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The world is in an unprecedented situation with the outbreak of the 2019 novel coronavirus (officially renamed, “COVID-19”). Numerous countries have instituted stringent policy measures to prevent the spread of the outbreak. While, for now, such policy measures comprise of widespread travel restrictions, workplace closures, city-wide lockdowns and mandatory quarantines, with the World Health Organization having declared COVID-19 as a pandemic, there are growing concerns of restrictions on trade with infected regions being imposed soon.

COVID-19 has disrupted the workplace in many organizations and employers have been faced with a multitude of challenges while dealing with issues relating to workforce management and labour law compliance. Against this backdrop, this edition of the series sets out guidance on key workforce management issues faced by employers in India.

### Employer’s obligations

- Labour laws in India such as state-specific shops and establishments legislations impose general obligations on employers to ensure health, safety, and welfare of their workers to the extent reasonably practicable. Employers must manage risks associated with the virus and take all reasonable precautions in accordance with all applicable guidelines/advisories to ensure safe working environments for employees.
- Employers should stay abreast of notifications/guidelines/orders issued by official sources such as the Ministry of Health and Family Welfare and State governments. Certain states such as Karnataka, Delhi, Odisha, Andhra Pradesh, Gujarat, Maharashtra, Tripura, and Haryana have issued regulations/guidelines to prevent the spread of COVID-19 under the Epidemic Diseases Act, 1897 and other States and Union Territories are likely to follow suit.
- Employers should not require employees who have tested positive for COVID-19 to come into work, and should specifically prohibit any such employee from entering the office premises until they have obtained a certificate of health from a registered medical practitioner.
- Employers should take all precautionary measures such as ensuring availability of N95 face masks and hand sanitizers, screening of employees, regulating travel plans to minimize risk of exposure to COVID-19, ensuring that employees who have returned from overseas trips are quarantined for at least 14 days, requiring employees who have symptoms to get medically checked, and spread awareness and encourage self-reporting.

- With respect to the contract workers working at the premises:
  - The principal employer is obligated to take measures to ensure their health and safety. Accordingly, the benefits of the suggested mitigation measures to be adopted by the principal employer should also be extended to its contract workers. Employers should also ensure that safety and precautionary practices are communicated to contract workers through their respective contractors.
  - We recommend that the principal employer should not compel any contract workers or employees to report to office if they are unwilling to on account of COVID-19 apprehensions.
- Employers should respect the privacy and dignity of employees and ensure that their actions are not discriminatory in nature and are compliant with the applicable privacy laws – including those dealing with the handling of medical information of employees.

### Work from home

- Labour statutes in India do not restrict/prohibit employees from working from home. Therefore, depending on work requirements, employers would be able to allow employees to work from home subject to their job profiles supporting remote working. There may be practical challenges, however, for certain categories of employees such as store staff, security guards, housekeeping, administration, electrical and other support staff in working from home. In case of reasonable apprehension of COVID-19 contamination within the office premises or the spread of the contagion, employees should not be compelled to report to work. In such cases, to the extent possible, employees may be placed on a self-quarantine and allowed to work from home, wherever possible, and adopt flexi-work policies subject to availability of adequate technology and infrastructure.
- Wherever possible, employers can consider providing employees with laptops, data-cards and other equipment to enable them to work from home. In order to record work hours/ attendance of employees working from home, the employer may use appropriate technology to monitor the hours logged in by the employees and in case any employee does not log in the requisite number of hours while working from home, such cases can be treated as unauthorized absence from work.



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- In this context, it is pertinent to note the following regulatory developments:
  - The Software Technology Parks of India, by circular dated 12 March 2020, permitted employees to work from home due to outbreak of COVID-19 using laptop/desktop provided by the unit to them.
  - The Municipal Commissioner of Municipal Corporation of Greater Mumbai has issued directions under the Epidemic Diseases Act, 1987 to *inter alia* direct all private sector companies and public sector companies to encourage their staff to work from home and for non-essential service providing offices to function at 50% capacity.
  - The Labour Commissioner, Kerala, has directed all establishments in Kerala to *inter alia* allow employees to take leaves if requested as per the Kerala Shops and Commercial Establishments Act, 1960 or make work hours flexible.
  - The District Magistrate, Gurugram, on 17 March 2020 issued an advisory under Haryana Epidemic Disease Covid -19 Regulations, 2020, to all MNCs, IT Firms, Industries and BPO's advising them to allow their employees/workers to work from home until 31 March 2020.

