

COVID-19: Guide to legal issues on Employment and Workplace

written by Aurelia Menezes | March 20, 2020



'Without Labour nothing prospers' – Sophocles.

In this Article we will be taking a look at COVID19 Legal Issues on Employment and Workplace. Labour and employees play a significant role in the corporate sector. Indian laws exist so that workers and employees are treated well in work environments and help protect their rights. Such laws also ensure that employers value their employees for their expertise and are compensated accordingly.

With the outbreak of the COVID - 19, many employers are struggling to prepare for the worst, including work from home, leaves, compensation, insurance and numerous other factors. This situation not only brings about a worry with reporting heads, managers and the like but also with senior management including the board of directors and stakeholders of a company.

Below are some FAQs to help understand the COVID19 Legal Issues on Employment and Workplace with relationships between management, i.e. employers and employees.

1. Is it essential for companies to close down workplaces due to the COVID – 19?

It is a well-known fact that many employers today are shutting their offices in order to provide a work from home option to their employees in light of the COVID – 19. However, is it mandated by law?

No, it is not mandated by law in most states to shut down operations just as yet due to the outbreak of the disease, but many employers are taking necessary precautionary steps for various reasons, such as employee's past history of travel [*whether personal or official*], number of employees in a workplace, infrastructure, bandwidth to complete tasks, etc.

Unless there is no official communication from any municipal corporation of any state to shut down businesses, employers can expect their employees to come to the workplace and work in the office. However, depending on the sector in which the company operates, it is generally advisable to sensitize towards the outbreak of the COVID – 19 and prepare for such scenarios to avoid large crowds in workplaces, canteens, etc.

In so far as per the orders passed by most states, non-essential services may continue to function as normal as stated above. Some examples of essential functions that are required to be working and functional are Banking, Electricity, Water, Telecommunication, Sewerage, Healthcare and Medical including ambulance services, outpatient departments, and clinics, Defense and Security, E-commerce hotels and restaurants, etc.

2. Are employers entitled to deduct employees' annual leave entitlement or

force the employee to avail unpaid leave?

Indian law does not provide for any such deduction in leave entitlement.

3. Should employers pay full salaries to employees who work from home?

Yes, firstly, since the outbreak is not caused due to liability of either party, but is beyond the control of both. It becomes quite tricky if employers have to pay salaries of employees who cannot work from home yet are required to be on standby. From a risk management, practical and even humanitarian perspective, employers who can afford to do so should continue to pay full salary, or benefits to their employees during this period. However, employers who are severely affected and cannot afford to pay their employees in full may put up an argument that the situation is beyond the control of the parties and the employment cannot be performed temporarily, and hence, they may not be required to pay the employees. Since there are no precedents with the views expressed above, employers should be cautious while implementing the same.

4. Should employees use their paid leaves in such a case or can employers require employees to use their paid leave?

No, employees are not bound to use their paid leaves. An employer cannot require that the employee utilise their paid leave; that is worker's choice.

5. How will the allowances of employees be treated?

This is a question to be tested and there is no clear cut answer as yet. However, we are of the view that all allowances shall be payable to the employee as were being paid earlier, even during 'work from home'. E.g. Allowances such as travel, which, the employees are not utilizing during work from home cannot be altered or cancelled and all allowances, whether utilized or not, forming part of the employee's salary or CTC, shall be due and payable.

6. Can employers retrench/lay-off employees?

Any employer facing financial crunches or those that are severely impacted due to the COVID-19 may require to reduce costs and expenses, including retrenchments and lay-offs. Retrenchments and lay-offs must be as per the Industrial Disputes Act and such procedures must be followed thoroughly by the organisation.

7. What can employers do to ensure safety in the workplace?

- Empathize towards the employees: Creating awareness among employees can contain panic. Using the company's internal communication tools, the board of directors should provide detailed and updated information about the virus, its symptoms, precautionary measures, etc. from time to time. Company's having policies, must update them to deal with the issue at hand and ensure proper reporting channels from those who are affected or have symptoms of the virus to the top management directly, because delay, could only attribute to trouble.
- Absenteeism from the workplace: It is essential for the reporting heads and management to consider sick leaves, without apprehension and accommodate such leaves of the employee who intend to remain absent from work. Typically, such acts of employees in excess could cause repercussions from the employer, however, it is required to be mindful of such issues and allow the same in the interest of the company, This, however, shall be guided by the company policy in place already, and hence, it is recommended that the board of directors be flexible while approving such absenteeism.
- Disaster Management Plan and Communication: A major role of the board in

enterprise risk oversight is to make sure that there are contingency plans in place even before a crisis arises. It is the responsibility of the board of directors to create a disaster management plan to be documented in the minutes of the meetings of the board in order to ensure transparency and clarity on expectations. The board must consider such crises as global and react proactively to be solution-oriented. The board has to exhibit great leadership ensuring that the rest of the people in the company do not panic. Constant communication and guidance is key. For instance, many courts have not allowed for 'force majeure' clauses to cover the coronavirus disease for not being able to consummate transactions and obligations under contracts. Such alerts must be communicated to relevant teams so that the manner of handling specific situations is known.

- Hygiene: It is the implied duty of the board of directors to provide a safe and hygienic workplace to its employees. Sanitizing floors, lifts, desks, computers and keyboards, printers, fax machines, including surface tables that employees use in common, is essential and contributes to a safe and hygienic work environment. Installation of hand sanitizers in common floor areas may ensure proper hygiene and less absenteeism.
- Insurance: The board should ensure that adequate group insurance policies are in place, and details such as nature and extent of coverage, designated hospitals, manner of settlement, emergency handling, etc., are notified to all employees. The board should have adequate Directors and Officers (D&O) liability cover in place.

Conclusion:

With the rise of

cases in India and elsewhere, the criticality of COVID -19 seems to be increasing by the hour. It is of utmost importance that directors be proactive

to curb the virus and ensure the safety of their employees. This will also help

reduce risk and liability from legal claims to which, during these harrowing times, organisations have higher exposure to than can be imagined.

All views expressed

above are unprecedented, and all employers must be mindful of legal implications and consequences while implementing any of the processes.

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