the state of Karnataka.

3. **What is the extent of applicability of the S&E Act and the S&E Rules?**

The S&E Act is applicable to all shops and establishments including government commercial undertakings in the State of Karnataka.

However, the S&E Act is not applicable to establishments such as governmental offices or offices of legal and medical professionals employing 3 or less persons; businesses / undertakings providing railway, postal, telegraph, telephone, water, power or light services; systems of public conservancy or sanitization; establishments for sick, infirm or mentally ill persons; managerial persons and employers whose work is inherently intermittent or those directly engaged in cleaning or clerical work.

Further, the provisions relating to opening / closing hours and weekly holidays is not applicable to certain categories of shops / establishments including shops dealing in medicines; residential hotels; establishments in boarding school; cinemas; retail sale of petrol; information technology establishments and establishments of epidemic and other diseases.

**4. What is a 'shop'?**

The term 'shop' means any premises where any business is carried on or where services are rendered to customers. It includes offices, storerooms, godowns and warehouses used in connection with the business, but it does not include a shop attached to a factory.

**5. What is an 'establishment'?**

The term 'establishment' means a shop or a commercial establishment. 'Commercial establishment' is a commercial establishment in which persons employed are mainly engaged in office work. This includes a hotel, restaurant, boarding or eating house, a cafe or any other refreshment house, a theatre or a place of public amusement or entertainment. The courts have held that it is essential for an 'establishment' to have an element of commerce to be governed under the S&E Act.

**6. Who is an 'employee'?**

An employee is a person who is employed in any establishment whether working permanently, periodically, on commission or contract or piece-rate wages. It includes an apprentice, clerical or any member of a factory or industrial establishment outside the scope of the Factories Act, 1948. However, it does not include a family member of the employer.

**7. Who is an 'employer'?**

An employer is a person who is in charge or has ultimate control over the affairs of an establishment. It includes a manager, agent, any other person managing or controlling the establishment and a family member of the employer.

**8. Who is a 'young person' and an 'adult' under the S&E Act?**

A 'young person' is a person who is over 14 years old but has not completed 18 years of age. An 'adult' is a person who has completed 18 years.

**9. Who are the authorities to ensure the implementation of the S&E Act and S&E Rules?**

A 'Chief Inspector' who is the Commissioner of Labour in Karnataka is appointed to implement the provisions of the S&E Act and the S&E Rules throughout Karnataka.

Further, one or more 'Inspectors'; 'Assistant Inspectors' and 'Additional Inspectors' may be appointed by the state government within specific local limits. An inspector may exercise powers such as inspecting establishments and registers, issuing and renewing registration certificates and interrogating any person on the establishment premises.





10. **What is the process of registration of a shop or establishment under the S&E Act?**

The employer of every establishment is required to register the establishment by submitting an application within 30 days of commencement of work to the inspector of the concerned area. On being satisfied with the contents of the application, the inspector will issue a registration certificate to the employer. The registration certificate must be displayed prominently in the establishment.

If the inspector is not satisfied with the application, she may reject the application and communicate her decision along with reasons for the refusal within 30 days of the receipt of the application. If the inspector does not communicate her decision within the said time, the establishment will be deemed to be registered.

11. **What is the validity of the registration that is granted and what is the process for renewal of registration?**

The registration certificate is valid for a maximum period of 5 years.

For renewal, an application must be submitted before 90 days from the date of expiry of the registration certificate. If the inspector is not satisfied with the application, she will communicate the same to the applicant failing which the registration certificate will be deemed to have been renewed.

12. **What are the on-going compliances an employer is required to undertake under the S&E Act and the S&E Rules?**

An employer must comply with the following:

- (a) **Notify any changes:** Notify any change in any of the particulars submitted during registration of the establishment with the inspector within 15 days from the date of such change
- (b) **Notify closure:** In case of closure of establishment, notify that the establishment has been closed for business to the inspector within 15 days from the date of closure of the business

- (c) **Notify weekly holiday:** Fix a weekly holiday at the beginning of the year or within 30 days of starting the establishment and notify it to the inspector. The fixed weekly holiday cannot be changed more than once in 3 months and the changed date is also required to be notified to the inspector
- (d) **Issue appointment order:** Issue an appointment order within 30 days from the date of employment of any person in the establishment
- (e) **Maintain registers / books:** Maintain muster roll-cum-register of wages; visit book to record any remarks by the inspector on her visit and leave with wages book and give a copy to each employee
- (f) **Display notices / registration certificate:** Display notice specifying weekly holidays; notice containing extracts of the S&E Act and S&E Rules in Kannada and in a language of the majority of employees and display registration certificate
- (g) **File annual return:** File a combined annual return with the inspector on or before 31<sup>st</sup> January every year
- (h) **Exhibition of name of establishment:** The name of the establishment shall be displayed prominently in Kannada. If any other language is used, it should be less prominent than the name written in Kannada

13. **What are the compliances required for shops and establishments employing 10 or more persons?**

The Labour Department of the Government of Karnataka has mandated through a notification dated 20 July 2021 that establishments employing 10 or more persons can remain open 24 hours in a day. This is applicable till 02 January 2024. In such cases, the employer must comply with the following requirements in addition to those mentioned in response to questions 12 and 17:

- (a) an employee cannot be allowed to work for more than 9 hours any day and 50 hours in any week
- (b) appointment of additional staff must be done so that each employee avails 1 weekly holiday on a rotation basis
- (c) details of every employee should be displayed on the establishment premises
- (d) setting up an internal complaints committee against sexual harassment of women under the sexual harassment law







14. **What is the process of removing an employee from service?**

An employee who has worked for 6 months or more can be removed from service only after she has been provided a notice of dismissal at least 1 month prior to her removal or 1 month's pay if notice is not given. The removal of such employee can only be on a reasonable cause. Courts have interpreted the term 'reasonable cause' widely and have held that intention for removing an employee must not lack genuineness.

