

This edition of the JSA Employment Newsletter discusses key compliances for employers of commercial establishments in engaging women in night shifts. Conditions prescribed in Karnataka, Maharashtra, Telangana, Tamil Nadu and Haryana are discussed. We also discuss some recent regulatory updates and judicial precedents across several employment legislations.

### **Employing women in nightshifts: Key compliances across states**

Generally, Indian labour laws prescribe several conditions relating to women working night shifts. Commercial establishments in various sectors, including information technology and information technology enabled services (“**IT and ITeS**”) sectors have been granted exemptions to these conditions, subject to compliance with prescribed protocols. Several states have amended respective shops and establishment legislations or issued notifications thereunder, to enable employment of women during night shifts, subject to employers’ compliance with specified conditions on health and safety of women.

Consolidated below are state-specific terms and conditions for employment of women in night shifts in commercial establishments across some states that have permitted this arrangement:

#### **1. Karnataka**

Section 25<sup>1</sup> of the Karnataka Shops and Commercial Establishments Act, 1961 (“**Karnataka S&E Act**”) provides that a woman employee “who is so willing” can be allowed to work in a shop or commercial establishment at night, i.e., between 8:00 PM and 6:00 AM<sup>2</sup>, subject to an employer’s compliance with conditions prescribed under Section 25 of the Karnataka S&E Act.

Some of the key conditions are: (a) compliance with limits on daily and weekly working hours, overtime work, rest intervals, and spread over under the Karnataka S&E Act; (b) obtaining written consent of the women employee; (c) provision of transportation facilities from the woman employee’s residence to workplace and back free of cost, with adequate security along with GPS for tracking and monitoring; (d) employment of women employees on a rotational basis; (e) posting of adequate number of security guards during night shift; (f) provision of sufficient and separate rest rooms, electricity, latrines lockers, dispensary facility and washing facilities with adequate water supply for women employees to secure their privacy; (g) employer should bear costs of creche obtained by women employees from voluntary or other organisations; (h) obtaining bio-data of drivers, conducting pre-screening of their antecedents either by the employer or through the service provider if employed through outsourcing; (i) schedule of route of pick-up and drop being decided by the establishment’s supervisory officer, and changes to drivers/routes/shifts only being made with the prior knowledge of supervisory officers/employees; (j) ensuring confidentiality of phone number, e-mail addresses and addresses of women employees; (k) selection of routes such that no woman employee is picked up first and dropped last, and provision of security guards at workplace and transport vehicles when women employees are picked up first or dropped off last; (l) random checks being done on vehicles on various routes by designated supervisors; and (m) providing a control room/travel desk at the establishment to monitor movement of vehicles.

<sup>1</sup> Introduced under the Karnataka Shops and Commercial Establishments (Amendment) Act, 2020 with effect from October 19, 2020.

<sup>2</sup> As defined under Section 2(m), Karnataka S&E Act.

## 2. Maharashtra

Section 13(2) of the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017 ("**Maharashtra S&E Act**") allows women employees to work in any establishment between 9:30 PM and 7:00 AM, subject to the employers' compliance with conditions prescribed under Maharashtra S&E Act and Rule 13 of the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of service) Rules, 2018 ("**MSE Regulations**").

Some of the key conditions include: (a) obtaining consent of the woman worker in Form L of the MSE Regulations; (b) ensuring adequate protection of dignity, honour and safety of the woman and ensuring protection from sexual harassment; (c) provision of safe and secure separate transportation facility for women employees from the establishment to doorstep of residence and vice versa, and police verification of all workers engaged for transportation; (d) strict implementation and enforcement of provisions of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 ("**POSH Act**"); (e) providing proper lighting and illumination inside the establishment, surroundings and places of movement of women employees; (f) maintenance of complaint box, and display of phone numbers of local police station, control room and women helpline prominently at the establishment; (g) engagement of sufficient number of women security guards, where establishment employs 10 (ten) or more workers and police verification of women security guards engaged; (h) provision of separate urinals and latrines with safety locking, for women employees; (i) ensuring that the number of women employees employed in the night shift is no less than 3 (three) at any point of time; (j) provision of an additional paid holiday for every 2 (two) months in a year for every woman employee who works in night shift as per her shift schedule; (k) ensuring that there is not less than 12 (twelve) hours of rest between shifts; and (l) submission of an annual undertaking to the facilitator appointed under the Maharashtra S&E Act, to provide all facilities as prescribed under the MSE Regulations when engaging women in night shift.

