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**Newsflash : FAQs on Employer's Obligations under
Payment of Wages & Other Labour Law during COVID
Crisis**

Frequently Asked Questions

Employer's Obligations under Payment of Wages & Other Labour Law during COVID Crisis

The entire world including India has been tormented by the novel corona virus Covid-19. The World Health Organization (WHO) has declared it as a pandemic on 11 March 2020 and it represents the biggest global Health, Economic and Financial challenge in recent memory. The Hon'ble Prime Minister Shri Narendra Modi announced a lockdown of the country in his address to the nation on 24 March 2020 which has now been extended until 3 May 2020. With this, the entire nation was shut down under the provisions of the Disaster Management Act, 2005.

The Disaster Management Act 2005 ["DM Act"] was passed by the legislature giving sweeping powers to the Central government to legislate overriding laws and regulations in times of crisis like these. Section 72 of this Act specifies -

"The provisions of this Act, shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. "

The DM Act provides for a National Disaster Management Authority [NDMA] and section 6 of the legislation deals with powers of the authority. Section 6(2)(i) of the Act authorises the NDMA, headed by the prime minister, to take measures for "the prevention of disaster, or the mitigation, or preparedness and capacity building for dealing with the threatening disaster situation or disaster as it may consider necessary". The Act also provisions for a national executive authority, which exercises powers to issue guidelines that will be in effect during the lockdown to central government departments, state/UT governments and other ministries. Based on these guidelines, the respective ministries or states may issue further advisories. However, nowhere in the Act is it stated that guidelines issued under DM Act by NDMA or the executive authority would override any legislation. Thus unless there is any specific instruction in the form of order under DM Act, the guidelines would not be deemed to be enforceable. However, any orders issued by the NDMA or the NEA would be enforceable.

Accordingly, the Home Secretary in the Ministry of Home Affairs, in exercise of the powers conferred under sec. 10(2)(I) of the DM Act, in the capacity of Chairperson of the National Executive Committee, issued various orders to the central and state/UT governments and various ministries and departments of the government on 24.03.20, 25.03.20, 27.03.20 29.03.20, 14.04.20 and 15.04.20.. The order dated 29.03.20 is of particular relevance to employers of any industrial or commercial undertaking since it instructs the employers to pay full wages to workers during the lockdown without any deduction by deeming the workers to be on duty.

The point (iii) of the said order reads as under –

"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 due to the lockdown."

This order of the MHA has raised a lot of issues as to the liability of the employers to pay the wages to their workers during the lockdown. This FAQs tries to address some of the issues arising out of this order and its interpretation. Apart from the DM Act, there is the Epidemic Diseases Act, 1897 enacted at Central as well as State level under which various state governments have also issued lockdown even before the national lockdown under the DM Act.

Further, apart from the orders under the DM Act and the Epidemic Diseases Act, the Ministry of Labour and Employment, being a nodal agency for all labour related regulations, has issued various advisories over the last 2 weeks. One advisory that has been issued relates to extension of support by private enterprises to the battle against COVID – 19 which requires the employers to adhere to the following-

- Not terminate the employees
- Not reduce the wages
- If worker takes leave he should be deemed to be on duty without consequential deduction
- If place of employment is to be made non-operational due to COVID 19 employees of such place would be deemed to be on duty

Several judicial precedents have held that advisory issued by Government Ministries are not legally binding on the employers. Further, it is also important to note that while DM Act was invoked on 24th March 2020, the advisory issued by Ministry of Labour and Employment is dated prior to the same and does not refer to the DM Act. Thus, it may be inferred that the advisory issued is not in pursuance of the DM Act and thus may not have the status of being a legal binding order. The advisory appears to be recommendatory in nature. However given that the DM Act and the Epidemic Diseases Act have been invoked in an epidemic situation for the first time nationally since Independence, any stand on validity of the advisory or other interpretations of the order and provisions bears legal risk.

The following FAQ mainly deals with the interpretation of the issues arising out of the MHA order dated 29th March 2020 for employers and other related aspects. Those establishments which fall within the definition of essential services or are otherwise exempted from the lockdown are not impacted by the MHA order and hence, this note may not be relevant to them.

