CIRCULAR

CIRCULAR No. 34 / 2021

Date: 21.04.2021

To
All Members of The Association

Leave to Employees infected by COVID-19

1. A number of queries are being received from Establishments seeking clarification whether the Establishments are required to grant leave with wages to the employees infected by COVID-19 and also to the employees who are the primary contact of their colleagues who are infected by COVID-19 and are required to be quarantine. Apparently, confusion in this behalf is on account of different notification issued by the Government of Karnataka starting from the circular dated 5.03.2020 issued by the Secretary Department of Labour.
2. The Secretary Department of Labour, Government of Karnataka by a circular dated: 5.3.2020 had directed the employers to grant 28 days leave with pay to the employees affected by Corona Virus. It was further directed that the employees covered under the ESI Scheme may obtain confirmation from the doctors about their medical status at the nearby ESI Hospital and submit the same to the concerned authority of the ESI for grant of 28 days leave. The notification dated 5.03.2020 also stipulated that the employees who are not covered under the ESI Scheme, the employers should mandatorily grant 28 days leave with wages in addition to the leave admissible to them under the Karnataka Shops and Commercial Establishment Act.
3. The above circular for granting 28 days leave with wages to the COVID infected employees was issued during the period of lockdown. However, subsequently the Ministry of Home Affairs Government of India by a notification dated 17.05.2020 and the Government of Karnataka notification dated 18.05.2020 superseded all the earlier restriction imposed on the employer effective from 18.05.2020. The guidelines as contained in the circular dated 5.03.2020 of Government of Karnataka also stood revoked.

4. While the matter stood thus, a Public Interest Litigation (PIL) in W.P No. 9009/2020 was filed by All India Trade Union Congress for a direction to the Government to issue guidelines for granting leave to the employees who are infected by the COVID-19 or who are required to remain under quarantine. As per the directive in the proceedings held on 21.102020, the Government of Karnataka issued notification KAE 66 KaBaNi 2020 (Part-1) dated 06.11.2020 with an advisory to employers of all public or private companies, as under:
    - The Period of Quarantine of Employees / Workmen infected by corona virus shall not be treated as unauthorized absence.
    - Enable the Employees / Workmen infected by Corona virus to utilize Leaves under their Quota for the period of quarantine.
    - The Employees/ Workmen who are not coming under the purview of ESIC, even if they are not entitled for leave, if infected by the coronas virus, taking into the consideration the larger interest of society, and the employers on their own initiative, grant leave as available/possible, in terms of their employment to undergo quarantine.
    - In case the Employees / Workmen who are infected by Corona Virus who don't have leave in their account, to facilitate transfer of leave from the account of other Employees/ Workmen and enable them to undergo the quarantine.
    - To facilitate workers who don't have leave under their quota and when it is already fully utilized, then provide for advance leave which they are eligible in future so that the infected Employee /Workmen undergoes the quarantine.
    - When the Employers are unable to grant leave on their own initiative to Workmen and when such Workmen do not have any kind of leave under their Quota, both Employers and Workmen to have consultation with each other regarding granting of special leaves for the period and come to an amicable solution.

5. The Petitioner Union placed the notification dated 6.11.2020 before the Hon'ble High Court in the subsequent proceedings. The Hon'ble High Court directed the Government to reconsider the guidelines issued under notification dated 6.11.2020.
6. In the above context, Chief Secretary to the Government of Karnataka in his capacity as the Chairman of the Karnataka State Disaster Management Committee issued the notification dated 18.01.2021 under Section 24(l) of the Disaster Management Act 2005. The notification

dated 18.01.2021 was placed before the Hon'ble High Court and the High Court was pleased to dispose off the PIL after taking note of the notification dated 18.01.2021.

7. In terms of the notification dated 18.01.2021, the employees who are infected with COVID-19 are required to be extended 14 days of leave with pay. The quantum of 14 day's leave with pay to be extended to the employees on account of the COVID infection is over and above the leave available to them in accordance with the applicable statutory provision or the leave policy/rules of the Establishment.
8. In terms of the above the establishments are required to grant leave with wages to their employees, if they are unable to work on account of the period of quarantine they are required to undergo due to COVID-19 infection. The leave facility should also be extended to those employees who are primary contacts of the COVID infected persons and consequently unable to work during the period of quarantine.
9. Establishments may comply with the directions as contained in notification dated 18.01.2021 issued by the Secretary to the Government and Chairman of the Karnataka State Disaster Management Committee in exercise of the powers conferred on him under section 24(1) of the Disaster Management Act 2005.

For KARNATAKA EMPLOYERS' ASSOCIATION
Sd/-
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