Notwithstanding the above, prohibition is placed on employment of women employees during night shift for a period of 24 (twenty four) weeks before and after childbirth, of which at least 12 (twelve) weeks are before expected childbirth, and such other period as specified in the medical certificate in the interest of the woman employee's or her child's health. Such prohibition may however be relaxed at the request of a woman employee on the basis of a medical certificate from a qualified medical practitioner stating that neither her health nor the child's health would be endangered.

## 3. Telangana

The Government of Telangana, *vide* notification dated October 13, 2022, granted an exemption to all establishments in the Telangana state from Section 23 of the Telangana Shops and Establishments Act, 1988 which prohibits employees from working in establishments before 6:00 AM and after 8:30 PM. Such relaxation is however not applicable to women employees during the period of 16 (sixteen) weeks before or after her childbirth, of which at least 8 (eight) weeks should be before the expected childbirth and for such additional period, if any as specified in the medical certificate as necessary for the health of the woman employee or the child. Other women employees are allowed to work in night shifts between 8:30 PM and 6:00 AM, subject to compliance with conditions as prescribed under the notification.

Some of the key conditions include: (a) obtaining consent of women employees in writing; (b) provision of transportation facilities from the woman employee's residence to workplace and back free of cost, and with adequate security along with GPS for tracking and monitoring; (c) employment of women on a rotation basis; (d) provision of safety and security measures including shelter, rest rooms, lunch rooms, night crèches and ladies toilets, and adequate protection of privacy, dignity, honour and safety of the woman and ensuring protection from sexual harassment; (e) employment of women in batches of 5 (five) during night shifts; (f) posting of adequate number of security guards during the night shift; (g) obtaining the bio-data of drivers, conducting pre-screening of their antecedents either by the employer or through the service provider if employed through outsourcing; (h) schedule of route of pick-up and drop being decided by the establishment's supervisory officer, and changes to drivers/routes/shifts only being made with the prior knowledge of supervisory officers/employees; (i) ensuring confidentiality of phone number, e-mail addresses and addresses of women employees; (j) selection of routes such that no woman employee is picked up first and dropped last, and provision of security guards at workplace and transport vehicles when women employees are picked up first or dropped off last; (k) random checks being done on vehicles on various routes by designated supervisors; (l) providing for a control room/travel desk at the establishment to monitor movement of vehicles; and (m) maintaining records and furnishing returns as prescribed by the state government.

#### 4. **Tamil Nadu**

The Government of Tamil Nadu, *vide* notification dated June 22, 2022, *inter alia*, permits all shops and establishments employing 10 (ten) or more persons to employ women in night shifts between 8:00 PM and 6:00 AM, subject to compliance with conditions prescribed thereunder, for a period of 3 (three) years with effect from June 5, 2022.

Some of the key conditions include: (a) obtaining written consent of women employees; (b) providing adequate protection of their dignity, honour and safety; (c) providing transportation facilities, and exhibition of a notice indicating availability of transport at the establishment entrance; (d) provision of rest room, washroom, safety lockers and other basic amenities; and (e) implementation and enforcement of provisions of the POSH Act.

#### 5. **Haryana**

Establishments in notified industries, registered under the Punjab Shop and Commercial Establishments Act, 1958 (as applicable in Haryana) may apply for a grant of exemption from provisions of the legislation to employ women in night shifts between 8:00 PM and 6:00 AM. The Government of Haryana *vide* notification dated February 21, 2023, laid down conditions for employment of women during night shifts in IT and ITes establishments, banking establishments, 3 (three) star or above hotels, 100% export oriented establishments, logistics and warehousing establishments in Haryana, subject to their written consent.

