

DEPARTMENT OF LABOUR & EMPLOYMENT,
ADMINISTRATION OF DAMAN & DIU,
DAMAN

No. LEO/Factories Act/ WE/2016/97

Date: 22/07/2016

NOTIFICATION

Whereas in the Judgment given by Hon'ble High Court of Judicature at Madras in Case No. W.P. 4604 to 4606 of 1999 and others has struck down section 66(1) (b) of the Factories Act, 1948 as unconstitutional. Based on the judgment, women can be employed in factories in the night shifts i.e. from 10.00 P.M. to 5.00 A.M. Hon'ble High Court in this Judgment has also imposed certain conditions for employing women in night shift so as to safeguard the interest of women workers. And that no appeal is pending before the Hon'ble Supreme Court or any other competent Court against this judgment.

Since the Hon'ble Madras High Court has declared Section 66(1)(b) along with its proviso as violative of Article 14,15 and 16 of the Constitution and therefore, now the said provision will not create any obstruction for the women working in the night shifts in the factories. Therefore, in view of the above decisions, the U.T. Administration of Daman & Diu, authorizes the factories of the Territory to employ women in the night shifts from 10 : 00 PM to 5:00 A.M. upon written permission and complying with the following guidelines and welfare measures for the female workers who come forward to work during night shifts:

- a) It will be the responsibility of the employer and other responsible persons to prevent any Act of probable sexual harassment and in case of such incident, they shall arrange for taking appropriate action.
- b) It shall be the duty of the employer or other responsible persons at the work places or institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, statement or prosecution of acts of sexual harassment by taking all steps required.
- c) All employers or persons in charge of work place or factory should take appropriate steps to prevent sexual harassment and they should take the following steps:
 - (i) Express prohibition of sexual harassment in any form such as an unwelcome sexually determined behavior either directly or by implication or advances or contact to again contact or demand sexually favours or make sexually coloured remarks or showing pornography or any other unwelcomed physics verbal or non – verbal contact of sexual nature;

(ii) The rules or regulation shall be framed by the factory managements relating to conduct and discipline prohibiting sexual harassment and provide for appropriate penalties in such rules against the offenders and also introduce amendments wherever necessary which are existing in the Standing Orders:

(iii) Provide appropriate working conditions in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no women employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

(d) In case of any criminal case the employers shall initiate appropriate action in accordance with the penal law without delay and also ensure that the victims or witnesses are not victimized or discriminated while dealing with the complaints of sexual harassment and whenever necessary, at the request of the affected worker, shift or transfer the perpetrator, if circumstances warrant. The employer shall take appropriate disciplinary action if such conduct amounts to misconduct in employment.

(e) The employer shall maintain a complaint mechanism in the factory in itself and the said mechanism should ensure time-bound disposal of complaints. Such mechanism should be to provide, when necessary a Complaint Committee, a special counsellor or other support services including the maintenance of confidentiality.

(f) Such Complaint Committee should be headed by a women and not less than half of its members should be women besides a non- governmental organizations representation in the committee. Such person should be familiar with the issues of sexual harassment.

(g) The female employees should be made aware of their rights in particular by prominently notifying the guidelines on the subject.

(h) Wherever there is an incident of harassment at the instance of a third party, either by an Act or omission the employer and person in charge of the factory should take all steps necessary and reasonable to assist the affected person in terms of supports an preventive action.

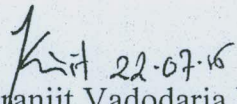
- (i) The employer shall provide proper lighting not only inside the factory, but also surroundings of the factory and to all places where the female workers may move out of necessity in the course of such shift.
- (j) The employer shall see that the women workers are employed in a batch not less than ten and the total of the women workers employed in a night shift shall not be less than 2/3rd of the total strength.
- (k) Sufficient women security shall be provided during the night shift at the entry as well as exit points.
- (l) Sufficient number of work sheds shall be provided for the female workers to arrive in advance and also leave after the working hours.
- (m) Separate canteen facility shall be provided for the female workers.
- (n) Separate transportation facility shall be provided wherever transportation is provided by the employer or the occupier of the factory.
- (o) Apart from the facilities, which are permissible under the Factories Act, an additional holiday shall be permitted for the women workers during their menstruation period, which shall be a paid holiday for the night shifts.
- (p) The factory shall provide appropriate medical facilities and also make available at any time of urgency by providing necessary telephone connections and where more than hundred female workers are employed in a shift, a separate vehicle be kept ready to meet the emergent situation such as hospitalization, whenever there is a case of injury or incidental acts of harassment etc.
- (q) Wherever the factory provides boarding and lodging arrangements for the female workers, the same shall be kept exclusively for the women under the control of women wardens or supervisors.
- (r) During night shift not less than 1/3rd-of strength of the supervisors or shift-in charge or foreman or other supervisory staff shall be women.
- (s) There shall be not less than twelve consecutive hours of rest or gap between the last shifts and the night shift whenever a woman worker is changed from day shift to night shift and so also from night shift to day shift.
- (t) In other respects, the provisions of the Factories Act and the rules of other statutory provisions with respect to the hours of work and the Payment of Equal Remuneration Act and all other Labour Legislations shall be followed by the employer.
- (u) The employer shall appoint not less than two female wardens per night shift who shall go round and work as Special Welfare Assistants.
- (v) The female workers who work in night shifts and regular shifts shall have a monthly meeting through their representatives with principal employer once in eight weeks as grievance day and the employer shall try to comply all just and reasonable grievances.\

(w) The employer shall be at liberty to employ female workers as a whole or in part during night shift, provided, the above directions be complied with.

(x) The employer shall send a fortnightly report to the Inspector of Factories about the details of employees engaged during night shifts and shall also send express report whenever there is some untoward incident to the Inspector of Factories and local Police station as well.

(y) The area Factories Inspector, Deputy Labour Commissioner and the Labour Inspector shall strictly enforce the directions and see that the employer complies with the directions.

This is issued with the approval of Hon'ble Administrator; DD & DNH vide FTS No. 14843 dated 31/05/2016.


(Karanjit Vadodaria)
Deputy Secretary (Labour)

Copy to: 1) The P.S to Hon'ble Administrator, Daman & Diu and DNH.

2) The P.A to Development Commissioner, Daman & Diu.

3) The Secretary (Labour), Daman & Diu

4) The Collector, Daman / Diu

5) The Chief Inspector of Factories & Boilers, Daman

6) The President, Industries Association, Daman/Diu.

7) The Publicity officer for wide publicity.

8) The Deputy Director of Planning & Statistics, Government of Printing Press, Daman to publish the same in the Official Gazette.

9) All Head of Offices, Daman & Diu.

10) The Labour Inspector, Daman/Diu.

11) The Assistant Director (O.L), for Hindi Translation.