

FREQUENTLY ASKED QUESTIONS (FAQ)

Payment of Wages to Workers for Period of Lockdown due to COVID-19

Q1: Whether an employer is liable to pay wages for the period of lockdown due to COVID-19?

A: The Home Secretary, Ministry of Home Affairs, Government of India vide Order dated 29.03.2020 (Ref : 40-3/2020-DM-I(A), directed the State / UT Authorities to take necessary action and to issue necessary orders to their District Administration / Police Authorities to ensure that all the employers, be it in the industry or in the shops and commercial establishments, shall make payment of wages to their workers, at their work place on the due date, without any deduction for the period their establishments are under closure during the lock down. In addition, Ministry of Labour & Employment, Government of India vide its letter dated 20.03.2020 has advised all the employers of Public / Private Establishments not to terminate 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. Further 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. In some states such as Haryana, the The Director, Industries of Commerce, Haryana vide advisory dated 27.03.2020 have advised all the industrial and commercial establishments to transfer salaries to their employees.

Q2: Whether the order dated 29.03.2020 by Ministry of Home Affairs is a binding direction or or advisory? If binding, under which legal provision?

A: Since the Order dated 29.03.2020 has been issued by the Home Secretary, Ministry of Home Affairs, Government of India while exercising the power conferred under **Section 10(2)(I)** of **Disaster Management Act 2015** (“DMA”) acting in the capacity as Chairperson, National Executive Committee, it is binding upon all concerned. **Section 10(2)(I)** of DMA empowers National Executive Committee to give directions to, the concerned Ministries or Departments of the Government of India, the State Governments and the State Authorities regarding measures to be taken by them in response to any threatening disaster situation or disaster. **Section 51** of DMA prescribes Punishment for obstruction, etc. against whoever, without reasonable cause refuses to comply with any such direction. As per **Section 71** of DMA No court (except the Supreme Court or a High Court) shall have jurisdiction to entertain any suit or proceeding in respect of any such direction. And in terms of **Section 72** of DMA, the Act shall have overriding effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Till such time the above order by Ministry of Home Affairs is not modified or set aside by a competent court i.e. High Court / Supreme Court, the said order is binding and remains in force.

Q3: What is the scope of “workers” for the purpose of payment of wages?

A: Based on various advisories and orders issued by Central Government / State Governments, the scope of payment of wages shall extend to **regular, casual & contractual workers**.

“Workman” as defined under the Industrial Disputes Act 1947 will broadly include 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, but excludes those employed mainly in a **managerial or administrative capacity**. **Also excludes those employed in a supervisory capacity** & draws wages exceeding Ten thousand Rupees per mensem or exercises.

The **Code on Wages Act, 2019** gained presidential assent on August 08, 2019. However, the Government is yet to notify the effective date of the Code coming into force.

Under the **Code of Wages 2019** sales promotion employees as defined in clause (d) of section 2 of the Sales Promotion Employees (Conditions of Service) Act, 1976 are also included. However, the Code excludes Apprentice as defined under clause (aa) of section 2 of the Apprentices Act, 1961 and also excludes a person employed in a supervisory capacity drawing wage of exceeding fifteen thousand rupees per month or an amount as may be notified by the Central Government from time to time.

Q4: What is the scope of “wages” for the purpose of payment to workers?

A: As per the definition of “wages” under the **Industrial Disputes Act 1947**, “wages” means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes dearness allowance; value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food-grains or other articles; any travelling concession; any commission payable on the promotion of sales or business or both; but does not include any bonus; any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force; any gratuity payable on the termination of his service;

Under the **Code of Wages 2019**, wages include basic pay, dearness allowance and retaining allowance only and excludes any bonus, the value of any house-accommodation, any contribution paid by the employer to any pension or provident fund, any conveyance allowance or the value of any travelling concession; house rent allowance; any award or settlement by court/tribunal; special expenses, overtime allowance; commission, gratuity, retrenchment compensation etc.

Q5: By what date the wages are required to be paid?

A: As per the MHA order, the wages are to be paid on the due date. The due date shall be as prevalent for specific establishment and in any case by 7th/10th day of subsequent month for establishment employing less than / more than 1000 employees respectively as prescribed under **The Payment of Wages Act 1936.**

Q6: Can the salaries be reduced or deducted?

A: As per the MHA order, the wages are to be paid on the due date without any deduction.

Q7: Can the employees be asked to utilize their accrued annual/privilege leave for absence during lockdown period?

A: It can only be done with the consent of workers. The employees can be encouraged to utilize their accrued annual / privilege. Availing leave is an employee's prerogative and the employers cannot compel them to adjust accrued annual leave.

Q8: Can the employees of industry exempted from lockdown period such as essential services provider refuse to join work?

A: As long as the industry is maintaining the required standards of safety and health, the workers of such exempted industry is required to join work.

Q9: Can the employees of essential products industry etc. exempted from lockdown period refuse to join work?

A: As long as the industry is maintaining the required standards of safety and health, the workers of such exempted industry is required to join work.

Q10: Can the employees be laid-off, terminated or retrenched?

A: Presently, the various advisories are against termination or retrenchment of employees. "Lay-off" as per **Industrial Disputes Act 1947** includes failure or inability of an employer on account of **natural calamity** or for any other connected reason to give employment to a workman. However, due process of law needs to be followed and should be considered as last resort.

Regards,

JEETENDER GUPTA

Advocate-On-Record

Supreme Court of India

Ph. 9810050748

Email : guptajeetender@gmail.com

Disclaimer: That the above interpretation is to the best of our understanding and after going through various provisions of law as mentioned above. Kindly obtain due clarification from all possible sources before acting upon the above opinion. This opinion is for internal circulation only and should not in any manner be construed or interpreted as a source or a medium of advertising or solicitation and neither the contents of this FAQ be construed as legal service.