Some of the key conditions include: (a) filing of an application seeking permission for employment of women during night shifts with the labour commissioner or chief inspector of shops of Haryana, 1 (one) month prior to commencement of the period for which such permission is sought; (b) compliance with provisions of POSH Act; (c) provision of sufficient safety guards and lighting inside and surrounding the shop/establishment; (d) provision of transportation facility to and from residence of the woman employee, and installation of CCTV cameras in vehicles used for such transportation; (e) employer to submit a declaration that they have obtained consent from each woman employee to work during night shift; (f) provision of separate canteen facilities, medical facilities, telephone facilities emergency vehicles for emergent situations and a grievance redressal mechanism; (g) provision of sufficient number of work sheds for women to arrive in advance and leave after working hours; (h) ensuring that not less than 1/3<sup>rd</sup> of the total strength, including supervisor or shift-in-charge and other employees are women, in logistics and warehousing establishments; (i) ensuring that there is no less than 12 (twelve) consecutive hours of rest or gap between 2 (two) shifts for the woman employee; (j) holding meetings for women employees working in night shifts and regular shifts through their representative with the employer once in 8 (eight) weeks to address grievances; and (k) submission of an annual report with the labour commissioner of Haryana with details of employees employed during night shifts.

## Regulatory Updates

### Introduction of the Manipur Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2021

In repeal of the Manipur Shops and Establishments Act, 1972 and the Manipur Shops and Establishments (Regulation of Employment and Conditions of Service) Ordinance, 2021, the Government of Manipur enacted the Manipur Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2021 ("**Manipur S&E Act**"), with effect from June 29, 2021. The Manipur S&E Act is applicable to shops and establishments employing 10 (ten) or more workers, and excludes from its applicability, *inter alia*, workers occupying a position of "*confidential, managerial or supervisory character*" in a shop or establishment, and a worker whose work is "*inherently intermittent*"<sup>3</sup>. Some of the key compliances under the Manipur S&E Act are highlighted below:

1. **Registration and labour identification number**<sup>4</sup>: Employers employing 10 (ten) or more workers are required to register their shops and/or establishments and obtain a labour identification number within a period of 6 (six) months of commencement of the Manipur S&E Act or the date on which such shop or establishment comes into existence. Such registration is required to be renewed annually. Shops and establishments registered under the Employees State Insurance Act, 1948 or the Employees' Provident Funds Miscellaneous Provisions Act, 1952 are deemed<sup>5</sup> to be registered for the purposes of the Manipur S&E Act, subject to them obtaining a labour identification number within a period of 6 (six) months from the commencement of the Manipur S&E Act.

<sup>3</sup> Section 3, Manipur S&E Act.

<sup>4</sup> Section 5(1), Manipur S&E Act.

<sup>5</sup> Section 5(5), Manipur S&E Act.

2. **Duties towards women employees<sup>6</sup>:** Employers are prohibited from discriminating against women in matters of recruitment, training, transfers, promotions or wages. Further, employers are disallowed from engaging women except between the hours of 6:00 AM and 9:00 PM. The state government may however, by notification, and subject to fulfilment of specified conditions with respect to the safety and dignity of women employees by employers, allow the engagement of women between 9:00 PM and 6:00 AM.
3. **Payment of wages in case of employer-initiated termination<sup>7</sup>:** When the service of a worker is terminated by or on behalf of the employer, the employer is required to pay wages payable to such terminated worker before the expiry of the second working day from the day of worker termination.
4. **Daily and weekly working hours, rest intervals, spread over<sup>8</sup>:** Employers are required to engage workers within the below specified limits:

Condition	Particulars
<b>Normal working hours</b>	Not exceeding 48 (forty eight) hours a week and 9 (nine) hours a day <sup>9</sup>
<b>Overtime hours</b>	Not exceeding 125 (one hundred and twenty five) hours in a period of 3 (three) months
<b>Rest intervals</b>	A minimum of 0.5 (zero point five) hours for every 5 (five) continuous hours of work; and 24 (twenty four) consecutive hours of rest for every week of work.
<b>Spread over (total hours of work including rest hours)</b>	Not exceeding 10.5 (ten point five) hours; and in case a worker is entrusted with intermittent nature of work or urgent work, 12 (twelve) hours.

