



NEW LEGISLATION APPLICABLE TO SHOPS AND ESTABLISHMENTS IN MAHARASHTRA

In India, each State has its own Shops and Establishments law which regulates the working conditions of employees engaged in shops and commercial establishments, other than in factories. On December 19, 2017, the new Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service Act), 2017 (“**New Shops Act**”) was made effective, which replaced the erstwhile Maharashtra Shops and Establishments Act, 1948 (the “**Old SWhops Act**”) and its rules. Thereafter, on March 23, 2018, new rules corresponding to the New Shops Act (the “**New Shops Rules**”) were notified.

Key changes introduced by the New Shops Act and the New Shops Rules

Set out below are the key changes introduced by the New Shops Act and the New Shops Rules, and the implications thereof:

- Applicability: The New Shops Act is applicable to establishments which employ ten (10) or more workers. The New Shops Act does not cover workers occupying a confidential, managerial or supervisory position in the establishment or workers whose work is inherently intermittent. This is a breather for small organizations and startups which employ less than ten (10) workers as they are no longer required to provide working conditions similar to those provided by a large employer.
- Intimation by establishments employing less than ten (10) workers: An establishment employing less than ten (10) workers is required to file an online intimation of commencement of business with the facilitator appointed under the New Shops Act (the “**Facilitator**”) within sixty (60) days of commencement of the New Shops Act or commencement of business, whichever is earlier. This intimation has to be filed in Form F along with the documents specified in Part C of the Schedule to the New Shops Rules. Other than this intimation requirement, establishments employing less than ten (10) workers are not required to comply with the New Shops Act.
- Intimation of confidential or managerial position: Every employer is required to inform the Facilitator, the names, designation and in brief, the nature of duties of persons occupying a managerial position in the establishment. Further, employers are also required to inform the Facilitator the names of persons who occupy a position of a confidential nature, not to exceed more than 1% of the total strength of the establishment or fifty (50), whichever is lower. These intimations are required to be made on an annual basis, or whenever there is a change during the year. Complying with this provision may be onerous for employers, although it will ensure that once an employee is exempted from the provisions of the New Shops Act, he/she will not be entitled to claim any benefits under it.
- Validity of registrations: The New Shops Act has clarified that registrations issued under the Old Shops Act will remain valid until the expiry date specified under the Old Shops Act, and a new registration under the New Shops Act will only have to be applied for at the time of expiry of the existing registration. The New Shops Act now permits renewal of a registration for a period up to ten (10) years as opposed to three (3) years under the Old Shops Act. Employers can save time and costs by renewing their registration for a period of ten (10) years.



- Inspection powers: Under the New Shops Act, the Facilitator and the Chief Facilitator appointed by the State government will have powers to inspect an establishment to ensure that the working conditions are compliant with the New Shops Act. Additionally, the State government has the power to issue a scheme to randomize inspection by generating a web-based inspection schedule. While this scheme has not yet been notified, in our view, this scheme will ensure that all establishments are treated equally and are inspected on a regular basis. However, on the flip side, it can also result in keeping alive the inspector raj.
- Weekly holidays: Under the Old Shops Act, every establishment was required to be closed at least one (1) day a week. The New Shops Act permits establishments to be kept open all days of the week, *provided, that*, every worker is given a weekly holiday. This change promotes a business friendly environment and will benefit the information technology services and the restaurant industry, which generally need to be functional on all days of the week.
- Working conditions for women: The New Shops Act has done away with the protective discrimination against women by permitting women workers to work in night shifts, between 9:30pm and 7:00am, subject to the following conditions: (i) consent of the concerned woman worker has been obtained; (ii) the employer provides adequate protection for the dignity, honour and safety of the woman worker; (iii) the employer ensures protection from sexual harassment; (iv) the employer provides transport to the woman worker from the establishment to the doorstep of her residence; and (v) at least three (3) women workers are employed in the establishment during every night shift. Moreover, every woman who works in the night shift is now eligible for one (1) additional paid holiday for every two (2) months in a year (i.e., six (6) extra holidays in all). In our view, the relaxation permitting women to work in night shifts is welcome. Prior to this relaxation, employers would have to seek exemptions from the provisions of the Old Shops Act to enable women to work in night shifts. Having said that, the conditions to be complied by the employer are quite stringent and may be difficult for small and mid-sized organizations to fulfil. Also, the employer is required to give an undertaking to the Facilitator that it has complied with and will take due care and diligence to ensure the safety, dignity and honour of women workers, in general, and particularly in the night shift.
- Welfare Provisions: The New Shops Act prescribes more elaborate welfare provisions for workers, such as: (i) sufficient supply of wholesome drinking water; (ii) crèche facilities for the care of children of workers; and (iii) maintenance of a canteen in an establishment where more than one hundred (100) workers are employed or ordinarily employed. Also, establishments employing more than one hundred (100) workers are required to constitute a health, safety and welfare committee which should include representatives from the employer's side and from the workers side.
- Registers and annual return: The New Shops Act allows employers to maintain their registers and records in an electronic form. However, the hard copies of such records, duly signed by the employer or its representatives, are required to be submitted to the Facilitators at the time of inspection, upon demand. Further, the employer of every establishment will now be required to furnish an annual return in the prescribed format. This annual return can be filed in an electronic form. The New Shops Act is business friendly for employers as it enables documents to be maintained in an electronic form and filings to be done online.



- No provision on notice periods: The Act does not specify any requirements on notice periods for resignation or termination of employment. Therefore, employers can prescribe notice periods in employment contracts as they deem fit. Having said that, the retrenchment provisions of the Industrial Disputes Act, 1947, may have to be complied with in case of termination of employment without cause. This change is beneficial for employers as it permits them to frame appropriate notice period provisions under employment contracts depending on the role, seniority and designation of the employee instead of having to apply a thumb rule to all employees.
- Maximum Penalty: In order to ensure that employers take the provisions of the New Shops Act seriously, the maximum penalty has been increased from INR15,000 (US\$215) to INR500,000 (US\$7,353). The New Shops Act also provides for imprisonment extending up to six (6) months in case of certain contraventions. Given these changes, employers will be forced to ensure that working conditions in their establishments are compliant with the New Shops Act. Having said that, the New Shops Act permits compounding of offences, i.e., the employer can make an application seeking reduction in the penalty imposed for any contravention.

Overall, this is a clear move by the Maharashtra government to make its labour laws more competitive and abreast with global standards. Permitting women to work in night shifts with appropriate safe guards, permitting e-filing, and doing away with termination notice periods are definite plusses, which will make industry more competitive.