

FAQ's - IMPACT OF COVID-19 ON LABOUR AND WORKFORCE

1. **Whether compliance with the lockdown pursuant to COVID-19 is mandatory for all establishments irrespective of the nature of work performed by the establishment?**

With a view to ensure social distancing and to prevent the spread of COVID-19, 21 days lockdown was declared through an Order passed by the National Disaster Management Authority under the Disaster Management Act, 2005 with effect from 25th of March 2020¹.

Pursuant to the abovementioned Order of the National Disaster Management Authority, the Ministry of Home Affairs issued guidelines on 24th of March 2020 to Ministries/ Departments of Government of India, State/ Union Territory Governments and State/ Union Territory Authorities to effectively ensure the implementation of the lockdown to prevent the spread of COVID-19².

As per the guidelines issued by the Ministry of Home Affairs read with the addendum³, all establishments, except those engaged in providing essential services or engaged in manufacture of essential goods, shall be closed during the lockdown.

Further, various State Governments have also issued notifications pertaining to 'essential services' in their respective states and the compliances to be adhered with to continue their operations.

2. **Can employees of establishments which are closed due to lockdown be made to work from home during such period? Whether the employer is obligated to pay full remuneration to the employees for the work done by them during the period of work from home?**

Yes, employees of establishments closed on account of the lockdown can be made to work from home during the said period to the extent that the nature of their work allows work from home. The guidelines issued by the Ministry of Home Affairs on the 24th of March 2020 (*supra*) read along with the addendums⁴, clearly specify that barring few exceptions, all establishments may allow employees to work from home only.

The employer is required to pay full remuneration to the employees for the work performed by them during such time. It is also clarified by the Ministry of Labour and Employment, Government of India through a formal communication dated 20th March 2020⁵ that if a place of employment is made non-operational due to COVID-19, the employees of such unit will be deemed to be on duty and therefore, such employees should be paid full remuneration as if on duty.

In this regard, the employers are advised to check the advisories/directions issued by the State Government having jurisdiction over their establishment.

3. **Whether the employees, working in the establishments where the nature of work is such that it cannot be performed from home, are required to be paid salary for the duration of lockdown?**

Yes, the employees working in establishments where the nature of work is such that it cannot be performed from home, are required to be paid salary for the duration of lockdown. The Ministry of Labour and Employment, Government of India through a formal communication dated 20th March 2020 (*supra*) clearly specified that if a place of employment is made non-operational due to COVID-19, the employees of such unit will be deemed to be on duty.

Further, the Ministry of Home Affairs issued an Order⁶ dated 29th of March 2020 directing the State/ Union Territory Government and State/ Union Territory Authorities to take necessary steps and issue necessary orders requiring, *inter alia*, all the employers, be it in the industry or in the shops and commercial establishments to pay wages to their workers, on the due date, without any deduction, for the period their establishments are under closure due to lockdown.

¹<https://mha.gov.in/sites/default/files/ndma%20order%20copy.pdf>

²<https://mha.gov.in/sites/default/files/MHAorder%20copy.pdf>

³<https://mha.gov.in/sites/default/files/Guidelines.pdf>

⁴https://mha.gov.in/sites/default/files/PR_ConsolidatedGuidelinesofMHA28032020.pdf

⁵<https://labour.gov.in/sites/default/files/file%201.pdf>

⁶<https://mha.gov.in/sites/default/files/MHA%20Order%20restricting%20movement%20of%20migrants%20and%20strict%20enforcement%20of%20lockdown%20measures%20-%2029.03.2020.pdf>

4. **Can the employer compel an employee to exhaust his/her annual leave while the employee is unable to attend office due to being in self-quarantine voluntarily or due to symptoms of COVID-19?**

Considering the prevailing pandemic, the Government has issued advisory requiring all such persons who are showing symptoms of COVID-19 to self-quarantine/isolate themselves for at least 14 - 28 days.

Further, as per the advisory⁷ issued on the 30th of March 2020 by the Ministry of Labour and Employment all private and public establishments are advised not to terminate their employees including casual and contract workers and also not to reduce or deduct their wages for the period during which the employees avails quarantine leave.

Thus, if an employee is unable to attend office due to suspected exposure to COVID-19, the employee cannot be forced to utilise his or her annual leaves for undergoing the recommended period of self-isolation/ quarantine and the leaves so availed shall be paid leaves.

5. **Whether the employer is under any obligation to pay wages to migrant workers in order to mitigate the economic stress caused to such workers on account of COVID-19?**

Yes, the migrant workers are required to be paid wages without any deduction.

In light of the nationwide lockdown implemented for the containment of spread of COVID-19 and to mitigate the economic hardship of the migrant workers, the Ministry of Home Affairs vide its Order dated 29th March 2020 (*supra*) directed all employers in the industry or in the shops and commercial establishments to pay wages to their workers, on the due date, without any deduction, for the period their establishments are under closure during lock down.

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

The Central Government has issued advisories and orders stating that even if place of business has become non-operational due to COVID-19, its employees shall be deemed to be on duty and the employer should not terminate any employees. The Government advisories/orders further directs that the employee should be paid full remunerations without deduction.

In this regard, State Governments such as those of Gujarat, Haryana⁸, Karnataka, Telangana⁹, have issued advisories/orders asking employers to refrain from terminating or reducing the wages of their employees.