## Leaves

- Under Indian labour laws, an employer cannot compel an employee to utilize the statutory leave entitlements and such leaves are to be availed at the discretion of the employee.
- Where an employer requires an employee to take mandatory leave to minimize the contagion in light of the outbreak of COVID-19 cases in the country, any such leave should be over and above the statutory/contractual leave entitlement of the employees.
- In case of sickness, the employer should advise employees to avail sick leaves with the flexibility of extension beyond the statutory/contractual entitlement on special grounds in light of COVID-19. The flexibility of extension should be based on sufficient evidence that the leave is due to genuine apprehension of COVID-19 and is not being misused by the employee under the guise of the disease. It is advisable that there should be no deductions from wages for such period.
- The Government of Karnataka, by circular dated 5 March 2020, directed organizations covered under the Employees' State Insurance Act, 1948 ("ESI Act") to grant 28 days paid leave to employees who have been tested positive for

COVID-19 and have obtained certificate from an ESI doctor to this effect and submitted it to the employer. Organizations that are not covered under the ESI Act are required to grant 28 days of paid sick leave under Section 15(3) of the Karnataka Shops and Commercial Establishments Act, 1961 to all employees who have contracted COVID-19. It is likely that other states may also issue similar notifications soon.

## Disciplinary action and termination of employment

- Courts in India have held that all unauthorised absence from duty may not amount to misconduct and if a person is absent from duty without prior permission for reasons such as flood, illness, etc., it will not amount to misconduct<sup>1</sup>. Therefore, in the event that employees refuse to report to office citing threat to their life and safety on account of COVID-19, it is advisable that the employer should not take disciplinary action against such employees and not compel such employees to report to office. However, employers are advised to take a cautionary approach towards absenteeism by employees who remain absent from work (either work from home or work from office) without any reasonable apprehension.

## Expats and travel restrictions

- Pursuant to the revised travel advisory issued by the Ministry of Health and Family Welfare, all existing visas (except diplomatic, official, UN/International Organizations, employment, project visas) stand suspended until 15 April 2020 with effect from 13 March 2020. However, visas of all foreigners already in India remain valid. They may contact the nearest FRRO/FRO through e-FRRO module for extension/conversion of their visa or grant of any consular service if they choose to do so.
- The travel advisory calls for passengers with travel history to China, Hong Kong, Republic of Korea, Japan, Italy, Thailand, Singapore, Iran, Malaysia, France, Spain, Germany, UAE, Qatar, Oman, and Kuwait to undergo self-imposed quarantine for a period of 14 days from the date of their arrival, and their employers to facilitate work-from-home for such employees during this period.
- The travel advisory also prohibits travel from European Union, European Free Trade Association, Turkey, and UK.
- We recommend that employers discourage employees from traveling. Employers should re-assess plans to hire international workers for the time being, and provide assistance to their expatriate employees in case they face any visa related issues pursuant to any government notification.

<sup>1</sup> *Employees in relation to the Management of Lohapati Colliery of BCCL v. The Presiding Officer and Ors.* MANU/JH/0740/2002



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## Reduction of Wages

- Courts have upheld reduction in salary only in rare cases where it is satisfied that if such relief is not given, the employer may have to close down its business.<sup>2</sup> Any such reduction will require prior notice of 21 days to workman employees under the Industrial Disputes Act, 1947, which is likely to trigger objections and complaints to labour authorities.
- In the event reduction of wages is contemplated, employers must ensure that welfare benefits such as provident fund, employee state insurance contribution and gratuity are not adversely impacted as a result of the reduction. The Employee State Insurance Corporation, by a recent notification, has extended the ESI contribution for the months of February 2020 and March 2020 to 15 April 2020 and 15 May 2020, respectively, in light of the outbreak of COVID-19.
- It is possible that the provident fund authorities may issue a similar relaxation.
- It is advisable to seek specific counsel prior to implementing any reduction of wages.

## Payment of Minimum Wages

- Salaries cannot be reduced below the minimum wage rate under any circumstances. Minimum wages must be paid, irrespective of the extent of profits, the financial condition of the establishment, or the availability of workmen on lower wages.
- This obligation to pay minimum wages is independent of the kind of industry and applies to all industries alike.<sup>3</sup>

## Lay-Offs

- In case of lay-offs, the Industrial Disputes Act, 1947 (‘the ID Act’) allows employers to pay 50% of the basic wages and dearness allowance to the employees being laid off.
- Lay-offs are regulated under the ID Act and are defined (distinct from retrenchment) to mean the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or natural calamity or for any other connected reason to give employment to a workman whose name is borne on the muster rolls of its industrial establishment, and who has not been retrenched.
- Although, the Ministry of Home Affairs, on 14 March 2020, through a press release, has declared COVID-19 a ‘notified disaster’, this may not be sufficient in itself to bring the COVID-19 outbreak within the ambit of “natural calamity” within the meaning of the ID Act.

## Trade Unions

- Employers may also face a push back from the trade unions in cases where organization attempt to reduce wages or suspend work/contemplate lay-off.
- Such situations must be handled cautiously while dealing with the trade union representatives to mitigate risk of litigation.

<sup>2</sup> *Ahmedabad Mill Owners’ Association and Ors. v. The Textile Labour Association (AIR1966SC497)*

<sup>3</sup> *Kamani Metals & Alloys Ltd. v. Their Workmen (AIR1967SC 1175)*

### Disclaimer

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