



Reducing Wages & Employee Lay Off During COVID 19 Pandemic & its Legality

COVID 19 Pandemic has played havoc in the lives of people and the entire year 2020 seems to have gone into great depression and losses for business. It is not only the lack of medical facility related to epidemics but the lack of resources to face the consequences of a worst situation if the infection spreads further. The entire business has collapsed due to the lock downs and revenue for all establishments have nosedived. Other than medical related products, all exports have been badly effected due to situation abroad, as the world has collapsed and reeling under pandemic. Locally in India the sectors effected directly are the restaurants and hotels or tourism in general more so due to fear psychosis and also because of the cash crunch due to the crash in business in general. It is estimated that there would be no business for the next five to six months after which the trickling business would be insufficient to sustain profitability, therefore the year end March 2021 may not see any big profits and would be a year of survival.

In this background the Government of India and the respective State Govts have done their bit which is highly appreciable in ordering a lock down and curfew. In compliance of the directions dated 22/3/2020 regarding Lock Down and the order of the District Magistrates regarding curfew, all establishments were closed down except those related to essential services. The provisions of Section 10(2) of the Disaster Management Act, 2005 have also been cited for issuance of advisory in some of the communication by the Disaster Management Authority under the said law.

Advisory issued by Ministry of Labour & Employment on 20th March 2020:

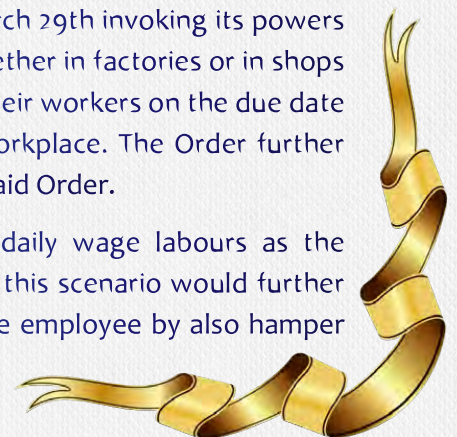
Direction was issued to all Chief Secretaries of States and UTs, requesting them to issue necessary Advisory to Employers and Owners of all establishments in the state, to extend their cooperation by not terminating their employees, particularly casual or contractual workers from job or reduce their wages. According to the advisory, if any worker takes leave, he should be deemed to be on duty without any consequential deduction in wages for this period and if the place of employment is to be made non- operational due to COVID-19, the employees will be deemed to be on duty.

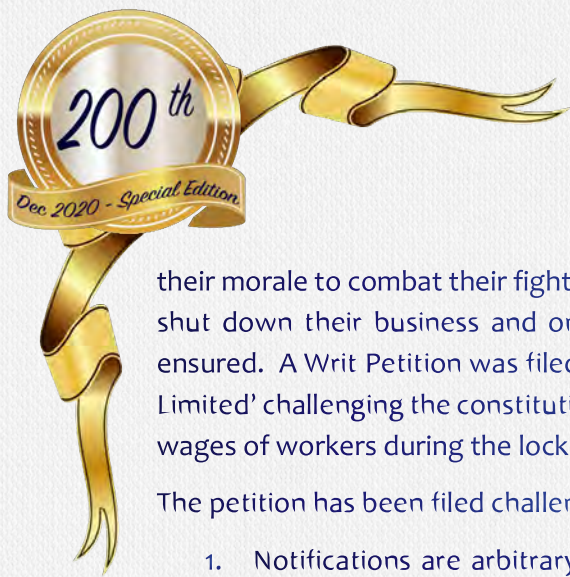


Order of Ministry of Home Affairs on 29th March 2020:

The Ministry of Home Affairs then issued a government order dated March 29th invoking its powers under the Disaster Management Act, 2005 stating that all employers whether in factories or in shops or in any form of commercial establishments will have to pay wages to their workers on the due date and amount cannot have any reduction owing to the closure of the workplace. The Order further directs the States / UTs to take necessary action for the violation of the Said Order.

The orders were issued by the government under the concern for daily wage labours as the termination of their employment from the job or reduction in wages in this scenario would further deepen the crisis and will not only weaken the financial condition of the employee by also hamper



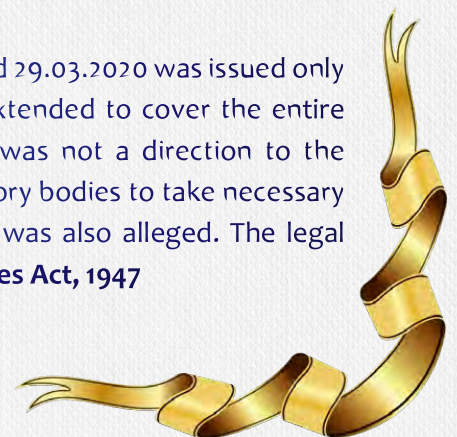


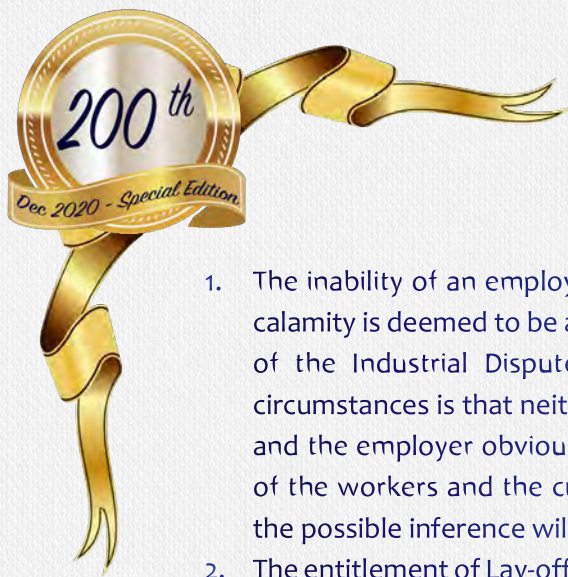
their morale to combat their fight with this epidemic. The owners of various establishments promptly shut down their business and only emergency maintenance including hygiene services was being ensured. A Writ Petition was filed in Supreme Court by Karnataka Based Company 'Ficus Pax Private Limited' challenging the constitutional validity of Notification issued by Central Government to pay full wages of workers during the lockdown period, the supreme court is yet to decide on the matter

