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KARNATAKA INTRODUCES DRAFT CRÈCHE RULES UNDER MATERNITY BENEFIT LEGISLATION**1. BACKGROUND**

The Maternity Benefit (Amendment) Act, 2017 (the “Act”) brought into force last year was lauded for its progressiveness and for promoting a more inclusive workforce. However, one of the key stipulations under the Act, requiring every establishment engaging more than 50 employees to provide a crèche facility for its women employees (a “Crèche Requirement”), needed additional clarity in the form of State rules.

Even though this Crèche Requirement came into force from July 1, 2017, given the absence of States rules, several corporations have been complying with the Crèche Requirement in a somewhat *ad hoc* manner given the lack of clarity.

In order to bridge this, the Government of Karnataka has recently published draft rules under the Maternity Benefit Act, 1961 titled ‘Karnataka Maternity Benefit (Amendment) Rules, 2018 (the “Draft Rules”). These Draft Rules provide crucial inputs on the Crèche Requirement.

2. HIGHLIGHTS**2.1. Applicability**

Any establishment within Karnataka that engages more than 50 employees (whether directly, or through an agency) is required to maintain 1 crèche for every 30 children, below the age of 6 years.

2.2. Location

The crèche facility has to be located within the premises of the establishment or within 500 meters from the entrance gate of the establishment. This proximity of the crèche from the workplace is also to ensure that the mother can make 4 visits to the crèche during a working day, which is a requirement under the Act. The employer is required to exercise due care while determining the location of the crèche in order to ensure that the facility is not exposed to obnoxious fumes, dust, odor or noise. The establishment can seek expert advice, including from National and State support agencies while determining the location.

2.3. Structural Requirements and Utilities

During the construction of the crèche, the employer is required to adhere to all laws relating to planning, building control, fire safety, and health and safety, including the following specific requirements:

- Compliance with building specifications (depending on whether the crèche is located in urban or rural areas);
- The crèche has to be located on the ground floor;
- There must not be less than 5 square feet of floor area for each child;
- Materials used for construction must be heat resistant and water proof;
- There must be adequate ventilation and protection from rains;
- There must be a kitchen and washroom with adequate water supply attached to the facility; and
- There must be provision for an open-air playground with adequate fencing.

In addition, the Draft Rules also list out various items and facilities that must be provided by the employer to the children and staff of the crèche, including milk, refreshments, clothes, soap, oil, cots, mattresses, cotton sheets, rubber sheets (for children below 3 years) and child friendly furniture, amongst other things.

2.4. **Staff**

Under the Draft Rules, at least 3 types of staff have to be engaged for the management of the crèche who would be required to have certain specific qualifications.

2.5. **Working Hours**

The working hours of the crèche should correlate to the working hours of the establishment. If the establishment operates in shifts, the crèche must also operate in shifts and different personnel have to be appointed for each shift.

2.6. **Health and Medical Records**

The crèche should have a first-aid kit and ensure that it is updated from time to time. Prior to admission at the facility and thereafter on a monthly basis, every child would be required to undergo medical examination and medical records in this regard have to be maintained at the facility.

3. **INDUSLAW VIEW**

At the outset, the long-awaited Draft Rules do serve as an operational guide to establishments to comply with the Crèche Requirement. However, the Government seems to have adopted a prescriptive, one-size fits all approach, which does not take into account parameters such as the size of the establishment, its commercial capability, the location of the establishment (i.e. whether there is adequate space within an establishment's premises or in surrounding areas to maintain a crèche facility) and the nature of the

business being carried out. Many establishments in city centers will no doubt find it difficult to find premises with outside space.

It is also unclear whether the Draft Rules once finalized, will provide flexibility to the employer to explore any alternatives such as:

- Whether the employer could, as part of complying with the Crèche Requirement, bear the costs of employees' enrolling their children at existing day care centers or nursery schools in the area?
- Whether the establishment could invite third party service providers to provide day care facilities at its own premises?
- Whether the employer can accommodate employees' requests to enroll their children at a facility closer to their homes rather than one closer to the establishment?

Another important factor is that each State already has certain other guidelines and policies that could impact day care facilities for children. For instance, in Karnataka, there are BBMP norms on setting up day care centres, a 2016 Karnataka State Child Protection Policy, as well as requirements under the education legislation for pre-primary schools.

Since day care centers and nursery schools could themselves be subject to multiple regulations, it remains to be seen whether every establishment that is required to have a crèche facility under the Act, has to comply with the Draft Rules, along with all other regulations that could have a bearing on day care or nursery school facilities for children.

While the effort of introducing the Draft Rules is undoubtedly commendable (Karnataka is one of the first few states to do so), in our view, the rules could definitely have provided a more nuanced understanding on how establishments of various sizes and in different areas are expected to comply with the Crèche Requirement under the Act.

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