



# IMPACT ON LABOUR LAW COMPLIANCE UNDER LOCKDOWN

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# PANDEMIC COVID - 19

On 11 March 2020, the World Health Organization (WHO) declared COVID-19 as a pandemic and a public health emergency of international concern. While the first confirmed case of COVID-19 in India was reported on 30 January 2020, it was not until March 2020 that the public and government began taking cognizance of it. The number of confirmed cases in India has crossed 900 as of 28 March 2020, and State Governments have resorted to stringent measures to control the outbreak and promote maximum social distancing.

Several questions come up in this backdrop and remain unanswered on the business and employment front. In this session, we attempt to address the frequently asked questions in the current circumstances from an employment law and practice standpoint.

# LOCKDOWN

Ministry of Home Affairs (MHA) has issued an Order dated 24.03.2020 under Section 10(2)(I) of the Disaster Management Act, directing the Ministries / Departments of Government of India, State/Union Territory Governments and State/ Union Territory Authorities to take effective measures for ensuring social distancing so as to prevent the spread of COVID-19 in the country.

# ADVISORY FROM MINISTRY OF LABOUR & EMPLOYMENT

Ministry of Labour & Employment have issued advisory vide DO/No. M-11011/08/2020-Media dated 20/03/2020 that –

*“The termination of employee from the job or reduction in the wages in this scenario would further deepen the crises and not only weaken the financial condition of the employee but also hamper their morale to combat their fight with the epidemic.”*

# CIRCULAR BY MINISTRY OF LABOUR & EMPLOYMENT

On 27.03.2020, the **Ministry of Labour and Employment** issued a circular, advising various Industries / enterprises / companies / associations to not to retrench any employee and continue paying the wages/salaries.

*The said circular was only **advisory** in nature and not enforceable.*

# ORDER BY MINISTRY OF HOME AFFAIRS (WAGE PAYMENT)

(ORDER NO. 40-3/2020-DM-I(A) DATED 29/03/2020)

*“All the employers, be it in the industry or in the Shops and commercial establishment shall make payment of wages of their workers, at their work places, on the due dates, without any deduction, for the period their the establishment are under closure during the lockdown”*

# LIABILITY FOR PAYMENT OF WAGES TO THE EMPLOYEES DURING LOCKDOWN PERIOD

The question for consideration has arisen as to

*Whether employer is required to pay wages to the employees by invoking principle of “no work no wages”???*

# DOCTRINE OF REPUGNANCY

Disaster Management Act, 2005 is within the scope of Govt, of India

Where the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy

***Hence, the Disaster Management Act will prevail over the Labour Laws and related enactments***





It is pertinent that for correctly comprehending susceptibility of Section 72 of the DM Act is produced below:

**Section 72 - Act to have overriding effect**

*The provisions of this Act, shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.*

Hence, no employer can withhold or deny the wages to the employees or to terminate their services on the pretext of lockdown.

Even lay off pertaining to workman as provided under section 2 (kkk) read with section 25-C of the Industrial Disputes Act would not be permissible.

The authorities under Disaster Management Act are empowered to take action under sections 186, 188, 267, 270, 271 of Indian Penal Code read with sections 51 to 54 DM Act

# BOTTOM LINE

Employers are liable to pay the wages to the workmen without deduction (Except PF, ESI, TDS etc.) and on the due date owing to the directions of the Central Government under Disaster Management Act as the aforementioned act has an overriding effect and punitive in nature.

# INDUSTRY EXEMPTED FROM LOCKDOWN

The industry exempted from lockdown period and those which could be categorized under essential services, in those cases, the workmen or employee shall be obligated to present itself for work unless he/she is quarantined owing to contraction to the disease. In such cases, regular laws relating to labour laws or the contractual law will be made applicable.

# INDUSTRY EXEMPTED FROM LOCKDOWN

Govt. of Gujarat have clarified vide Circular no. LC6/Circular/385/2020 dated 10/04/2020 that –

*“Workers / Employees working with exempted manufacture / shop, sales / providing of essential item / services during the Lockdown period are required to report as per their employer’s requirement and not to pay salaries if Worker / Employee do not keep them presence at workplace and employer even can take disciplinary action against them”*

# CHIEF LABOUR COMMISSIONER (CENTRAL) ADVISORY

The Chief Labour Commissioner (Central) have issued advisory no. CLC(C)/Covid-19/Instruction/LS-I dated 22/04/2002 regarding making timely **payment to Contractors and ensuring timely payment to the contract workers** relating to Private Security, Cleaning / Housekeeping Service during Lockdown period by the Principal Employers

# WRIT PETITION IN SUPREME COURT

Two writ petition got filed in the Supreme Court by challenging the Home Ministry Affairs' order dated 29.03.2020 and Labour Ministry's order dated 20.03.2020 and 23.03.2020 . The details of the Petitioners are as under:

1. Ludhiana Hand Tools Association Vs. Union of India , filed on 21.04.2020 ,
2. Nagreeka Exports Ltd. vs. Union of India, WP (C) No. 471/2020, registered on 18.04.2020.

