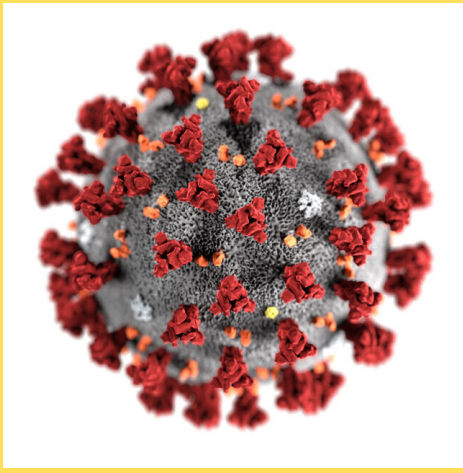


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Analysis of Obligation for Employers to remunerate employees during lockdown



Given the present situation, when most of the countries are worst hit owing to COVID-19 and even the cases in India are rising, there is a lot of concern of impact of COVID-19 on the economy



On the March 27th 2020, the Ministry of Labour and Employment issued a circular advising various industries and companies to not to retrench any employee from work



On the March 29th, 2020, the Ministry of Home Affairs issued an order for constituting Empowered Committee under Disaster Management Act, 2005 and requiring payment of full wages to the workmen



Accordingly, an analysis has been conducted relating to a legal opinion on the above and whether the employers are liable or bound to remunerate their employees in the present situation

Employer (Company/Organization)

Workmen
including contract
workers, casual
workers, etc

Employees
earning more
than Rs. 10,000
per month

B

If the company has
other business
vertical or
segment which is
profit-making or
work can be done
from home

If it is not possible to
get work done from
home and due to
cessation of work,
employer is financially
drained and on verge
of closure

In such a situation, the
employers shall be
mandated to pay wages
to the workers during the
period of lockdown

If the employer is economically strained
to pay the FULL wages, then he can pay
the sustenance allowance* to workmen.
However, such measure should be taken
only if the employers can demonstrate
they are incurring losses and on verge of
closure

* If the employer is economically strained and there's no work during lockdown, however he would be required to pay sustenance allowance as it is an allowance which flows from the term of employment as not contingent on actual working as per the Payment of Wages Act

B

Employees earning more than Rs. 10,000 per month

If the company has other business vertical or segment which is profit-making

If it is possible for employees to work from home

If it is NOT possible to work from home and there is no work due to lockdown which strains the employer financially

In such a situation, the employers shall have to pay salary to the employees subject to any deduction depending on the contract

In such a situation, the employers shall have to pay salary to the employees subject to some deduction depending on the contract

If the employer is economically strained, then he may resort to *force-majeure* clause and might keep the payments to employees at abeyance (for the period of lockdown) or terminate the contract (if the work is ceased indefinitely)

The employer must take care to follow the due process as per the regulations of the Contracts Act, 1872 before taking any decision

Employees drawing salary of more than Rs. 10,000 do not come under the definition of 'workmen' and aren't governed by any legislation relating to labours. They are governed by the 'Employer-Employee' contract agreement regulated by the Contract Act

**Force Majeure* clause is a provision in Contract Act that relieves the parties (one or both of them) from performing their contractual obligations when circumstances beyond their control arise making performance of obligation not possible

Following an ammendment in the EPF Scheme, 1952, all employees and workers are now permitted to withdraw an amount of basic wages and dearness allowance for three months or upto 75% of the amount standing in the employee's credit, whichever is LESS and this will additionally aid employees and workers to sustain in case the employees are ecoonimically strained to pay their salaries or wages

It is important to note that though Ministry of Home Affairs have required the companies to refrain from terminating services of any employee, the employers may lay-off employees subject to compensation equal to 50% of the salary after following due procedure and regulations of the Industrial Dispute Act, 1947 if the employer is financially strained

Lay-off in the Industrial Dispute Act has been defined as - *"Failure, refusal or inability of an employer on account of shortage of coal, power or raw material or the accumulation of of stocks or breakdown of machinery or natural calamity or for any other connected reasons... to provide employment"*

However, the employer is advised to support the workmen/employees who are facing hardships as per the advisory issued by the Central and State governments and on humanitarian grounds as termination of their services or non-payment of their dues would add to their hardship

Other than workmen, in relation to the Employer-Employee contract, the employer has an option to place the salaries on abeyance for the period of lockdown if the company is incurring huge losses and on the verge of closure. However, if the company is in a better position and the employees are able to work from home, then the employer should support the employees and refrain from terminating their services or deducting their salaries

Stay home and Stay safe!

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