This note is strictly confidential for further deliberation and analysis and is not meant for circulation to any person other than for client's own reference. This is a preliminary analysis which needs to be revalidated by a legal counsel or law firm as well client's own legal department. As you would appreciate, the situation is unprecedented and some of the laws have been invoked for the first time and as a result, limited guidance is available in terms of application and interpretation of the laws. The analysis is general in nature and it is necessary to take in to account the detailed legal provisions and the laws in each state as well as client's own business related factual aspects

1. What is definition of lockdown under the labour laws or DM Act?

- **Section 12 of Schedule I under The Industrial Employment (Standing Orders) Central Rules, 1946**, dwells with stoppage of work by an employer “in the event of fire, catastrophe, breakdown of machinery or stoppage of power-supply, epidemics, civil commotion or other cause beyond his control, stop any section or sections of the establishment, wholly or partially for any period or periods without notice.”
- The DM Act does not define the term lockdown. Hence, the definition of a lockdown or lockout as contained in the above Rules may apply to industrial and commercial establishments to the extent they are not repugnant to the context or meaning of the DM Act.
- However, since the DM Act overrides all other laws and since a lockdown is announced by the NDMA under the DM Act, the employer may not be in a position to announce a stoppage of work as per the Standing order on his own for his establishment till the order is in force i.e. till 20th April 2020 or 3rd May 2020 (as the case may be).
- It may be pointed out that the lockdown exempts several essential industries and services subject to the specified conditions. Further, it is expected that on and from 20 April, exemption may be extended to certain districts, export-oriented industries, IT and ITeS partially or entirely subject to specified conditions. It would be important to carefully analyse the exemptions and the conditions as your business or segments or certain units/offices may be covered by the exemption.

2. Whether establishment can lockout for temporary period due to uncertainty of business sentiment / financial losses?

- **According to Sec. 2(1) of the Industrial Disputes Act 1947, Lockout** means "the temporary closing of a place of **employment**, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him".
- Possible reasons for Lockouts-
 - Disputes or clashes in between workers and the management.
 - Unrest, disputes or clashes in between workers and workers.
 - Strikes by workers.
 - External environmental disturbance due to unstable governments.
 - Continuous or accumulated financial losses of factory or industry.
 - Failure in maintaining proper industrial relations, industrial peace and harmony.
 - Unnecessary political involvement in management of workers union and unjustified demands by unions.
- Thus, if the financial condition of the employer is not good or if his cash flows do not allow the operations to run normally, the employer can announce a lockout under the provisions of law under normal circumstances.

- However, during the operation of the orders under the DM Act, the workmen shall be 'deemed' to be on work and the employer would not be legally permitted to declare a lockout to save itself from payment of wages since DM Act would have overriding provisions over Industrial Disputes Act. But once the lockdown is lifted on 20th April 2020 or 3rd May 2020 (as the case may be), and if no further lockdown or other measures are announced, the employer can always announce a lockout on his own for such period as he deems fit for his business to revive the business or for other suppliers and service providers (like transporters) to start their operations and support the employer run his own operation.

