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PAID LEAVE TO COVID-19 AFFECTED EMPLOYEES

Brief Background

1. The Chief Secretary of Karnataka issued order under the Disaster Management Act, 2005 (**DM Act**) in Kannada language on 18th January 2021 (**Order**).
2. This Order, *inter alia*, states that:
 - a. If any worker is found to be Covid-19 positive, they must go for compulsory quarantine for 14 days;
 - b. Under the DM Act, Sec. 24(l), all employers must grant paid to their workers if they are under quarantine
 - c. It will be effective from the time of lockdown period.
3. The Order is vague in its applicability, as to if it applies only to unorganised sector or all sectors of workers.
4. Karnataka is currently under curfew from 27th April to 12th May 2021¹ and is reportedly going under lockdown from May 10th for two weeks.² The legality of the Order is discussed below.

Position Under DM Act

1. The Order passed by the Chief Secretary; Government of Karnataka is under Sec. 24(l) of the DM Act. However, that clause is merely residual permitting the State Executive Committee to “*take steps as directed by Central/ State Government or as required or warranted by the form of any threatening disaster situation or disaster.*” Grant of paid leave cannot be said to be a step to address a disaster situation.
2. State ministries must take necessary affirmative steps to implement the directions of the State Executive Committee, whereas its directions cannot *per se* have any force of law. Therefore, the Order directing employers to grant paid leave cannot be issued under the DM Act.

Position under Karnataka Shops Act

1. The law governing holidays in Karnataka is the Karnataka Shops and Commercial Establishments Act, 1961(**Shops Act**).
2. It grants leave with wages for employees *i.e.*, earned leave under and sickness-cum-casual leave. No other type of leave is mandated under the Act.

¹ <https://covid19.karnataka.gov.in/storage/pdf-files/Government%20Orders/Order-COVID-19%20Guidelines%20to%20break%20the%20Chain%20of%20COVID-19%20Transmission%20in%20the%20State.pdf>

² <https://timesofindia.indiatimes.com/city/bengaluru/curfew-ineffective-govt-lockdown-call-on-may-10/articleshow/82447412.cms>

3. Karnataka Industrial Establishments (National and Festival Holidays) Act, 1963 (**Holidays Act**) grants paid holidays to employees on national/festival holidays and on polling days.
4. However, neither of these Acts grant powers to the government to declare any other type of paid leave.
5. Hence, the Order is inconsistent with the existing laws governing leave.

Judicial Precedents and Analysis

1. High Court of Karnataka in its order dated 20th January 2021³ *INTUC v. State of Karnataka* held that the Order will apply to employers in the organized and unorganized sector.⁴
2. But *Indian School, Jodhpur v. State of Rajasthan*,⁵ the Supreme Court held on 3rd May 2021 in the context of school fees in the context of DM Act that “*it is unfathomable as to how the State Authorities established under the stated Act can arrogate unto themselves power to issue directions to private parties on economic aspects of legitimate subsisting contractual matters or transactions between them inter se.*” It also held that “*it is the direct effect of disaster that is required to be mitigated and not indirect hardship caused to individuals much less in respect of contractual matters.*”
3. From the apex court’s judgment, it is clear that the DM Act does not *per se* empower the Karnataka Government to pass the Order.
4. The employee may be well within their rights to utilise their available sick leave, casual leave earned leave or any other accumulated leave. Also, the employer may voluntarily grant paid leave for days when an employee is affected by the virus.

CONCLUSION

From the above analysis, it appears that the Order is inconsistent and not supported by law. At best, it is in the nature of advisory to employers. However, it does not have any force of law.

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³ WP No. 9009/2020.

⁴ The Order does not (in its entirety) appear to apply to organized sector employers.

⁵ https://www.livelaw.in/pdf_upload/indian-school-jodhpur-vs-state-of-rajasthan-ii-2021-sc-240-392802.pdf