

FAQ on leave, pay, termination, suspension of Employee by Employer during Coronavirus - COVID 19

written by Jidesh Kumar | March 23, 2020



COVID 19 Employment FAQs

- Can employers force employees to take unpaid leave?

Yes, if the contract with the employees is governed by an 'at-will' kind of an agreement. The employer can end the employment at their discretion if it is not violating an agreement and there is no discrimination. You may contact us at jidesh@ksandk.com for legal advice.

- Can employers in India suspend employees temporarily on zero pay?

Without a clear contractual right to suspend in these circumstances, there is no clear route to employee suspension. Imposing suspension without agreement may give rise to claims against the employer, so the agreement should be sought.

- Can employers temporarily suspend employees on reduced pay?

Without a contractual right to do so, asking employees to stay at home for a temporary period on reduced pay would be a proposed contractual change, and a contract change process would be required for this to be effective. Under the Indian Contract Act, 1872, a contract requires the consent of both parties. Hence the employer cannot unilaterally make changes to the employment agreement.

Agreement from employees should be sought to deal with the current extraordinary circumstances in order to minimize the risk of legal claims. Employers in this situation should aim to be transparent with employees about the reason for the temporary suspension as well as what potential alternatives might look like, including perhaps having to consider redundancies. For example, certain airlines are currently seeking to agree on periods of unpaid leave with employees, with reduced payments smoothed over a number of months.

- What is lay-off? Is it different to suspension?

Layoff means termination of employment (with or without notice) by the employer or management. Layoffs are not caused by any fault of the employees but by reasons such as lack of work, cash, or material. A permanent layoff is called retrenchment. But in view of the Industrial disputes act, 1947

(India), a layoff means the temporary removal of employees because of deficit and shortage of inputs which are related to productivity, breakdown of machinery, or effect of natural calamity. Layoff of employees does not mean that they are terminated from the job, such employees could be reinstated if the situations improve. Layoff applies to workmen and suspension applies to all other employees of the company, including managerial employees

- Can lay-off trigger redundancy?

Yes,

there are mechanisms within the lay-off rules through which redundancy is triggered.

- Is it necessary for employers to give/issue notice of termination?

In the case of 'workmen' (as defined in the Industrial Disputes Act, 1947), employers must give 30 days' notice for termination for convenience or make a payment in lieu of the notice period. In the case of other employees, including supervisory, administrative, and managerial personnel, most states also provide 30 days' notice for termination for convenience, with a similar provision for payment in lieu of notice.

- Can an employer

introduce a lay-off or short-time working provision, if they don't already have

one in employment contracts?

This

would be a change in contractual terms and conditions and a contractual change

process would be required. Legal advice should be obtained, to do this.

- Can an employee be

terminated in these situations?

The employer should consult with employees (and trade unions, if any) to see whether an agreement can be reached. A voluntary discussion could also take place before any formal process is commenced. Whilst employees and trade unions would not usually agree to such measures, there may be a willingness to agree in the current climate and particularly if the alternative is job losses or business closure.

If an agreement cannot be reached, the employer may decide (following careful consideration) that it has to take the risk of acting in breach of contract and make the decision to lay off or suspend or reduce hours or proceed with a redundancy process.

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