

COVID-19 : OUR TAKE ON EMPLOYMENT ISSUES IN INDIA

COVID-19 is severe acute respiratory disease caused due to infection from the novel corona virus which originated from Wuhan province in China and has now turned into a global pandemic. Within three months from its first instance, COVID-19 has spread across the globe and has already started causing severe economic repercussions. Indian businesses have also been severely affected due to the COVID-19.

Taking cues from how COVID-19 has taken turns in other countries and social distancing being the only effective way to control this disease, the Government of India has decided to implement a nationwide lockdown in India effective from March 24, 2020. Basis the advisory issued by the Government of India, all state governments and union territories have implemented lockdowns respectively. It is obvious that the Lockdown will come at its own economic consequences in India, the Indian business are also experiencing unprecedented issues including employee related issues. In this note we endeavor to provide our understanding of some common issues arising out of COVID-19 which may help the employers in taking a concerned approach in dealing with their employee related matter.

WORK FROM HOME

While the concept of work from home is not new in Indian businesses, the Indian employment statutes are silent about the work from home concept. There is no statutory definition or any specific guidelines that may regulate the said concept. Accordingly, there is a flexibility available with the employers to allow or not allow its employee work from home and they specify their own guidelines for the same. However, the statutory provisions relating to working hours, overtime payment etc. shall continue to apply as if the employee has been working from the office premises.

Due to the nature of COVID-19 and to promote social distancing various state governments and central government have time to time issued various advisories for promoting work from home. As of the implementation of lockdown in India (effective March 24, 2020) all commercial and industrial establishments which are not engaged in providing essential services, have to be closed. However, the closure due to the said lockdown does not



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necessarily mean that employers are required to close all of their operations and are free to implement work from home wherever possible. Requiring employee to perform their work from home will also not trigger any overtime payments as the closure of offices does not mean declaration of a holiday. As an exception to lockdown, industrial establishment which require some physical presence of workers/employees to maintain its continuity, such establishments can continue to operate after taking appropriate permissions from the local administrative authorities.

LEAVE MANAGEMENT

As a result of the lockdown implemented by state governments on the advisory of Government of India, many employers have implemented work from home to the extent possible, but there are various establishments or the nature of work performed by zzan employee, where work from home is not possible.

Under these circumstances where the lockdowns have been implemented and commercial and industrial establishments are closed pursuant to the government orders, the absence of employees from work cannot be adjusted towards paid or un-paid leaves. However, if the establishments are voluntarily closed in absence of specific orders from government, the employers and employees can mutually agree on adjustment of paid and un-paid leaves

Availing leave on a particular day is an employee's prerogative, and they cannot be forced to utilise their leave. Most organisations are therefore examining the possibility of work from home as a preventive measure. In past few days we have noticed that a few organizations have implemented some schemes where employees are provided an option to go on un-paid leaves but considering the implementation of lockdown such scheme may get effected.

In case an employee is infected or require sickness leave otherwise, the prescribed number of sickness leaves under the applicable law vary from 7 (seven) days to 12 (twelve) days depending on the location of the concerned establishment. Some states like Karnataka have required the employers to provide a longer duration of sickness leave (up to 28 days) to employees who have contracted COVID-19. If the sickness continues beyond such number of days, other leaves like casual leaves or earned leaves can be utilized for the same. In the event of prolonged illness, employees can be provided unpaid leaves for the required duration. Further, establishments covered under ESI Act, longer duration of sickness leave is possible.

If an employee is required to administer self-quarantine as a consequence of discharging his official functions, such employees should be provided with paid leaves for the same. However, if the employee is required to do the same due to his personal actions, they can be required to utilize their outstanding leaves for the same.

LAY-OFFS

Lay off is defined in the Industrial Disputes Act of India which means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or natural calamity or for any other connected reason to give employment to a workman. During lay-off the workman continues to be in the employment of the employer but at a reduced pay. Eligible workman category employees can claim compensation at up

to 50% of basic salary and dearness allowances for lay-off. If the lay-off continues for a duration of 45 days or more the employer can proceed for retrenchment. The compensation paid for lay-off is adjustable with the compensation payable for retrenchment. The processes for lay-off shall differ from one establishment to other depending on number of workmen employed and nature of activity undertaken. For a non-workman category employees the conditions of lay-offs will need to be mutually agreed.

REDUCTION IN PAY

In the Indian labour laws, there is no specific provision which deals with reduction of pay. This has to be agreed mutually between the employer and employees. Taking in account the situation arising because of COVID-19 in certain industries (like Aviation and Tourism) the employer and employees have agreed on a standardised pay cut across the board. In this regard if the employer is looking at implementing pay-cuts the same should be applied universally, without any discrimination and specially not in form of a punishment to any specific employee. Further, keeping in mind the current situation and welfare of the employees, Ministry of Home Affairs (“MHA”) vide its order dated March 29, 2020 mandated every employer to pay full salaries to its employees and any pay cut would amount to an offence under the Disaster Management Act, 2005. However, vide the recent order dated May 17, 2019, MHA has made its previous orders ineffective, including the order of March 29, 2020, this would mean that the employers can now make alterations in the payment of wages of their workers without any government restriction. As far as the violation of the previous order is concerned for the period of 29.03.2020 to 17.05.2020, a petition is pending in the Supreme Court, challenging the previous order on constitutional grounds. Pursuant to the petition, the court issued an interim order on May 15, 2020 directing the state government not to take any coercive action against the employers who fail to pay full wages for the aforementioned period. However, the ultimate fate of the employers over such violations will depend upon the final order from the court.

RETRENCHMENT/TERMINATION

The option of retrenchment/termination is available to the employers but the same will be treated as termination for convenience and all the necessary processes like notice period, intimation to government authorities, payment of retrenchment compensation, payment of gratuity, Leave encashment etc will need to be completed. Further, there is also a lot of government advisory against termination of employees due to COVID-19. We recommend that retrenchment/ termination should be considered as an option of last resort.

OFFICIAL TRAVEL

Considering the complete lockdown implemented in the country, any kind of international and domestic travel should be avoided. In case any employee is in the course of travel for his official functions and is unable to return home, the employer should provide for safety and necessary accommodation requirements.

Government of India has cancelled all visas issued to any overseas person up till April 15, 2020. If any overseas employee is already in India such persons can continue to remain in India for the balance duration of their visa, however if their visa is expiring during the lockdown they should contact the

nearest foreign resident registration office to seek support. Indian employer should provide necessary assistance for the same.

COMPENSATION TO INFECTED EMPLOYEES

Employers (in India) are obligated to pay compensation to employees who are injured (which includes partial or permanent disablement) or die due to accidents arising out of or in the course of employment. Accordingly, if it can be demonstrated that COVID-19 infection was contracted in the course of employment and it arose out of employment, the employer shall be legally obligated to pay compensation to impacted employees. The obligation to pay compensation would also depend on other factors like the State of employment, the nature of the employee's work, and the circumstances in which the injury/death/infection was caused. Accordingly, each case has to be evaluated based on the facts of each case.

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