3. Whether the employer can 'layoff' the workers during the lockdown period under the Industrial Disputes Act?

- It may be noted that the aforementioned order of the MHA is contradictory to (and overrides) the normal provisions of **Section 12 of Schedule I of the Industrial Employment (Standing Orders) Central Rules, 1946, which states as under—**
 - i. The employer may, at any time, in the event of fire, catastrophe, breakdown of machinery or stoppage of power-supply, epidemics, civil commotion or other cause beyond his control, stop any section of the establishment, wholly or partially for any period without notice.
 - ii. In the event of such stoppage during working hours, the workmen affected shall be notified by notices put upon the notice-board in the department concerned, as soon as practicable, when work will be resumed and whether they are to remain or leave their place of work. Whenever practicable, reasonable notice shall be given of resumption of normal work.
 - iii. In case where workmen are laid off for short periods on account of failure of plant or a temporary curtailment of production, the period of unemployment shall be treated as compulsory leave either with or without pay, as the case may be. When, however, workmen have to be laid off for an indefinitely long period, their services may be terminated after giving them due notice or pay in lieu thereof.
- As per the above Standing order rules, during any lockdown situation due to events or action as above, the employer is required to declare lay-off in accordance with the Section 12 of Schedule I of the rules read with Section 25-C and 25-M of the Industrial Disputes Act 1947.
- As per section 25-M of the Industrial Disputes Act, an employer of an establishment, employing more than 100 workmen on an average during immediately preceding 12 months, is required to obtain prior permission from the appropriate government to declare lay-off. However, Sub Section 9 of Section 25-M provides that if the lay-off is due to exceptional circumstances (such as in the present situation) the employer can make application to the appropriate government seeking exemption from taking prior permission.
- In case the establishment is employing less than 100 workmen, the employer can declare lay-off in accordance with Section 25-C of the Industrial Disputes Act 1947 and Standing Orders. No permission is required to be taken from the government and straight away a notice can be put up declaring lay off.

- It may be noted that the Standing orders are applicable only to establishments employing 50 or more workers. For those with lesser workers would be governed by their appointment letters and other terms of employment given to the workers.
- All establishments employing 50 or more persons are required to pay compensation equal to 50% of their normal wages to the workmen for the days of lay-off except for the intervening weekly off days. This provision applies to only those workmen who have not less than one year's continuous service under the employer i.e., 240 days of working during immediately preceding 12 months.
- **Thus, as per the Industrial Disputes Act and its Rules and Standing orders, during an event like the Corona pandemic, an Employer could announce a temporary lockout wherein there would be no liability to pay any wages, or announce layoff (subject to approval from the state government in case employees exceed 100) and it would have to pay only 50% of the wages during the period of such layoff.**
- **However, notwithstanding the provisions of the Industrial Disputes Act and Standing Orders, all employers have to pay wages without deduction for lockdown period as per order issued under the DM Act given that the DM Act overrides all other laws.**

4. What are the obligations of the employers to pay wages to the employees during lockdown as per various Acts and the MHA order issued under the DM Act?

- The provisions related to payment of wages are covered under the Payment of Wages Act and any dispute relating to the same are covered under the Industrial Disputes Act. As analysed in other questions of this FAQ, under normal circumstances, every establishment is required to pay wages to workers within the time allowed under the Payment of Wages Act. However, in situations like lockout, layoff etc, there are separate provisions for non-payment or lesser payments under the Industrial Disputes Act as already explained.
- However, as per the aforementioned order issued by MHA of Central government (and some State governments as well) for the lockdown due to Covid19 epidemic, all employers of any industrial, shop or commercial establishment, have been mandated to pay full wages for shutdown period and the workers are deemed to be on duty for the said shutdown period.
- But, as analysed hereinafter, the obligation would be limited to payment of wages to only those employees who would fall within the definition of 'workers' and that too for the period of lockdown.
- The new orders of MHA dated 14.04.20 and 15.04.20 do not clarify or contain any instructions to employers relating to payments to workers or any reference to the earlier order of 29.03.20. Hence, while the situation till 14th April is quite clear, the obligation of an employer to pay wages for the extended period of lockdown is unclear. The plain reading of the MHA orders suggest that the MHA has not mandated any specific obligation for payment of wages by employers to their workmen during the extended period of lockdown and hence, it would appear that the said mandate and obligation

would be only for the period of 21 days ending on 14th April 20, unless clarified further through a separate order.

5. What is the definition of workmen for the purpose of DM Act or the Industries Disputes Act/Standing orders and other relevant labour regulations? Are managers and employees above certain remuneration covered and should they be paid salaries in full?