In both writ petition which are identical and the Petitioners have challenged the MHA order dated 29.03.2020 in respect of the issue for payment of full wages , without deduction , during lock-down period . The tenable grounds, in brief, in the both petition are as under –

The DM Act, 2005 never says for the payment of wages by the employers during any disaster. Hence, lacks legislative jurisdiction competence to enact law a directing private establishment to pay the wages of their workers /employees whether work/duties are done by them or not. Therefore, directions given by the Central Government / State Government and their competent authorizes are violative of fundamental rights guaranteed under Article 14, 19(1) (g) of the Indian Constitution.





# SOME QUESTION RELATED TO LABOUR LAW ARISING FOR LOCKDOWN

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## CAN A COMPANY DEFER / CANCEL THE EMPLOYMENT OF NEW JOINEES (WHO HAVE NOT YET JOINED THE SERVICES)?

Companies should review the terms of the appointment letters issued to new joiners. In general, if the appointment letter stipulates a specific date on which the employee is required to report to work, the same should be considered as the effective date of commencement of employment relationship, unless there is any other stipulation indicating the contrary.

The company may, in such case, either delay the joining or revoke the offer of employment prior to the specified date of joining.

Ultimately, it must be determined on a case-to-case basis as to when the employment relationship would really commence and whether the company has any flexibility to either delay the joining or revoke the offer at any time prior to such commencement.

# WHETHER AN EMPLOYER CAN TAKE DISCIPLINARY ACTION IF AN EMPLOYEE IS NOT PERFORMING HIS/HER ASSIGNED DUTIES, WHILE WORKING FROM HOME?

Yes, an employer can act against an employee in accordance with established procedures, if the employee is found lacking in performance of assigned duties. However, such disciplinary action should not be in violation of applicable laws and principles of natural justice, and due consideration should be accorded to the current lockdown situation and limitations for employees to perform their assigned tasks from home, such as unavailability of adequate IT resources or connectivity issues.

# CAN THE EMPLOYER DECLARE THE PERIOD OF LOCKDOWN AS 'LEAVE WITHOUT PAY'?

As regards the category of workmen, leave without pay would be difficult to implement in view of the provisions of IDA. As for managerial employees, management must strategize a plan for payment of their salaries keeping in view the state advisories that have been released to urge employers to not deduct employees' salaries during the initial closure period

# WHAT IF AN EMPLOYEE REFUSES TO ATTEND OFFICE (ESSENTIAL SERVICES)?

Appropriate disciplinary action may be taken\*

(\* As per the Clarification Circular by Govt. of Gujarat)

# CAN THIS LOCKDOWN PERIOD BE CONSIDERED TO BE 'LAY-OFF' ?

The Industrial Disputes Act and The Industrial Employment (Standing Orders) Act deal about lay-off

Temporary inability of an employer to provide work/employment could be treated as lay-off

Disaster Management Act shall prevail over the above said Acts

# CAN THIS PERIOD BE TREATED AS HOLIDAYS ?

As per the advisory by Ministry of Labour and Employment, Govt. of India vide D.O.No.M-11011/08/2020-Media 20.03.2020 –

The employees shall be deemed to be on duty

# CAN THE EMPLOYEES BE ASKED TO GO ON LEAVE?

No. Employees are entitled to use their accrued annual leave at their discretion

They cannot be mandated by the employer to do so



# WHAT IF WORKER IN A FACTORY WILLINGLY APPLIES FOR THE LEAVE?

Can be accepted...

# AN EMPLOYEE IS ABSENT BEFORE LOCKDOWN. SHOULD BE PAID HIM FULL FOR THE PERIOD OF LOCKDOWN?

Not necessarily, if action has been already against the said person has been initiated

# CAN AN EMPLOYER TERMINATE THE SERVICES OF AN EMPLOYEE DURING THE LOCKDOWN PERIOD ?

No, The Central Govt. as well as some of the State Govts. have specifically instructed **not to terminate the services of the employees**

# CAN AN EMPLOYER REDUCE THE WAGES OF AN EMPLOYEE DURING THE LOCKDOWN PERIOD ?

No, The Central Govt. as well as some of the State Govts. have specifically instructed **not to reduce the wages of the employees**

Allowance related to Duty like Travelling Allowance, Petrol Allowance, Mobile Allowance, etc are not to be paid

# IF THE CONTRACT COMES TO AN END DURING THIS PERIOD, STILL THE WORKERS ARE TO BE PAID WAGES ?

The contract workers need not be paid wages after the end of the contract

The best practice would be to extend the contract till the end of the lockdown period

EMPLOYEES COMING TO OFFICE ARE BARE MINIMUM. OTHERS ARE WORKING FROM HOME. SHOULD THE EMPLOYER UNDER ANY OBLIGATION TO PAY EXTRA SALARY FOR THOSE WHO COME TO OFFICE ?

