

KP ASSOCIATES

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PAYMENT OF WAGES/SALARIES DURING COVID-19 PANDEMIC A MORAL OR A LEGAL OBLIGATION?

On March 24, 2020 the Government of India announced a 21-day nationwide lockdown to prevent and contain the spread of Covid-19. In exercise of powers contained in the Epidemics Disease Act, 1897 and the Disaster Management Act, 2005, both the Central and the State Governments issued orders, notifications, guidelines, advisories and circulars in connection with the manner of implementation of the lockdown.

While these Notifications deal with measures to be adopted to “prevent and

contain” the spread of Covid-19, a few measures contained in the Notifications go beyond the realm of “prevention and containment” of Covid-19. One such measure is the direction to all private establishments to make payment of wages /salaries in full to their workers/employees during the lock down period.

Perusal of the Advisories, Orders and the Notifications of the Central and State Governments shows that the rationale for the direction to the private establishments to pay wages/salaries

and not terminate the employees is to “not weaken their financial condition and mitigate the economic hardship” the employees will face during the lock down which will have a direct impact on their right to life and livelihood - to live with dignity guaranteed to them under Article 21 of the Indian Constitution.

When there is a natural calamity the State is obliged to support the victims of such natural calamities to help them to save their lives.

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ADVISORY “D.O.NO. M-11011/08/2020-MEDIA” ISSUED BY THE MINISTRY OF LABOUR AND EMPLOYMENT, GOVERNMENT OF INDIA TO ALL EMPLOYER’S ASSOCIATION DATED MARCH 20, 2020:

“In the backdrop of such challenging situation, all the Employers of Public/Private Establishments are advised to extend their coordination by not terminating their employees, particularly casual or contractual workers from job or reduce their wages. If any worker takes leave, he should be deemed to be on duty without any consequential deduction in wages for this period...”

Pursuant to the above Advisory issued by the Ministry of Labour and Employment, Government of India, several State Governments such as Delhi, Haryana, Kerala, Maharashtra, Punjab, Telangana etc., issued advisories/orders directing the private establishments/government to consider the employees as ‘on duty’ and pay the wages to their employers during the period of lockdown. These advisories/orders also refrain the employers from terminating the employees during the lockdown period.

THE SALARY, ALLOWANCES & PENSION OF MEMBERS OF PARLIAMENT (Amendment) ORDINANCE, 2020

The Central Government also by way of the said Ordinance of 2020 has taken steps to reduce the salaries, allowances and pensions of Members of Parliament (MPs) by 30 per cent for one year for purposes of raising resources to manage and control Covid-19.



EMPLOYERS WON'T BE PROSECUTED FOR NON PAYEMENT OF WAGES / SALARIES: SC

The Supreme Court on May 15, 2020 stayed the operation of a government circular dated March 29, 2020 asking private companies including MSMEs to pay full salaries to their employees during the coronavirus-induced lockdown. The Apex Court has asked the Centre and the States to not to prosecute private firms, factories and others over non-payment of wages/salaries until next week counting from May 15, 2020.

The Supreme Court while considering the plea of the employers requesting for staying the operation of the MHA Order dated March 29, 2020 was made to consider the following:

- ❖ the government passed such an order without deliberating on the financial implications for the

employers.

- ❖ by making payment of wages mandatory under the said order would lead to closure of many of the units which in turn would cause permanent unemployment and will adversely affect the economy.
- ❖ such a blanket direction for payment of full salaries under the said MHA order was manifestly arbitrary, unconstitutional and unsustainable.
- ❖ the MHA order violated the private companies' right to carry on any occupation, trade or business guaranteed under Articles 19(1)(g) of the Constitution.
- ❖ the Centre lacked the power to direct payment of wages as the

provisions of the Disaster Management Act, 2005 cannot “impinge upon express provisions of the Industrial Disputes Act, 1947 and take away the right to layoff workmen during times of natural calamity.”

- ❖ it is irrational on the part of the Government to treat all private establishments alike irrespective of profit, loss, debt, or turnover.
- ❖ that adding a blanket direction by MHA is akin to a tax without any statutory backing.

- ❖ that an employer and employee have reciprocal promises whereby the right of an employee to demand salary is reciprocal to performance of work by such employee.
- ❖ that an employer has a right not to pay if no work is done.



ORDER NO. 40—3/2020-DM-1(A)
DATED MARCH 29, 2020 ISSUED BY
THE MINISTRY OF HOME AFFAIRS,
GOVERNMENT OF INDIA

The Order issued in exercise of powers contained in Section 10(2)(1) of the Disaster Management Act, reads as under:

“Whereas, to deal with the situation and for the effective implementation of the lockdown measures, and to mitigate the economic hardship of the migrant workers, in exercise of the powers, conferred under Section 10(2)(1) of the DMA, the undersigned, in the capacity as Chairperson, National Executive Committee here directs the State/Union Territory Government and State/Union Territory Authorities ... to take following additional measures:

(i) ...

(ii) ...

(iii) *All the employers, be it in the industry or in the shops and commercial establishments, shall make payment of wages of their workers, at their work places, on the due date, without any deduction, for the period their establishments are under closure during the lockdown; ...”*

Meaning thereby that vide the above captioned Order the advisory of March 20, 2020 on payment of wages by private establishments/government has been treated to be mandatory in nature by directing that any violation will be punishable under the Disaster Management Act.



GENERAL CIRCULAR NO. 15/2020 DATED APRIL 10, 2020 ISSUED BY THE MINISTRY OF CORPORATE AFFAIRS, GOVERNMENT OF INDIA clarified that the payment of salary/ wages to employees and workers during the lockdown period shall not qualify as admissible under CSR expenditure of the Companies. It is understood that the Government disallowed the wages/salary to be treated as CSR expenditure for the reason that payment of salary/ wages in normal circumstances is a contractual and statutory obligation of the company and that payment of salary/ wages to employees and workers during the lockdown period is a moral obligation of the employers, as they have no alternative source of employment or livelihood during this period. It is a well-settled principle of law that a moral obligation cannot be converted into a legal obligation.

CONCLUDING REMARKS

- Section 25M of the Industrial Disputes Act, 1947 recognizes that, a natural calamity, is likely to disrupt not just lives of individuals but also companies and other economic units and hence an employer is permitted to lay-off their employees as a result of a natural calamity. A right that has been conferred pursuant to a statute cannot be abrogated by an Order of an instrumentality of State, save and except by due process of law.
- The Disaster Management Act, 2005 does not confer or vest any power with the Central or the State Government to direct the payment of wages/salaries by private establishments.
- The lack of business due to the lockdown and the continued payment of salaries and wages could potentially drive the private establishments into insolvency, hence the stay imposed by the Supreme Court on the MHA Order is a welcome step towards resuscitating private employers, MSME's and other employers.
- An employer and employee have reciprocal promises whereby the right of an employee to demand salary is reciprocal to performance of work by such employee.
- It is a settled principle that a moral obligation cannot be converted into a legal obligation.



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