- In this regards, it is worth noting that the MHA order mentions about payment of wages to workers and not 'employees'. The term 'workers' is not defined under the DM Act. Hence, as per the normal interpretation of laws, whenever there is no conflict between the provisions of the overriding law and the original law, the provisions of original law should apply.
- As per **Section 2 (S) of ID Act 1947 "Workman"** means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute,
But does not include any such person-
 - i. who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
 - ii. who is employed in the police service or as an officer or other employee of a prison, or
 - iii. who is employed mainly in a managerial or administrative capacity; or
 - iv. who, being employed in a supervisory capacity, **draws wages exceeding Rs. 10,000** per month or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, function mainly of a managerial nature.
- As per the Factories Act, 1948: The term employee is not defined but rather the term 'worker' is defined which reads as :- "worker" means a person employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process but does not include any member of the armed forces of the Union.
- As per section 2(e) of Payment of Wages Act 1936, "employee" means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

- **The Payment of Wages Act also limits the definition of workmen to those earning less than Rs. 24,000 per month.** The other labour laws also define workers with some monetary limit for the applicability of the respective laws viz. Provident fund, Employee State Insurance etc. But by and large, the maximum monetary limit is up to Rs. 24,000 pm.
- As per section 2 (s) of Gujarat Shop Act 2019, “Worker“ means any person including a person engaged through an outsourcing agency (except an apprentice) employer to do any manual, unskilled, skilled, technical, operational or clerical work for hire or reward, whether the terms of employment be express or implied.
- **Thus, as can be seen from the above, a view can be taken that employees in managerial or supervisory capacity and those earning more than Rs. 24,000 may not be covered under the definition of workmen. Accordingly, employers may not be bound to pay full wages to such employees.**
- **For workers earning up to Rs. 24,000 and those who are not in managerial or supervisory positions will have to be paid full wages for the lockdown period failing which could lead to an offence punishable under the DM Act and/or Epidemic Act with fine and/or imprisonment.**
- The objective of the government cannot be to dictate payment of wages to well-off employees without corresponding work being done by them. In fact, **when point (iii) is read with other points of the MHA order, it is clear that the same is meant for low wage workers, especially migrant workers.** Moreover, some of the state governments themselves have been cutting salaries of IAS and other senior officers during this pandemic which also gives us some insights into their thought process to provide safety net to the most needy section of the population i.e. low wage and migrant workers.
- However, as a prudent HR policy, it is always advisable for employers to communicate and discuss with their managerial and supervisory employees or all non-worker employees about the situation and take their concurrence and consent in writing before initiating any cut in the salaries due to the lockdown.
- Some guidelines also suggest that non-worker employees should be encouraged to work from home as much as possible and payments can be linked to work from home rules and policies of the employer. Work from home presents unique challenges and employers may have to look at ways of measuring effectiveness of work done from home and linking pay with productivity.

6. If wages are payable, are they payable on the full amount or only on Basic & DA? What is definition of wages as per Wage Code and other regulations which are in force?

- **As per section 2 (VI) of Payment of Wages Act 1936, wages means –** all remuneration (whether by way of salary allowances or otherwise) expressed in terms of money or capable of being so expressed which would if the terms of employment express or implied were fulfilled by payable to a person employed in respect of his employment or of work done in such employment, and, Includes among others (exhaustive list is not given since some points may be not relevant) –

- a. Any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;
- b. Any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);
- c. Any sum to which the person employed is entitled under any scheme framed under any law for the time being in force,

But does not include –

- i. Any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court;
- ii. The value of any house-accommodation or of the supply of light water medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the State Government;
- iii. Any contribution paid by the employer to any pension or provident fund and the interest which may have accrued thereon;
- iv. Any travelling allowance or the value of any travelling concession;
- v. Any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or
- vi. Any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d)

▪ **As per Section 2(h) under The Minimum Wages Act, 1948,**

(h) "**Wages**" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment 9 [and includes house rent allowance],

But does not include the value of —

- i. Any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance;
- ii. Any travelling allowance or the value of any travelling concession;
- iii. Any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or
- iv. Any gratuity payable on discharge;
- v. Any house accommodation, supply of light, water, medical attendance, or
- vi. Any other amenity or any service excluded by general or special order of the appropriate Government.