There is no such obligation

# CAN THE EMPLOYERS ASK THE EMPLOYEES TO WORK FROM HOME?

Yes, employers can ask the employees to **Work From Home**

# CAN THE EMPLOYEE CLAIM OVERTIME WAGES WHILE WORKING FROM HOME?

There is no settled position

It will be fair, if paid, in case an employee works for more than the prescribed number of hours



# PRIVILEGE UNDER VARIOUS LABOUR LAWS...

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# EPF & MP ACT

**90% of employees** those who draw wages less than Rs. 15000/- per month and the companies having **less than 100 employees / workers**, Central Government will bear the Contribution of **24%** for both employee's (12%) and employer's (12%) for the next three months (for March, April & May)

# EPF & MP ACT

Central Government have amended the Employees' Provident Fund Scheme to include Pandemic as the reason to allow non-recoverable advance of **75% of the amount or three months of the wages, whichever is less**, from their accounts

# EPF & MP ACT

Due date of the remittance for the wage month March 2020 has been extended till 15<sup>th</sup> May 2020

# ESI ACT

Due date for remittance of contribution for the wage month February 2020 and March 2020 has been extended till 15<sup>th</sup> May 2020

# CONTRACT LABOUR (R & A) ACT

Extension of time limit for the license renewal during lockdown period

**Central Government: In Shram Suvidha Portal, any license / registration renewal under the above three Acts falls due, timeline extended up to 31<sup>st</sup> May 2020.**

**In Gujarat:** license renewal under CLRA / ISMW time line extended up to 15<sup>th</sup> May 2020 (As per notifications dated 4<sup>th</sup> April 2020)

# UNIFIED ANNUAL RETURN

Submission of Unified Annual Return under following Labour Law (Central) for the year 2019 has been extended till 30 April 2020 from 1<sup>st</sup> February 2020.

- The Payment of Wages Act
- The Minimum Wages Act
- The Maternity Benefit Act
- The Payment of Bonus Act
- The Industrial Dispute Act
- The Contract Labour (R & A) Act
- The Inter State Migrant (R & C) Act
- The Building and Other Construction Workers (R & C) Act

# THE GUJARAT FACTORIES RULES

Testing of equipments under Factories Act time line extended up to 15<sup>th</sup> May 2020

Further Government of Gujarat have also declared following relaxation for establishment **for the period of 20th April 2020 to 19th July 2020** -

- 1) **Daily duty hours** has been increased from 8 hours to **12 hours** subject to a maximum of 72 hours in a week.
- 2) An interval for rest for half an hour should be given after 6 hours of working.
- 3) Female workers can be engaged between 6 AM to 7 PM only.
- 4) **Wages should be paid in proportion** to existing wages for 12 hours. For example, if you are paying Rs. 100/- per day for 8 Hour duty than you have to pay Rs. 150/- per day for 12 Hours duty.



# POST LOCKDOWN

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# STANDARD OPERATING PROCEDURE FOR SOCIAL DISTANCING FOR OFFICES, WORKPLACE, FACTORIES AND ESTABLISHMENTS

- All areas in the premises including the following shall be disinfected completely using user friendly disinfectant mediums.
  - Entrance Gate of building, office etc
  - Cafeteria and canteens
  - Meeting room, Conference halls/ open areas available, veranda, entrance gate of site, bunkers, potra cabins building etc.
  - Equipment and lifts.
  - Washroom, toilet, sink water etc
  - Walls/ all other surfaces
- For workers coming from outside, special transportation facility will be arranged without any dependency on the public transport system. These vehicles should be allowed to work, only with 30-40% passenger capacity

# STANDARD OPERATING PROCEDURE FOR SOCIAL DISTANCING FOR OFFICES, WORKPLACE, FACTORIES AND ESTABLISHMENTS

- All vehicles and machinery entering in the premise should be disinfected by spray mandatorily.
- Mandatory thermal scanning of everyone entering and exiting the work place to be done
- Medical insurance for the worker to be made mandatory (Not required for ESI Covered Employees / Workers)
- Provision for hand wash & sanitizer preferably with touch free mechanism will be made at all entry and exit points and common areas Sufficient quantities of all the items should be available
- Work places should have a gap of one hour between shifts and will stagger the lunch breaks of staff to ensure social distancing

# STANDARD OPERATING PROCEDURE FOR SOCIAL DISTANCING FOR OFFICES, WORKPLACE, FACTORIES AND ESTABLISHMENTS

- Large gatherings or meetings of 10 or more people to be discouraged Seating at least 6 feet away from others on job sites and in general meetings and training sessions.
- Not more than 2/4 persons (depending on size) will be allowed to travel in lifts or hoist
- Use of staircase for climbing should be encouraged.
- There should be strict ban of gutka tobacco etc. and spitting should be strictly prohibited
- There should be total ban on non-essential visitors at sites
- Hospitals/clinics in the nearby areas, which are authorized to treat COVID-19 patients, should be identified and list should be available at work place all the times



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