5. **Wages for overtime or work on rest days<sup>10</sup>:** Workers required to work on any day in excess of normal working hours (9 (nine) hours a day, or 48 (forty eight) hours a week); or on a day of rest, are entitled to wages at the rate of twice the rate of their ordinary rate of wages.
6. **Leaves and holidays<sup>11</sup>:** Workers are entitled to the below listed leaves with wages and holidays:

Condition	Particulars
<b>Weekly holiday</b>	1 (one) weekly holiday
<b>Casual leave</b>	8 (eight) days' every calendar year, credited into the account of the worker on a quarterly basis
<b>Annual/earned leave</b>	1 (one) day for every 20 (twenty) days worked in the subsequent calendar year, for every worker who has worked for 240 (two hundred and forty) days of work in a calendar year. Unused annual/earned leave can be accumulated up to a maximum of 45 (forty five) days.
<b>National and festival holidays</b>	8 (eight) days, including 3 (three) national holidays, namely Independence Day (August 15), Republic Day (January 26) and Gandhi Jayanti (October 2) and 5 (five) festival holidays as agreed to between the employer and workers.

7. **Creche facility<sup>12</sup>:** Shops and establishments that ordinarily employ 30 (thirty) or more woman workers or 50 (fifty) or more workers are required to provide and main a suitable room or rooms as a creche for the use of children of women workers. Groups of shops and establishments may provide a common creche within a radius of 1 (one) kilometre if so permitted by the Chief Facilitator as appointed under the Manipur S&E Act.
8. **Maintenance of registers, submission of annual returns<sup>13</sup>:** Employers are required to maintain records and registers as may be prescribed, and further furnish an annual return with the appropriate authority in the form and manner as may be prescribed under the Manipur S&E Act.

Penalty for contravention of provisions of the Manipur S&E Act may extend up to a fine of INR 2,00,000 (Indian Rupees two lakhs)<sup>14</sup>. Further, penalty for non-compliances under the Manipur S&E Act resulting in an accident causing serious bodily

<sup>6</sup> Section 6(1) and Section 6(2), Manipur S&E Act.

<sup>7</sup> Section 6(5), Manipur S&E Act.

<sup>8</sup> Section 8, Manipur S&E Act.

<sup>9</sup> These limits may be relaxed in case of work of urgent nature with the previous permission of the facilitator appointed under the Manipur S&E Act.

<sup>10</sup> Section 9, Manipur S&E Act.

<sup>11</sup> Section 11, Manipur S&E Act.

<sup>12</sup> Section 14, Manipur S&E Act.

<sup>13</sup> Section 18 and Section 19, Manipur S&E Act.

<sup>14</sup> Section 20, Manipur S&E Act.



injury or death of a worker may extend up to a fine of INR 5,00,000 (Indian Rupees five lakhs) and/or imprisonment of up to 6 (six) months<sup>15</sup>.

## Relaxation of obligation to mandatorily upload details of contract workers deployed in Delhi

The Office of the Commissioner (Labour), Government of NCT Delhi, *vide* an order issued on March 7, 2014 (“**Earlier Order**”), had directed all contractors deploying contract workers/employees to upload details of category of workmen employed, wages being paid, and other statutory records being maintained by them on their website. In the event the contractor did not have their own website, the principal employer was required to upload the same on their website until the contractor uploaded the required information on their website. It also directed principal employers/contractors to submit hard copies of the aforesaid information to the registering/licensing officer under the Contract Labour (Regulation and Abolition) Act, 1970 (“**CLR Act**”).

From an ease of doing business perspective, and based on a department committee recommendation, the Office of the Commissioner (Labour), Government of NCT Delhi *vide* its order dated November 10, 2023, relaxed its directions under the Earlier Order. It has directed registering/licensing officers under the CLR Act to evaluate registration/license applications strictly in accordance with requirements under the CLR Act and rules thereunder.

## Classification of certain industries as ‘public utility service’ under the Industrial Disputes Act, 1947

The Ministry of Labour and Employment *vide* notifications each dated November 9, 2023, has, in public interest, notified that services of industries engaged in (a) processing or production or distribution of fuel gases (coal gas, natural gas and the like); (b) lead and zinc mining industry and (c) food stuffs, to be a ‘public utility service’ for purposes of the Industrial Disputes Act, 1947 (“**ID Act**”), for a period of 6 (six) months from the publication date of these notifications. Additional compliances are imposed in relation to resolution of disputes with respect to public utility services, as well as strikes and lockouts under the ID Act would now apply to these notified industries.

