

ERGO

Analysing developments impacting business

COMPLETE NATION-WIDE LOCKDOWN AND STATE ADVISORIES FOR EMPLOYERS

25 March 2020

Further to our Ergo Updates in 5 March 2020, 12 March 2020, 13 March 2020, 16 March 2020 and 20 March 2020, we set out below latest regulatory updates in respect of COVID-19 outbreak.

Complete nationwide lockdown until 15 April 2020

In his second speech post COVID-19 outbreak in India, the Indian Prime Minister announced a complete nationwide lockdown for a period of 21 days with effect from 25 March 2020 to contain the pandemic.

Following the announcement, the Ministry of Home Affairs, Government of India, issued an order dated 24 March 2020 under the Disaster Management Act, 2005 (DMA), setting out guidelines (Central Guidelines) for state governments to ensure consistency in application of lockdown provisions and the exceptions therefrom. Set out below are the important provisions of the guidelines.

- All commercial and private establishments will be closed (or work from home, as the case may be), subject to the following exceptions:
 - a) shops dealing with food, groceries, fruits and vegetables, dairy products, and meat and fish;
 - b) banks, insurance companies and ATMS;
 - c) print and electronic media;
 - d) telecommunications, internet services, broadcasting, information technology services (only pertaining to essential services);
 - e) e-commerce of essential goods such as food, pharmaceuticals and medical equipment;
 - f) petrol pumps and gas;
 - g) power generation and transmission;
 - h) capital and debt market services under the purview of the Securities and Exchange Board of India;

- i) cold storage and warehousing services; and
 - j) private security services.
- Production units, although not connected with essential services, may continue to operate in case they require continuous operation, subject to the permission of the state government.
 - Any non-compliance of the measures taken by the respective governments shall entail penalty under the DMA in addition to any penalty under Section 188 of the Indian Penal Code, 1860. In case of companies, the person in charge of and responsible to the company for the conduct of its business would be held liable, unless he can prove that the offence was committed without his knowledge or that he exercised necessary diligence.

It may be noted that the Central Guidelines came after states and union territories imposed a lockdown order in their respective jurisdictions (up to 31 March 2020) mandating closure of commercial establishments unless the same fall in the category of 'essential services' set out therein (these exceptions being largely in line with the Central Guidelines). The Central Guidelines do not aim to supersede the state-specific lockdown orders, and it is expected that states may come out with modified orders to align the extant lockdown provisions with the Central Guidelines.

Central and state-wise regulations / advisories (released on or after 20 March 2020)

➤ Government of India

On 20 March 2020, the Ministry of Labour and Employment, Government of India, issued an advisory to all public and private establishments requesting them to not terminate the services of their employees or reduce their wages in the times of COVID-19. If a worker takes leave, he should be deemed to be on duty and, accordingly, no wages shall be deducted.

➤ Delhi

Like other states, the Government of Delhi issued a lockdown order dated 22 March 2020, which would remain effective until 31 March 2020 (unless further extended). The order *inter alia* mandates that employees of private establishments shall be deemed to be on duty and be paid full salary during the period of lockdown.

➤ Telangana

The Labour, Employment, Training and Factories Department, Government of Telangana, issued a notification dated 23 March 2020 mandating that all shops and commercial establishments subject to lockdown shall consider the closure period as paid holiday for all categories of employees.

➤ Gujarat

The Labour Department, Government of Gujarat, issued a circular dated 21 March 2020 advising the employers to not terminate the services of their employees or deduct their wages on account of disruption of operations occasioned by COVID-19. Instead, action plans should be developed to provide laptops to them to ensure that they are able to work from home.

It has also been provided that if there is any suspected or infected worker and he is unable to report to work till 15 April 2020, the employer shall not deduct his wages or remove him from services.

The regulatory measures being taken by the states in conjunction with the Centre, are becoming stricter as the number of confirmed cases in India multiply. Employers must be proactive in terms of creating an action plan based on these developments and assess how best to comply with the regulations given that the exceptions from the provisions of lockdown are limited.

Regulatory developments on COVID-19 are being tracked by Anshul Prakash (Partner), Prachi Vijay (Associate) and Deeksha Malik (Associate), authors of this Update and members of the Employment, Labour and Benefits (ELB) practice group.

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