The State of Uttar Pradesh has issued a Notification dated 20.03.2020 stating that the employees/workers, working in factories/shops/establishment which are closed temporarily vide order passed by the State Government or District Magistrate shall be provided holidays with wages by the employer for the period of temporary closure. Subsequently, the Labour Commissioner, Kanpur also issued a circular dated 25.3.2020 directing all Trade Unions of Uttar Pradesh that they should inform the workers accordingly.

It is, therefore, advisable that before taking any action for reduction of the workforce during the lockdown, the employer must check the advisories/orders/ notifications issued by the State where its business is situated or where the employer has its establishment. In a case where 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.

⁷https://clc.gov.in/clc/sites/default/files/mygov_15855558681.pdf

⁸http://www.nhmharyana.gov.in/WriteReadData/userfiles/file/CoronaVirus/Advisory%20for%20private%20establishments%20for%20not%20terminating%20the%20services%20of%20employees%20-%20COVID-19_23_03_2020.pdf%%

⁹<https://covid19.telangana.gov.in/wp-content/uploads/2020/03/Circular-Memo-No-2122-GAD-2020-Telangana-Government.pdf>

7. Whether any relaxations have been given by the Government in relation to statutory compliances under various labour laws on account of COVID-19?

i. Package to the employers for payment of provident fund contribution

The Employees Provident Fund Organisation has issued a Notice on 01.04.2020 stating that Government has announced a package for the employers under the Pradhan Mantri Garib Yojna pursuant to which Government shall pay 24% of wages of the workers in their EPF account in relation to the establishments which employs less than 100 employees and 90% of such employees are drawing wages less than Rs. 15,000/ per month. The Notice further prescribes certain conditions that are to be fulfilled to avail benefits of the above provision.

ii. [Extension given for payment of ESI Contribution for the month of February and March, 2020](#)

ESIC vide notification no p-11/14/Misc/1/2019-Rev has extended the filing and payment of ESI contribution for the month of February 2020 & March 2020 to 15th April 2020 and 15th May 2020 instead of 15th March, 2020 and 15th April, 2020 respectively.

iii. Extension of last date for filing of Unified Annual Return under eight labour laws

The Ministry of Labour and Employment has extended the last date of filing of Unified Online Annual Returns for the year 2019 under eight labour Acts and ten Central Rules up to 30th April 2020.

The jurisdictional authority is advised to not take any legal action for non-filing of Annual Returns for the year 2019 against such establishments. The Acts covered under the unified annual return filing are:

- ❖ Payment of Wages Act, 1936
- ❖ Minimum Wages Act, 1948
- ❖ Contract Labour (Regulation and Abolition) Act, 1970
- ❖ Maternity Benefit Act, 1961
- ❖ Building and Other Construction Workers (Regulation of Employment and Condition Service) Act, 1996
- ❖ Payment of Bonus Act, 1965
- ❖ Inter-State Migrant Workmen (Regulation of Employment and Condition Service) Act, 1979
- ❖ Industrial Disputes Act, 1947

iv. Extension of Non-Refundable Advance to Members under EPF Scheme

The Ministry of Labour & Employment has amended the Employees Provident Fund Scheme, 1952 vide Notification dated 27th March 2020. As per the amended EPF Scheme, the Commissioner may, on an application from any member of the Scheme working in any establishment or factory located in an area declared as affected by outbreak of any epidemic or pandemic, permit a non-refundable advance from the provident fund account of such member not exceeding the basic wages and dearness allowances of that member for three months or up to 75% of the amount standing to his credit in the fund, whichever is less.

8. What will be the impact on the employment visas of expatriates working in India?

Considering the pandemic, many expatriate employees working in India chose to fly back to their countries and / or were called back by their Governments. Considering this movement, the Indian Government issued certain key advisory relating to the status of visas that were issued to such personnel.

With regards to expatriates, it is stated that all existing visas (except diplomatic, official, UN/International Organizations, employment and project visas) will stand suspended till at least April 15, 2020 from the port of departure beginning on March 13, 2020. However, visas of all foreigners already in India will remain valid. They may contact the nearest Foreign Regional Registration Office through the e-FRRO module for extension/conversion, etc., of their visa or grant of any consular service, if they so require¹⁰.

¹⁰<https://boi.gov.in/content/advisory-travel-and-visa-restrictions-related-covid-19-0>.

9. Whether any steps have been taken for daily wage construction workers considering the COVID-19 pandemic?

In order to support unorganized construction workers, the Ministry of Labour and Employment has issued an advisory to all Chief Ministers/ Lt. Governors of all the States/Union Territories to transfer funds in the account of construction workers through direct benefit transfer mode from the cess fund collected by the Labour Welfare Boards under the Building and Other Construction Workers Welfare Cess Act, 1996¹¹.

10. Whether an apprentice will be entitled to claim stipend during the lockdown?

The Ministry of Skill Development and Entrepreneurship on 30.03.2020 issued an Office Memorandum making it mandatory for all establishments to pay full stipend to the apprentices engaged in their respective establishments under both designated and optional trade during lock down. Further, reimbursement of stipend to establishments under National Apprenticeship Promotion Scheme (NAPS) shall be paid by the Government for the lock down period as per the NAPS guidelines¹².

The above FAQ's are based on the advisory / notifications / orders existing as of 09th April 2020.

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¹¹<https://pib.gov.in/PressReleasePage.aspx?PRID=1607911>

¹²<http://apprenticeship.gov.in/Pages/FileDownload.aspx?fileId=701>