## Notification of accessibility standards for the rural sector under the Rights of Persons with Disabilities Rules, 2017

The Ministry of Social Justice and Empowerment, Department of Empowerment of Persons with Disabilities, Government of India *vide* notification dated November 16, 2023 amended the Rights of Persons with Disabilities Rules, 2017, to notify the accessibility standards for the rural sector, titled ‘rural sector specific harmonized accessibility standards/guidelines’, published by the Ministry of Rural Development, Government of India *vide* notification dated June 26, 2023, which can be accessed [here](#).

## Issuance of list of holidays for the calendar year 2024 by several state and union territories

Several governments including in Karnataka, Tamil Nadu, Sikkim, Andhra Pradesh, Gujarat, Lakshadweep, Maharashtra, Jharkhand, Tripura, Assam, Himachal Pradesh, West Bengal, Mizoram, Meghalaya, Odisha, Puducherry and Rajasthan have issued their respective list of national and festival holidays for the calendar year 2024. Please reach out should you require further information on the state-issued lists of holidays.

## Case Law Ratios

### Employer-employee disputes not within purview of writ jurisdiction of courts

In *Sunita Wali v. UOI and others*<sup>16</sup> the petitioner filed a writ petition with the Jammu and Kashmir and Ladakh High Court challenging a termination order issued by her employer, along with the charge-sheet and disciplinary proceedings pursuant thereto. The employer (one of the respondents) objected maintainability of the petition on grounds that the employer did not discharge public duties. Based on several precedents, the court noted that a writ petition would only be maintainable against a public body/entity discharging public functions and matters of violation of public law, and that “*it is only when the removal of an employee is regulated by some statutory provisions, its violation by the employer may be interfered by the Court*”.

<sup>15</sup> Section 21, Manipur S&E Act.

<sup>16</sup> SWP No. 1597/2017 (J&K&L HC)

As such, the court dismissed the writ petition observing that the petitioner's case was that of a private dispute with her employer, and devoid of any demonstrated statutory violation.

### Oral and documentary evidence to be considered to determine artificial veil created to deprive workers of benefits extended to regular employees

In ***Oil & Natural Gas Corpn. Ltd. v. Government of India, Ministry of Labour***<sup>17</sup> a union of contract labourers engaged as security guards with the petitioner (employer) claimed regularisation of their services as regular employees of the petitioner before the Assistant Labour Commissioner, Vishakhapatnam on the ground that the petitioner was engaging their services for several years, without any break. The Ministry of Labour, Government of India referred the claim (industrial dispute) to an Industrial Tribunal-cum-Labour Court, Hyderabad, against which the petitioner filed a writ petition before the Andhra Pradesh High Court. Without going into the merits of the case, the Andhra Pradesh High Court noted that the “*concerned tribunal is required to consider the oral and documentary evidence placed before it and decide the nature of employment of workers*”, to determine if an artificial veil has been created by an employer to deprive workers of benefits that are being extended to regular employees. The court dismissed the petition filed by the petitioner and directed concerned industrial tribunal-cum-labour court to conduct due enquiry and pass an award in accordance governing law and rules.

### Prolonged unauthorised absence on account of mental depression cannot be construed as wilful absence

In ***KPTCL v. S. Kiran***<sup>18</sup> the petitioner (employer) challenged the order of the labour court that directed reinstatement of the respondent (employee) who was dismissed by the petitioner on account of his prolonged unauthorised absence. The respondent cited mental depression suffered by him as the reason for his prolonged absence from work. In deciding the challenge, the Karnataka High Court placed reliance on the decision in ***Krushnakant B. Parmar v. Union of India***<sup>19</sup>, where the Supreme Court observed “*the question whether “unauthorised absence from duty” amounts to failure of devotion to duty or behaviour unbecoming of a government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful*”. Taking into account the mental depression suffered by the respondent and the sufficiency of material placed on record by the respondent in that regard, the court observed that his absence was not wilful and that reasons for his absence from duty were valid and upheld the decision of the labour court.