▪ **As per section 2 (y) of Wage Code Bill 2019,**

"Wages" means all remuneration whether by way of salaries, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment,

And Includes,—

- i. Basic pay;
- ii. Dearness allowance; and
- iii. Retaining allowance, if any,

But does not include—

- a. Any bonus payable under any law for the time being in force, which does not form part of the remuneration payable under the terms of employment;
- b. the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government;
- c. Any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
- d. Any conveyance allowance or the value of any travelling concession;
- e. Any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment;
- f. House rent allowance;
- g. Remuneration payable under any award or settlement between the parties or order of a court or Tribunal;
- h. any overtime allowance;
- i. any commission payable to the employee;
- j. any gratuity payable on the termination of employment;
- k. any retrenchment compensation or other retirement benefit payable to the employee or any ex gratia payment made to him on the termination of employment:

Provided that, for calculating the wages under this clause, if payments made by the employer to the employee under clauses (a) to (i) exceeds one-half, or such other per cent, as may be notified by the Central Government, of the all remuneration calculated under this clause, the amount which exceeds such one-half, or the per cent so notified, shall be deemed as remuneration and shall be accordingly added in wages under this clause.

- The Wage Code has become law but it has still not been made operational by notification in the official gazette and no rules have been defined and till the time the Code becomes applicable, the provisions contained in the Payment of Wages Act and other laws subsumed in the Wage Code would be applicable.
- It may be noted that as per the Minimum Wages Act 1948, an Employer is bound to pay employees at least minimum rate of wages notified by central / state governments from time to time with respect to type of industry, schedule employment & geographical area where employees are working. However if the worker's wages are more than minimum wage rate, than the employer shall be required to pay such higher amount without deduction during the lockdown since the MHA order mentions 'payment of wages....., without any deduction'.
- **Thus, as can be seen from the analysis of the definition of wages under the various Acts and regulations, the term "wages" would mean a monthly remuneration which is agreed as per terms of contract of employment i.e. by appointment letter as revised from time to time, and includes basic, DA, HRA and all other allowances but does not include production or performance linked incentives, bonus, commission or any type of variable pay. Accordingly, when wages are payable to workers as per MHA order, the same is payable on the entire fixed gross monthly amount.**

7. When are the Wages payable i.e. what is the wage period? Is it necessary to pay the wages before 31 March 20 for March and 30th April for April?

- **Wages are to be paid at the end of every wage period (typically a month) in respect of work done. Wages are to be paid before expiry of the 7th day after end of the month in case of those establishments where there are less than 1,000 employees. In all other cases, for establishments where more than 1,000 employees are employed, the wages are to be paid before expiry of 10 days following the end of the wage period.**

8. Whether establishment can retrench an employee due to uncertainty of business sentiment or financial losses?

- As per section 25-F of Industrial Disputes Act 1947 -
 "No workman employed in any industry who has been in continuous service for not less than 1 year under an employer shall be retrenched by that employer until-
 - a. The workman has been given 1 month's notice (for establishment having 50 or less workers) & 3 months' notice (for establishments having 100 or more workers) in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
 - b. the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to 15 days' average pay of every completed year of continues service or any part thereof in excess of six months;
 - c. approval of the appropriate Government is taken.

- Thus, in normal circumstances, an employer may retrench employees subject to payment of retrenchment compensation and other procedural formalities like approval from the government. But during the operation of the DM Act and orders issued under it being of overriding nature, retrenchment cannot be possible during the period of lockdown. Once the lockdown is lifted and subject to other orders that may be issued under the DM Act, the employer can use the normal provisions of the Industrial Disputes Act to retrench workers.

9. Whether employer can make their employees to work extra days without additional pay after the lockdown period to compensate for the lost work and adjust the lockdown period paid leaves at a later stage?

- Yes employer would be within his rights to require his employees to work extra days at a later stage to adjust or compensate the employer for lock down period leave since no law stops the employer to require work to be done to the extent of days and amount for which he has already paid any employee. However, the provisions as regards privilege leaves under the Factories Act as well as Shops and Establishment Acts should still have to be adhered to i.e. weekly off and other paid leaves, e.g. 21 as per the Shops and Establishment Act. But there could be a possibility to adjust the privilege leaves against the extra or compensatory workdays with employees' permission or where the organization is already giving more than the statutory minimum leaves, it can adjust against those extra days.

