

Covid-19: Impact on employment conditions in India

The pandemic caused by Covid-19 is creating havoc around the world. According to WHO's website, as of May 6, 2020, there are more than 3,588,773 confirmed cases and 247,503 deaths globally due to Covid-19, with US, Italy, Spain, and China being the most affected.

India, second most populous country in world, is no exception for Covid-19. However, the Indian Govt. was prompt in taking some bold preventive measures to contain the deadly virus. Due to such measures, business entities having operations in India are finding it difficult to manage their operations during these testing times.

In this newsletter, we will first explain (i) what measures are required to be followed by business entities in India, and (ii) we also will discuss employment related issues such as: (a) whether salary can be decreased, or (b) termination can be carried out etc. to mitigate the impact of measures imposed on business entities for the prevention of Covid-19.

1. What measures have been imposed on business entities?

(1) Overview

The most stringent of all measures was the pronouncement of 21 days lockdown on March 24, 2020. Accordingly, an order was issued by the National Disaster Management Authority under the Disaster Management Act, 2005 (**DMA**), whereby various Ministries, Departments of Central Government & State Governments were directed to ensure social distancing. Thereafter, the Ministry of Home Affairs (**MHA**) issued several guidelines identifying measures to be taken by various authorities/ departments under the Central Government as well as State Governments. The sum and substance of those guidelines was that all non-essential office and business activities should be closed during the lockdown period. Though a few other measures such as restrictions on foreign travels, quarantine of people traveled from affected countries, work from home (**WFH**) etc. were also proposed.

Thereafter, on April 14, 2020, the Indian Government extended the lockdown for a period of 21 days i.e. up to May 3, 2020. Though this time a calibrated permission to operate certain identified businesses and industries w.e.f. April 20, 2020 was provided as per guidelines and in the manner permitted under the Standard Operating Procedures (**SOPs**) issued by MHA on April 15, 2020.

Recently, on May 1, 2020, the Indian Government has once again decided to extend the lockdown for another 2 weeks from May 4, 2020. At the same time, MHA has issued revised new guideline of lockdown measures ("**NG**").

(2) Contents of New Guideline

The Ministry of Health and Family Affairs has categorized all districts across the country into different colors zones such as red, green, and orange depending upon the number of Covid-19 cases reported in a district. Accordingly the MHA under the NG has permitted the identified business activities in different zones to

the extent necessary, and subject to compliance with the local instructions/ advisories issued by the respective State Government where the business establishment or the office is situated.

Just to give an idea, the following business activities have already been permitted from April 20, 2020:

- i) All health-related services such as: a) hospitals, b) nursing homes, c) laboratories, d) veterinary hospitals, e) pharmacies, f) manufacturing of drugs, pharmaceuticals, medical devices, packaging material, their raw material and intermediates, g) ambulances, and h) movement of person involved in those activities.
- ii) Agricultural, fisheries, plantation (tea, coffee, rubber, cashews etc.), animal husbandry, milk related activities including the manufacturing of feed, fertilizers, pesticides, seeds etc.
- iii) Financial Sector: operations of banks, ATMs, insurance companies, financial markets, payment system operators regulated by Reserve Bank of India.
- iv) Public Utilities: a) electricity generation, transmission and distribution, b) water, sanitation, waste management sector, c) Oil and Gas manufacturers, refiners, transportations, d) postal services, e) telecommunication, and internet services etc.
- v) Cargo Movement: transportation of goods by trucks, railways, cargo movements at airports, ICDS, seaports and movement of staff and labor for such services.
- vi) Supply of essential food items: all facilities involved in the sale or supply chain of daily use goods such as vegetable, fruits, dairy, milk, meat etc. such as grocery shops, brick and mortar stores, e-commerce sites etc.
- vii) Commercial and private establishments: a) print and electronic media, broadcasting and DTH, b) IT and IT enabled services (up to 50% strength), c) E-commerce companies and their vehicles for the purpose of delivery, d) courier services, e) cold storage and warehousing services, f) logistic services including those at airports, railways, containers depots etc. g) private security agencies and facility management services for maintenance of office and residential complexes, h) services provided by self-employed persons such as electricians, IT repairs, plumbers, motor mechanics, carpenters etc., i) Hotels, motels which accommodate tourists, medical and emergency staff stranded due to lockdown etc.
- viii) Industries and factories: a) food processing units operating in rural areas i.e. outside the limits of municipal corporation or municipalities, b) manufacturing and other industrial establishments in industrial areas, SEZs, EoUs etc., c) manufacturing units of essential goods such as drugs, pharmaceuticals, medical devices, their raw materials and intermediates, d) production units which require continuous process and their supply chain for eg: steel, e) manufacturing of packaging material, f) manufacture of IT hardware, g) production & transportation of coal, mines, mineral and other incidental operations.

- ix) Construction activities: a) roads, irrigation projects, building and industrial projects situated outside municipal limits, b) construction of renewable energy projects, c) construction work in ongoing projects within the municipal limits (only if workers are available onsite).

Pursuant to the latest NG, the scope of permitted business activities has been further expanded. Subject to certain restrictions as specifically mentioned in the NG, almost all types of business activities have been permitted under the green zone. It is therefore advisable for business entities to check with local administrative authorities if they are permitted to operate business.

