

Covid-19: To pay or not to pay Wages

written by Sindhuja Kashyap | March 30, 2020



Impact of Covid 19 Outbreak on Salary and Wages

The coronavirus has taken the world by storm and it is not a new recommendation to stay at home and abide by social distancing as much as possible. While the government is struggling to contain the spread, morbidity, and mortality of COVID-19, companies in India are struggling to maintain a balance between the business demand and the cost.

In furtherance to the same, an advisory note was issued by the Ministry of Labour and Employment dated March 20, 2020^[1] (attached herewith) advising all public and private employers to support their employees and workers by not terminating their employees and reducing/deducing their wages. However, it is pertinent to mention here that this note was issued as an advisory only and was not issued as a direction or order thereby having no legally binding effect on private institutions and establishments.

Additional

Measures by the Ministry of Home Affairs

Section 10(2)(l) of the Disaster Management Act ("Act") provides power to the National Executive Committee to "*lay down guidelines for or give directions to the concerned ministries or departments of the Government of India, the state governments and the State Authorities regarding measures to be taken by them in response to any threatening disaster situation or disaster*".

Ministry of Home Affairs ("MHA"), exercising this power, issued an order dated March 29, 2020^[2] ("Order"), directing the respective governments and authorities to take necessary actions for various additional measures including but not limited to providing adequate arrangements of shelters and foods for poor and needy which also included the migrant labourers, containing the migrant people who have moved out in the nearest shelter for a minimum period of 14 days. Landlords of the flats being resided by migrant labourers have been directed to not demand payment of rent for one month and any breach would be penalised under the Act.

Direction on

Salary deduction

Out of all the directions issued by MHA, what gained the most attention was the direction given to the governments and authorities to ensure that all the employers make payment of wages to their workers. It is pertinent to mention here that the word "employer" as used herein is irrespective of it being an

industry or shops & commercials establishments thereby bringing all employers across India under its ambit.

Such payment of wages has to be done on the due date and shall under no circumstances be deducted. Further, this payment of wages has to be for the period the establishment/industry/shops are under the closure during the lockdown as decided by the government.

This Order saw an immediate implementation in West Bengal wherein an order by the Government of West Bengal was issued on March 29, 2020,[3] reciprocating the abovesaid directions and also directing the district administrations to ensure strict compliance with the aforementioned directions at their respective districts. While we are still expecting other State/UT Governments to issue an order in compliance with the above Order, we are likely to see the same in a day or two.

Further, an order was also issued by the Gautam Buddha Nagar district administration in Uttar Pradesh on March 28, 2020,[4] stating that all such shops, commercial facilities, and factories being temporarily closed due to an order to this effect by the state government or district administration shall ensure that all their workers and labourers are provided paid leave for the duration of such closure.

Further, all such establishments, depending on their situation, shall make such adequate arrangements to ensure the payments are provided to the workers on March 30 and 31 or April 3 and 4, 2020. Any violation of the above order by the district magistrate would attract legal actions under Section 51 of the Act which provides for imprisonment for a term which may extend to one year or with fine, or with both, and two years of imprisonment if the violation of the order results into any loss to life or imminent danger.

Conclusion

By the said Order, the Government of India has as on date clearly restricted any deduction or delay in payment of salaries to any employee on account of work from home or leave due to lockdown. However, there is still no order or direction on the restriction on the employers for lay-off and retrenchment of its employees, which is anticipated to follow post-completion of this lockdown period.

We recommend the employers to keep a watch on the orders/circulars/notifications being issued by the relevant authorities from time to time before taking any decision on and retrenchment/layoff of their employees to avoid contravention. For more such information, please visit our page COVID19 which is constantly being updating with relevant legal information

- [1]<https://mha.gov.in/sites/default/files/MHA%20Order%20restricting%20movement%20of%20migrants%20and%20strict%20enforcement%20of%20lockdown%20measures%20-%2029.03.2020.pdf>
- [2] <https://wb.gov.in/COVID-19/OC5.pdf>
- [3] Order No. 1907/S.T-D.M-Corona/2020 dated March 28, 2020

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