Conclusion:

Based on the above analysis and reasoning and subject to further clarifications by the Government as also any other legal interpretation or validation of the views expressed herein, we may conclude as under -

- The lockdown announced by the Prime Minister is under the Disaster Management Act 2005 overrides all other regulations including the labour laws
- The lockdown exempts several essential industries and services subject the specified conditions. Further, it expected that on 20 April, exemption may be extended to certain districts, export-oriented industries, IT and ITeS partially or entirely subject to specified conditions. It would be important to carefully analyse the exemptions and the conditions as your business or segments or certain units/offices may be covered by the exemption.
- During the operation of the Disaster Management Act orders, an employer would not be able to announce closure, lockout, layoff or retrenchment of workers employed in his establishment
- Further, Wages will need to be paid by all employers to their 'workers' per the MHA order dated 29.03.20 for the period of lockdown. However, compulsion to pay the wages would be only for workers falling within the definition of 'workmen' under the labour laws viz. combined reading of the Industrial Disputes Act and Payment of Wages Act i.e. not to workers above Rs. 24,000 pm or to managerial, supervisory or administrative employees.
- For employees above Rs. 24,000 or those in managerial or supervisory positions, it would be best for establishments to properly communicate the situation to them, take them into confidence and then put in place a plan for

payment of salaries. For these category of people, it may be prudent to pay advance on ad hoc basis till there is clarity on the overall situation and process the exact salaries later. HR has a very important role in the communication as also the re-design of the rules and structures for this category in future if the situation persists.

- For the purpose of calculation of wages, the gross fixed amount payable as per the terms of employment including basic, DA, HRA and other allowances but excluding bonus, performance incentives or other variable pay
- The new orders of MHA dated 14.04.20 and 15.04.20 do not clarify or contain any instructions to employers relating to payments to workers or any reference to the earlier order of 29.03.20. Hence, while the situation till 14th April is quite clear, the obligation of an employer to pay wages for the extended period of lockdown is unclear. The plain reading of the MHA orders suggest that the MHA has not mandated any specific obligation for payment of wages by employers to their workmen during the extended period of lockdown and hence, it would appear that the said mandate and obligation would be only for the period of 21 days ending on 14th April 20, unless clarified further through a separate order.
- After the end of the applicability of the MHA orders on 14th April 20 or 20th April 2020 or 3rd May 2020 (as the case may be or as clarified or as extended further), all the normal labour law provisions related to lockdown, layoff, retrenchment etc. would be applicable thereafter and employers will be free to take further actions depending on their business and financial situation.
- There are other conflicting legal views floating around as to the possibility of claim on the Employee State Insurance Corporation to pay the workers for the days of absence due to the Corona virus by considering 'social distancing' as a treatment for a disease instead of the employer bearing the cost OR the possibility of considering the lockdown period as layoff under the Industrial Disputes Act requiring organizations to pay only 50% of normal wages OR even about the constitutional validity of the MHA order itself directing employers to pay for days when no work is done by the workers. However, all these would require further legal analysis and only the courts will be able to conclusively decide on the same given that there are no parallels or precedents of this situation of the past. Hence, any such aggressive view may be avoided till further clarity emerges to avoid getting into litigations.
- The employers can also require the employees to work from home or work for extra days after the end of the lockdown in lieu of any payments made for the period of lockdown to obey the MHA order subject to compliance with the provisions of Shops & Establishment Act or Factories Act regarding minimum leaves and public holidays.

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This newsflash is general in nature. In this newsflash, we have summarized and provided clarifications on Employer's Obligations under Payment of Wages & Other Labour Law during COVID Crisis. It may be noted that nothing contained in this newsflash should be regarded as our opinion and facts of each case will need to be analyzed to ascertain applicability or otherwise of the said notification and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this newsflash.

17 April 2020