(3) SOPs

The identified business and commercial activities which have been permitted to operate from April 20, 2020 are required to implement the following SOPs and other conditions as prescribed by local administrative authorities:

- i) The premises should be completely disinfected especially entrance, cafeteria, toilet, lifts, conference room etc.
- ii) For workers traveling from outside there should be special transportation arrangements. The transportation vehicle should not have occupancy more than 40%.
- iii) Any vehicle and machinery entering the premises should also be disinfected regularly.
- iv) Mandatory thermal scanning of everyone entering and exiting the workplace.
- v) It is necessary all workers to have medical insurance.
- vi) Provision for hand wash & sanitizers at common areas, entry and exits.
- vii) There should be one-hour gap between shifts, and lunch/ tea breaks should be staggered to ensure social distancing.
- viii) Meetings of 10 or more people to be discouraged. There should be a gap of at least 6 feet between two persons sitting.
- ix) Not more than 2 persons at a time in a lift. Bigger lifts can have 4 persons. The use of staircase should be encouraged.
- x) Strict ban on chewing gutka, tobacco and spitting.
- xi) Total ban on non-essential visitors at sites.
- xii) List of nearby hospitals/ clinics which are authorized to treat Covid-19 patients should be available at workplace.

Pursuant to the latest NG, SOP's referred above could have further changes depending upon the number of cases in the respective zone. It is therefore advisable for business entities to check with local administrative authorities, if they are required to comply with these or any additional operating guidelines

with respect to their business.

2. Can employers of offices and establishments which are closed due to lockdown ask employees to WFH during such period?

Yes, Indian Government have been promoting WFH. Depending upon their work conditions and HR policies, the commercial and private establishments in India can ask employees to WFH.

3. Whether the employer is required to pay full salary to the employees during the period of lockdown?

On March 20, 2020, the Ministry of Labour & Employment has issued clarification¹ in this respect. Accordingly, the employees of an establishment which has become non-operational on account of Covid-19 shall be deemed to be 'on duty' and are entitled for full remuneration during lockdown as if they are on WFH.

The employer would still be required to pay salary where the employee is not able to WFH for any reasons such as due to the nature of work, non-availability of PC, internet etc.

4. Whether the employer can reduce/downsize the workforce on account of business slowdown due to lockdown pursuant to Covid-19?

The Central Government as well as few State Governments such as Haryana, Uttar Pradesh, Maharashtra, Karnataka have issued advisories/ orders asking employers to refrain from terminating or reducing wages of their employees pursuant to Covid-19. However, as a matter of fact not all State Governments have issued similar instructions.

It is, therefore, advisable that before taking any action for the reduction of the workforce during the lockdown, the employer must check the advisories/orders/notifications issued by the respective State where its business establishment is situated. In a case no such advisories/orders are issued, reduction or downsizing can be done subject to the policies of the employer, terms and conditions of the employment agreement/contract and complying with the due process of law.

5. Whether an employer can take disciplinary actions if an employee is not performing his/her assigned duties, while WFH?

Yes, an employer can act against an employee in accordance with established procedures if the employee is found lacking in performance of assigned duties. However, such disciplinary action should not be in violation of applicable laws and principles of natural justice, and due consideration should be given to the

¹ <https://labour.gov.in/sites/default/files/file%201.pdf>

current lockdown situation and limitations for employees to perform their assigned tasks from home such as unavailability of adequate IT resources or connectivity issues. State Governments have also suggested to adopt sympathetic approach towards employees during this period.

6. Can employer ask employees to undergo medical examination of Covid-19?

There are no statutory provisions requiring the employer to direct employees to undergo medical examination for Covid-19. However, employers may as a measure to ensure health and safety of other employees suggest the suspected employee to get himself/herself medically tested for Covid-19.

Here it is relevant to note that an employee's health and medical records are *Sensitive Personal Data or Information (SPDI)* under the Information Technology Act 2000; therefore, employee's medical report should be treated as confidential information, and be shared within the business only on a need-to-know basis after seeking consent of the employee.

Having said that in the event there is a suspected case of Covid-19, the same should be reported to the nearest hospital or registered medical care provider. The hospital or medical care provider will then notify the authorities. Alternatively, the employee may call the toll-free helpline², which connects with the State authorities.

7. Can employer ask employees and clients for preventive screening for Covid-19?

Yes. The NG requires offices, workplaces etc. to conduct thermal scanning of everyone entering or exiting the premises.

8. What obligations do employers have to prevent discrimination or harassment of the those suspected of Covid-19?

In general, Indian law prohibits discrimination based on gender, sexual orientation, caste, and religion. Yet there is no specific law that covers Covid-19. Therefore, it is a moral obligation on the employer to prevent employees from any sort of harassment or discrimination based on Covid-19. Yet an employer can implement different measures such as request for screening, medical checkup etc. if any employee pose the risk of infection. In this context please also refer to our response to question number 6.

Note: The situation related to Covid-19 as well as the response of Indian Government so far has been very dynamic and is expected to remain the same in near future. Therefore, business operators/ employers are encouraged to consult legal experts, as well as relevant guidance put forth by the Central Government, State Governments, and local administrative bodies on regular basis.

² <https://www.mohfw.gov.in/pdf/coronavirushelplinenummer.pdf>

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