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C&M Alert: FAQs FOR EMPLOYERS REGARDING TREATMENT OF EMPLOYEES DURING LOCK-DOWN

While the world is facing and fighting one of the most catastrophic pandemics ever seen, its effects on various sectors of the economy worldwide has already become evident. Governments across the globe, have had to order a complete nationwide lock-down for prolonged periods of time to fight the spread of this pandemic. The Government of India has also declared a nation-wide lock-down of 21 days, with effect from 25 March 2020, ending on 14 April 2020, to curb the spread of Covid-19, with exceptions for essential supplies such as the police, hospitals, fire and emergency services and food supplies.¹

As a result, employers of other sectors have had to shut their functions and operations completely during this period, leading to severe cash-crunch but are required to pay wages to their employees. The Government, at both Central and State Levels, has issued various Notifications/Advisories/ Orders on how employees are to be treated with respect to payment of wage, leaves etc., during the lock-down period.

Accordingly, this article aims to answer certain queries which may have arisen in the minds of all such employers.

I. Can employers deduct wages of their employees during the lock-down period?

The Ministry of Home Affairs, Government of India has issued a Notification bearing No. 40-3/2020-DM-I(A) dt. 29 March 2020² to deal with the present situation and for the effective implementation of lock-down measures. Through this Notification, the Ministry has directed all employers to make payment of wages to their workers on the due dates without any deductions for the period that their establishment is under closure, during the nationwide lockdown declared by the Central Government.

¹ The complete consolidated guidelines regarding the 21 days lock-down issued by the Ministry of Home Affairs (as on 5 April 2020) are available [here](#).

² Complete Notification bearing No. 40-3/2020-DM-I(A) dt. 29 March 2020 is available [here](#).

Notably, this Notification has been issued under Section 10(2)1(I) of the Disaster Management Act, 2005 which enables the National Executive Committee formed under the Disaster Management to take steps for effective implementation of directions issued by the Central Government for the purpose of disaster management in the country, such as the present nationwide lockdown. Section 72 of the same Act states that the provisions of the Disaster Management Act, 2005 have an overriding effect on all other laws in India. Further, the Notification states that in case of any violation of the Notification, the respective State/Union Territory shall take necessary action under the Disaster Management Act, 2005.

The language used in the Notification regarding direction to make payment to the workers appears to be mandatory. In such circumstances, it will not be advisable to deduct the wages of employees during the lockdown period.

II. Can employers force their employees to avail their annual designated leaves for the period they were unable to report to the place of employment during the lock-down period?

The Ministry of Labour and Employment, Government of India has issued an Advisory bearing No. DO No. M-11011/08/2020 dt. 20 March 2020³ advising all employers of public as well private establishments not to terminate their employees from jobs or reduce their wages and that if any worker takes leave, he/she should be deemed to be “on duty without any consequential deduction in wages for this period”. The Notification further clarifies that if the place of employment is made non-operational due to Covid-19, “the employees of such unit will be deemed to be on duty”. Another Notification dt. 23 March 2020⁴ was issued by the Ministry of Labour and Employment, in furtherance to the previous Notification, reiterating the directions of the Notification dt. 20 March 2020. Further, a Letter dt. 30 March 2020⁵, bearing No. DO No. CLC(C)/ Covid-19/Instructions/LS-1, has also been issued by the Chief Labour Commissioner to all Regional Offices (of the Labour Commission) directing them to rigorously take up steps with all employers and public/private enterprises in case of distress calls being received from employees/ workers in their respective regions for non-compliance of the above Notifications.

As can be understood from these Notifications, the Ministry has stated that if the place of employment is made non-operational due to Covid-19 or the employee takes leave during these times, such employee shall be deemed to be “on duty”, and that there should be no deduction from his/her wages due to such reasons. State Governments have also issued various Notifications giving similar directions to employers to ensure

³ Complete Notification bearing No. DO No. M-11011/08/2020 dt. 20 March 2020 is available [here](#).

⁴ Complete Notification bearing No. DO No. M-11011/08/2020 dt. 23 March 2020 is available [here](#).

⁵ Letter bearing No. DO No. CLC(C)/ Covid-19/Instructions/LS-1 dt. 30 March 2020 is available [here](#).

compliance of these Notifications.

In such circumstances, it will not be advisable to require employees to mandatorily/forcibly avail their annual designated leaves during the ongoing lock-down.

III. Can the employers use the defence of “no work no pay principle” to not pay their employees for the lock-down period?

The principle of “no work no pay” is primarily applicable to cases where an employee voluntarily remains absent from his/her duty. However, it is not applicable when circumstances are such that the employee is forced to remain absent from work and his absence was not voluntary, such as in the present lock-down.

Keeping in mind the various Notifications/Orders issued by the Ministry of Home Affairs and the Ministry of Labour and Employment, it can be inferred that no employer can withhold or deny wages to the employees or terminate their services on the pretext of lockdown. In case the employer withholds wages or terminates services of employees, penal action under the Disaster Management Act, 2005 could be taken against such an employer.

IV. Can employers assume that the employees have been on leave if no work could be done by the employees during the lock-down period?

The Notifications issued by the Ministry of Labour and Employment state that if the place of employment is made non-operational due to Covid-19 or the employee takes leave during these times, such employee shall be deemed to be “on duty”. In light of such directions, employees, if unable to come to the place of employment due the lock-down, will still be deemed to be “on duty”, and thus such assumptions, if made by the employer, will be in direct contravention to these Notifications.

V. Can you give some suggestions to employers to create a balance between the directions of the Government and the issue of severe cash-crunch during this period?

It may not be advisable to reduce wages of the employees or force them to avail their annual leaves during this period, as we still do not know how such non-compliances will be dealt with by the authorities once the lock-down has been officially suspended. Further, a review of the above-mentioned Notifications confirms that the intention of the government is to ensure that employers do not lay-off their employees or reduce their wages and maintain status-quo during the lock-down period.

However, the employer can engage with its employees to arrive at a mutually acceptable compromise regarding certain pay cuts to help the company/establishment during this pandemic. If the employee voluntarily accepts a pay cut to help the financial condition of the company/establishment, the same may not be seen as a non-compliance of the above-mentioned Notifications.

Should you have any queries or comments on this alert or how COVID 19 may affect your business or transactions, please visit our [LinkedIn page](#) or drop a line to our **COVID – 19 task force** at covid19@chandhiok.com. You may also contact the authors below.



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