The petition has been filed challenging the notifications on the following grounds:

1. Notifications are arbitrary and illegal: Because of the impugned notifications, an otherwise stable and solvent industrial establishment, especially an MSME establishment, can be forced into insolvency and loss of control of business, making arbitrary, illegal, irrational, unreasonable and contrary to provisions of law.
2. Contrary to principle of "Equal Work Equal Pay" and also "No Work No Pay": The notifications do not differentiate between the workers who are working during the lock down period in establishments such as the Petitioner who have been permitted to operate during the lockdown period thereby violating principles of Article 14 and Article 39 of the Constitution of India, being contrary to principle of "Equal Work Equal Pay" and also "No Work No Pay"
3. Wrongful invocation of Disaster Management Act 2005: The Government of India cannot invoke Section 10(2)(I) or any other provision of the Disaster Management Act 2005 to impose financial obligations on private sector such as payment of wages, contrary to the obligation of state under Article 43 of Constitution of India.
4. Causing financial hardship to industrial establishments: The government cannot be permitted to cause financial hardship to industrial establishments by compelling them to pay "Wages" without getting any work done from the employees during the lockdown period.
5. Subsidizing the wages of the workers for the lockdown period: The petition states that while empathizing with the workmen and doing whatever is possible to support them, the ultimate responsibility to provide a financial package or grant so as to subsidize the wages of workers lies with the Government. The government should subsidize the wages of the workers for the lockdown period, especially for the employers under the MSME Sector to the tune of 70-80 percent, taking example from other countries like Australia, Canada & the UK etc.
6. Establishments will be forced into insolvency: If the notifications are implemented for entire lockdown period, many MSME establishments would be forced into insolvency and loss of control of business as they will be compelled to pay for manpower during the shutdown without receiving any substantial revenue from their customers, thereby hampering the right of the petitioner under Article 19(1)(g).
7. Many establishments failing to bear the financial burden and hardship may have to close their businesses. The very notifications issued for the benefit of the workers might end up adversely impacting those workers who would be rendered unemployed.

Some of the counsel have also raised the submissions that the order dated 29.03.2020 was issued only with regard to migrant labour and the scope of order should not be extended to cover the entire workforce of the establishment. Further, the order dated 29.03.2020 was not a direction to the employer but it is an order to the State/UT Government and other statutory bodies to take necessary action. The violation of Article 14 and Article 19(1)(g) and Article 300A was also alleged. The legal position and various options under the relevant law i.e., **Industrial Disputes Act, 1947**





1. The inability of an employer to provide work to an employee in such a situation of a natural calamity is deemed to be a lay-off according to the definition of 'Lay-off' under **Section 2 (kkk)** of the Industrial Disputes Act, 1947 ("Act"). Whereas the situation under the present circumstances is that neither the workers can report for duty nor their safety can be assured; and the employer obviously is in a worst situation of being responsible for health and safety of the workers and the customers. Therefore, owing to the ongoing lock down and curfew, the possible inference will be that the workers are deemed to have been laid-off.
2. The entitlement of Lay-off compensation for a worker during the period of a Lay-off is provided in **Section 25C** of the Act and is at the rate of half the wages for days of work (excluding weekly off) which can be inferred as compensation
3. The important interpretation of the government order is that the Non-compliance of the order would attract action under Section 188 of the IPC (and not the law on wages or any other labour legislations). The action there under would be by a competent authority and not the labour department.
4. The effect of order of the Government not to deduct wages for the period of lock down and not to terminate the services of the workers especially the casual and contractor workers is to be considered in detail.

Spice jet had reduced salaries across board up to 70% and the labour commissioner has in fact advised the company not to do so. A senior official in the CLC (Central Labour Commissioner) office has said the efforts of the government were to resolve the cases amicably and not to press for legal action against employers. The employees of the Bongaigaon refinery of Indian Oil Corporation (IOC) in Assam had complained about "retrenchment and salary cut" during the lockdown, "Some advice has been given to the refinery management not to do so and have asked to comply with directions issued from various departments or ministries of the government," according to a status note prepared by Chief Labour Commissioner. There are many more organisations who have in fact laid off workers and also have reduced their wages. MHA order of 29th March 2020 requires that during the lockdown period, employers should pay wages to all workers without any deductions. Labour laws in India protect the rights of the workmen, who are blue collar workers operating plant and machinery in industrial establishments and generally does not cover IT & ITES sectors or service sectors having no workmen. But the directives by the government did not make any distinction between workmen and white-collar employees, and those hired on contract by companies. "These directives do not make a distinction between workmen and non-workmen. They interchangeably use the terms, worker, employee, outsourced worker, employer, principal employer thus trying to cover every category of workforce." In view of the above the Supreme Court finally overturned the order by the Ministry Home Affairs which asked industries to pay full wages to their employees for the lockdown period. The apex court has ordered government not to take any coercive action against private companies unable to pay the full salaries to their workers. We can therefore conclude that, any change in the terms of employment during this lockdown times and during the pandemic can be construed legal and there cannot be any consequences as employers also suffer equally.

S. Ravishankar

Company Secretary in Practice
ASR & CO – Company Secretaries
ravishankar@asrandco.com