However, if misconduct by an employee is brought on record at an inquiry conducted by the employer, the requirement of giving notice does not apply.

15. **What is the maximum limit for the working hours for an employee?**

An employee can be required to work in an establishment up to 9 hours in any day and 48 hours in any week. Such employee must not be required to work continuously for more than 5 hours unless she is given a break of at least 1 hour. Also, no young person shall be allowed to work in an establishment for more than 5 hours a day. The period of work of an employee must not exceed 12 hours in a day.

16. **Are there any overtime payments to be made if the employee works beyond the maximum limit?**

Yes, where an employee in an establishment is required to work beyond 9 hours a day or 48 hours a week, she will be entitled to wages at the rate of twice her ordinary rate of wages for the overtime work. It must be noted that the total number of hours of work including overtime shall not exceed 10 hours in any day except on days of stock-taking and preparation of accounts. The total number of overtime hours must not exceed 50 hours in a period of 3 months.

17. **What are the conditions specifically with respect to women employees?**

Women employees may be allowed to work between 8 p.m. and 6 a.m. after obtaining her written consent.

The employer is responsible to provide adequate protection to the dignity, honour and safety of the women employees including arranging transport for women working in shifts and carrying out a check of the drivers employed for the same; arranging night shift vehicles if a woman employee is picked up first or dropped last during transportation; monitoring movement of vehicles used in transportation by setting up a control room or travel desk; ensuring privacy of contact details of women employees; bearing the cost of creche facilities availed by women employees and providing security guards at work place.

18. **What is the minimum number of leaves to be provided to the employees?**

Every employee is entitled to the following leaves:

- (a) **Weekly leave:** 1 weekly holiday with wages
- (b) **Annual leaves:** 1 day for every 20 days of work, for every adult and 1 day for every 15 days of work, for a young person
- (c) **Sick leaves:** 12 days for every 12 months of continuous service in case of sickness, accident or any other reasonable cause. Generally, what is 'reasonable' depends on facts and circumstances of each situation.
- (d) **Accumulation:** Up to 45 days of earned leave can be accumulated

It is to be noted that an employee should apply for leaves in writing at least 10 days before her leave period begins except when leave is taken due to reasons such as sickness or accident.

Further, an advance payment of wages must be made to an employee in the following instances: (i) for an adult in case of a leave of 4 or more days; (ii) for a young person in case of a leave of 5 or more days; and (iii) in case of sick leaves, within 15 days of the beginning of the leave.

19. **What are the welfare measures that are required to be undertaken by the employer?**

The employer is required to take measures relating to the health and safety of the employees including at least two stairs for two-storeyed buildings, lighting and prevention of fire; sufficient rest rooms; separate washrooms for men and women; lockers; dispensary facilities and washing facilities with adequate water supply.

20. **What is the penalty for contravention of the S&E Act and the S&E Rules?**

The penalty for contravention of the S&E Act and the S&E Rules is as follows:

- (a) INR 1000 for contravention of obligations relating to registration, notifying inspector; appointing and dismissing employees; daily and weekly hours of work; wages for leaves; intervals for rest; opening and closing hours and weekly and annual holidays. For any repeated offence, a penalty of up to INR 2000 may be imposed



- (b) INR 250 for contravention of compliances relating to extra wages for overtime work, advance payment of wages in certain cases of leaves, maintaining and producing registers for inspection
- (c) For contravention of the provisions regarding employment of children and women, punishment may be levied in the form of imprisonment for 3 to 6 months or a fine between INR 10,000 to INR 20,000 or both. Further, repeated contravention of the same is punishable by imprisonment for a period of 6 to 12 months
- (d) Between INR 500 to INR 1000 for contravention of compliances under the S&E Rules. However, for contravention of the provision regarding displaying the name of establishment in Kannada, the minimum penalty is INR 10,000

21. **What is the consequence of non-cooperation with the inspector?**

Any obstruction to the inspector from discharging their duties of inspection, examination, inquiry, investigation or refusing to produce a register or other document, is punishable with a penalty of up to INR 500.

22. **What is the period during which proceedings can be initiated under the S&E Act?**

Proceedings can be initiated against any offence committed by an employer within 6 months from the day on which the offence takes place.

23. **Can a person charged of offences under the S&E Act and S&E Rules enter a compromise and agree to have the charges dropped against her i.e., can the offences be compounded?**

Any offence except those relating to employment of women and children may be compounded on an application by the accused person before or after the institution of prosecution for the offence. The offence can be compounded after payment of an amount between INR 1000 to INR 2000 for the first offence and between INR 2000 to INR 5000 for any subsequent offense.



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