

## **RAMIFICATIONS OF COVID-19 ON EMPLOYMENT RELATIONS**

Indisputably, the COVID- 19 pandemic is having wide-scale implications on the economy worldwide and the stark reality of government quarantines and travel restrictions has impacted the workplace and workforce in truly unprecedented ways. To curtail the spread of the COVID- 19 pandemic, the Central Government as well as the State Governments, have implemented tremendous measures and have taken umpteen steps, which, *inter alia*, affected the functioning of workplace and the businesses of the employers. Although, the measures and the steps taken by the Central as well the State Governments are novel and quintessential for the curtailment of the spread of COVID- 19 in India, however, the impact of such measures and steps are shaking the foundations of employer-employee relationship in India.

To protect the welfare of the employees, the Central and State Governments have issued several directions, orders, advisories and regulations for the employers, *inter alia*, requiring them to provide security of employment and wages to the employees. However, the employers are no exception to the COVID- 19 crisis, and their businesses have also majorly suffered and got impacted due to the outbreak of COVID- 19. In the backdrop of businesses, which are in a shut-down mode, the employers are also facing financial distress in complying with the pro-employee directives/orders/regulations issued by the Central and State Governments.

It, therefore, becomes imperative to analyse and understand the applicability of various directions, orders, advisories and regulations issued by the Central and State Governments for the interests of the employees and their impact on the relationship between the employers and the employees. Though, the employers cannot evade their obligations under such directions, orders, advisories and regulations, however, to protect the interests of the employers in this pandemic situation, it is essential to carve out a mid-way or an acceptable way to balance the interests of the helpless employers and their helpless employees, while coping with the compulsions enforced by the Central and the State Governments.

### **GOVERNMENTAL ADVISORIES / MANDATES**

- The Secretary, Ministry of Labour and Employment, issued an advisory on March 20, 2020<sup>1</sup> to the Chief Secretaries of all States/UTs, that all employees / workers may be deemed to be on duty, in case the place of employment is made non-operational due to outbreak of COVID- 19. It was also advised all private and public enterprise to not terminate the employment of the employees, including casual and contract workers, and not to reduce or deduct their wages for the period that the employee takes quarantine leaves.

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<sup>1</sup> <https://labour.gov.in/sites/default/files/Shri%20Sailesh,%20Secretary%20DPE.pdf>

- Government of Uttar Pradesh vide Notification dated March 20, 2020<sup>2</sup> directed that the employees/workmen who are affected by COVID-19 or who are suspected to be affected by COVID-19 and are kept in isolation, will be provided paid leaves of 28 days by their employers. In the said notification, it is further directed that Employee/Workmen of the shops/commercial establishment/factories, which closed temporarily by the orders of the State Government or District Magistrate, shall be provided holidays with wages by their employer for the period of such temporary closure.
- Government of Delhi vide Order dated March 22, 2020<sup>3</sup>, directed that the employees, including temporary, contractual and outsourced, of all private establishments shall be treated to be on duty, and shall be paid in full.
- Government of Haryana vide Letter dated March 23, 2020<sup>4</sup>, advised the employers of the private establishments, not to terminate the employment of employees and workers and not to reduce their wages/salary.
- Ministry of Home Affairs vide its Order dated March 29, 2020<sup>5</sup>, directed that all employers, be it in the industry or in shops and commercial establishments, shall make payment of wages to their workers on the due date, without any deduction, for the period their establishments are under closure during the lockdown.
- The Government of Gujarat has advised the private establishments vide letter dated March 30, 2020<sup>6</sup> to not terminate employees or reduce wages during the period of lockdown.
- The Government of Maharashtra, Labour Department vide Notification dated March 31, 2020<sup>7</sup>, stated that no reduction in wages or wages of homeless/ displaced workers and foreign workers trapped during the lockdown due to spread of COVID-19.

All the orders/advisories issued by the Central and State Governments were issued under the powers conferred under the Epidemic Diseases Act, 1897 (“**Epidemic Act**”) and the Disaster Management Act, 2005 (“**DM Act**”). Thus, violation of the orders/advisories issued by the Central and the State Governments would attract punishment

<sup>2</sup>[https://prsindia.org/files/covid19/notifications/781.UP\\_Labour%20Epidemic%20Order%20for%20Paid%20Leave%20by%20Employers\\_March%202020.pdf](https://prsindia.org/files/covid19/notifications/781.UP_Labour%20Epidemic%20Order%20for%20Paid%20Leave%20by%20Employers_March%202020.pdf)

<sup>3</sup><http://health.delhigovt.nic.in/wps/wcm/connect/deaf86804da4c3bb8687f7982ee7a5c7/lock.pdf?MOD=AJPERES&lmod=48689189&CACHEID=deaf86804da4c3bb8687f7982ee7a5c7>

<sup>4</sup> [https://prsindia.org/files/covid19/notifications/408.HR\\_advisory\\_factory\\_workers\\_Mar\\_23.pdf](https://prsindia.org/files/covid19/notifications/408.HR_advisory_factory_workers_Mar_23.pdf)

<sup>5</sup><https://mha.gov.in/sites/default/files/MHA%20Order%20restricting%20movement%20of%20migrants%20and%20strict%20enforcement%20of%20lockdown%20measures%20-%2029.03.2020.pdf>

<sup>6</sup> [https://prsindia.org/files/covid19/notifications/2364.GJ\\_Wage\\_Payment\\_Mar%2030.pdf](https://prsindia.org/files/covid19/notifications/2364.GJ_Wage_Payment_Mar%2030.pdf)

<sup>7</sup> [https://prsindia.org/files/covid19/notifications/1593.MH\\_wages\\_Mar\\_31.pdf](https://prsindia.org/files/covid19/notifications/1593.MH_wages_Mar_31.pdf)

under Section 51 to 60 of the DM Act, 2005 besides legal action under Section 188 of the Indian Penal Code, 1960.