### Misconduct termination without holding regular enquiry in accordance with principles of natural justice liable to be set aside

In ***Sanjay Dadich v. The State of Rajasthan***<sup>20</sup> the petitioner's services were terminated by his employer on the ground that he had furnished a forged certificate to secure appointment with the employer. The Rajasthan High Court observing that the petitioner was not provided an opportunity to be heard prior to an order of dismissal being passed against him, noted that “*passing an order which affects a person, without giving him an opportunity of being heard would be held to be vitiated as being contrary to principles of natural justice*”. Based on the same, the court set aside the dismissal order passed against the petitioner and directed the employer to hold fresh enquiry against the petitioner in accordance with applicable laws.

#### Did you know?

*IT/ITes establishments in Karnataka have been granted exemptions from standing orders of the labour department and a host of labour law compliances, in view of increasing ease of doing business. However, in a recent interview, the labour minister, Shri Santosh Lad has indicated that in view of growing job insecurity among employees in IT/ITes establishments and attrition rates, the labour ministry is planning to bring the IT/ITes sector within the purview of the labour department through policy changes.*

<sup>17</sup> WP 24835/2004 (Andhra Pradesh HC)

<sup>18</sup> WP 31883/2019 (Karnataka HC)

<sup>19</sup> (2012) 3 SCC 178 (SC)

<sup>20</sup> WP 6869/2007 (Rajasthan HC)

## Employment Practice

JSA has a team of experienced employment law specialists who work with clients from a wide range of sectors, to tackle local and cross-border, contentious and non-contentious employment law issues. Our key areas of advice include (a) advising on boardroom disputes including issues with directors, both executive and non-executive; (b) providing support for business restructuring and turnaround transactions, addressing employment and labour aspects of a deal, to minimize associated risks and ensure legal compliance; (c) providing transaction support with reference to employment law aspects of all corporate finance transactions, including the transfer of undertakings, transfer of accumulated employee benefits of outgoing employees to a new employer, redundancies, and dismissals; (d) advising on compliance and investigations, including creating compliance programs and policy, compliance evaluation assessment, procedure development and providing support for conducting internal investigations into alleged wrongful conduct; (e) designing, documenting, reviewing, and operating all types of employee benefit plans and arrangements, including incentive, bonus and severance programs; and (f) advising on international employment issues, including immigration, residency, social security benefits, taxation issues, Indian laws applicable to spouses and children of expatriates, and other legal requirements that arise when sending employees to India and recruiting from India, including body shopping situations.

JSA also has significant experience in assisting employers to ensure that they provide focused and proactive counselling to comply with the obligations placed on employees under the prevention of sexual harassment regime in India. We advise and assist clients in cases involving sexual harassment at the workplace, intra-office consensual relationships, including drafting of prevention of sexual harassment (POSH) policies, participating in POSH proceedings, conducting training for employees as well as Internal Complaints Committee members, and acting as external members of POSH Committees.

**This Newsletter has been prepared by:**











**Gerald Manoharan**  
Partner



**Sonakshi Das**  
Principal Associate



**Sandhya Swaminathan**  
Associate

		
<p>17 Practices and 24 Ranked Lawyers</p>	<p>16 Practices and 11 Ranked Lawyers</p>	<p>19 Practices and 19 Ranked Lawyers</p>
		
<p>11 Practices and 39 Ranked Partners <b>IFLR1000 APAC Rankings 2022</b> ----- Banking &amp; Finance Team of the Year ----- Fintech Team of the Year ----- Restructuring &amp; Insolvency Team of the Year</p>	<p>Among Top 7 Best Overall Law Firms in India and 9 Ranked Practices ----- 11 winning Deals in IBLJ Deals of the Year ----- 10 A List Lawyers in IBLJ Top 100 Lawyer List</p>	<p>Banking &amp; Financial Services Law Firm of the Year 2022 ----- Dispute Resolution Law Firm of the Year 2022 ----- Equity Market Deal of the Year (Premium) 2022 ----- Energy Law Firm of the Year 2021</p>
		
<p>7 Practices and 2 Ranked Lawyers</p>	<p><b>Ranked #1</b> <b>The Vahura Best Law Firms to Work Report, 2022</b> ----- Top 10 Best Law Firms for Women in 2022</p>	

For more details, please contact [km@jsalaw.com](mailto:km@jsalaw.com)

[www.jsalaw.com](http://www.jsalaw.com)





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