

Mandatory Obligation on Employer to monitor Aarogya Setu imposed by the MHA order of May 30, 2020

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Aarogya Setu

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Do you have an Aarogya Setu observation/ management/ enforcement team in your organization?

As a company, your responsibility is not limited to the installation of the application by an employee. Continuous monitoring to check if the employee is using Aarogya Setu on a daily basis is very crucial. The law, as provided in the MHA order of May 30, 2020 ("MHA order"), states that a company must ensure that the Aarogya Setu is installed by all employees.

Section 8(ii) of the Guide for Phased Re-opening (Unlock 1) states that employers should ensure that the Aarogya Setu app is installed by all employees having compatible mobile phones.

Annexure - 2 of the MHA order deals with the offences and penalties to be imposed in the case of violation of lockdown measures. As per the annexure, any violation of any of the provisions by the company will render the Directors, Officers, Managers and Secretary guilty of committing an offence. Non-compliance may also lead to imprisonment for a term of six months or a monetary fine of INR 1000 or both.

The employers are now required to use 'best efforts' to ensure that all employees are installing Aarogya Setu application on their compatible mobile phones. Since the term 'best efforts' is not particularly defined, it can be interpreted as monitoring it on a regular basis. Monitoring the usage of the Aarogya Setu application by the employees on a daily basis can be deemed as the employer using its best efforts.

The guidelines also state that the app needs to be installed only on those phones that are compatible. It is important to analyze the purport of the law for those employees without compatible phones. To arrive at a solution, we may need to examine the provisions of the Indian Penal Code.

Section 188 of the Indian Penal Code deals with disobedience to an order duly promulgated by a public servant. This section states that if any person who is in control of management disobeys the order and if such action or inaction results in causing injury or death to any other person that is lawfully employed, then such person may have committed an offence under this section and will be liable to punishment for a jail term up to 6 months or fine of INR 1000 or both.

The explanation to Section 188 of the Indian Penal Code is as follows –It is

not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

It may be advisable to request all employees who don't use a compatible phone, to try using a compatible phone, if possible, to control the spread of the virus and also to render the workplace safe for all other employees.

While it is mandatory to install the app, it is also mandatory to keep the internet and location turned on, or else the entire purpose of installing the app will be rendered ineffective.

This means that every day the employee visits the premises, he/she should be checked for the installation of the Aarogya Setu app. The company may be required to have an Aarogya Setu register to ensure compliance with this order.

Disclaimer : This update is only for information purposes and is not legal advice. You are requested to seek legal advice before you take any legal and/or business decision.

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