From the various guidelines/advisories/directives issued by the Central and the State Governments, it is clearly implied that during the lockdown period due to COVID- 19 pandemic, it would be difficult for the employers to terminate or reduce the salary of the employees including workmen.

### **WAYOUT FOR THE EMPLOYERS**

To mitigate the human resource expenditure, while still being within the four corners of the advisories/orders issued by the Central and the State Governments, the employers may consider the following options:

- Employees (other than workmen<sup>8</sup>) can be requested (i) to utilise their existing leave balances for the lockdown period; or (ii) to observe the lockdown period as unpaid leaves. The consent to the said requests given by the employees, should be duly recorded via letter or e-mail. However, it would be difficult to implement such requests for the workman, as it would require compliance of 21 days notice period under the Industrial Disputes Act, 1947 (“**ID Act**”).
- Employers can have negotiations with the Workers’ Unions and arrive at a mutually acceptable settlement. The Unions must also be conscious of the grave financial crisis resulting from the spread of COVID-19 and hopefully they might agree to negotiate on the terms beneficial to the workers of the Union and the employer, to cope-up with the present pandemic situation and protect continuation of business in future. Under the settlement, the Unions may have to give up some privileges and entitlements and the employer in turn may have to give assurance to the Unions that the employees will be adequately taken care of once the lockdown gets over through some measure of recompense.
- Employees (other than workmen) can be requested for reduction in the salary or deferment in the payment of the salary. The consent to the said request given by the employees, should be duly recorded via letter or e-mail. For the workmen category of employees, it would not be possible to ask them to accept the reduced wages.

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<sup>8</sup> Workman is defined under Section 2 (s) of the ID Act, as any person (including apprentice) employed in any industry to do manual, unskilled, skilled, technical work but excludes any person who is inter alia (a) employed in managerial or administrative capacity; or (b) employed in supervisory capacity draws wages exceeding INR 15,000/- per month.

- The quantum of discretionary and non-contractual/statutory benefits given to employees, can be reduced. For example, certain employers, who provide uncapped provident fund contributions, can make the provident fund contributions capped in accordance with the provisions of the Employees' Provident Funds and Miscellaneous Provident Act, 1952.
- Employers can relax the employment terms pertaining to resignation, allowing employees to easily resign from the employment. Such relaxations can be elimination of the requirement of serving prior notice or removal of employment lock-in period.
- The concept of work from home is new to India and there is no statutory legislation governing this concept. Thus, all relevant labour law legislation including hours of work and overtime, would continue to apply on the employees, even if they are working from home. Accordingly, employers must be cautious about compliance of the applicable labour law legislations including keeping a track on the actual working hours of the employees working from home.
- The employer can defer or cancel the joining of new employees, as the orders/advisories made by the Central and the State Governments are not applicable on them.
- As of now, the applicability of the advisories/orders regarding payment of wages, non-termination and non-reduction of wages would remain valid only for the period of the lockdown. After the lock-down is lifted, the employer would have certain options under the labour laws as regards the workmen:
  - a) As per the provisions of the ID Act, an employer has the right to lay off its workmen, on account of a shortage of any resources or raw-materials, accumulation of stocks, breakdown of machinery or natural calamity. For laying off the workmen, it is necessary to follow the procedure laid down in the ID Act. If the lay-off period is upto 45 days, then the employer is required to pay compensation equivalent to 50% of the basic wages and dearness allowance. However, the lay off period can be extended for more than 45 days without any compensation, provided there is an agreement with the Union/workers to this effect.

The stringent procedure of lay-off mentioned under ID Act, including payment of compensation, is applicable only for those establishments which employ more than 50 workmen. Other establishments employing less than 50 workmen would need to follow the specific terms of employment, for the procedure of laying off.

- b) The employer can also retrench its workmen under the ID Act, by following the procedure provided in the ID Act. The procedure of retrenchment depends on the size of the establishment. For retrenching the workmen, employer is required to serve 1 months' or 3 months' prior written notice to the workmen. Before retrenchment,

employer has to take prior permission from the appropriate Government or such authority as may be specified by that Government.

- c) The above mentioned options of lay-off and retrenchment is required to complied only for the workmen. For non-workmen, the terms of employment agreement executed with them and/or the provisions of applicable shops and establishment act, shall be required to be followed for laying-off and retrenchment.

*[The contents of this article should not be considered as our legal advice and it is imperative to seek prior independent legal advice for acting upon any of the information provided herein.]*