

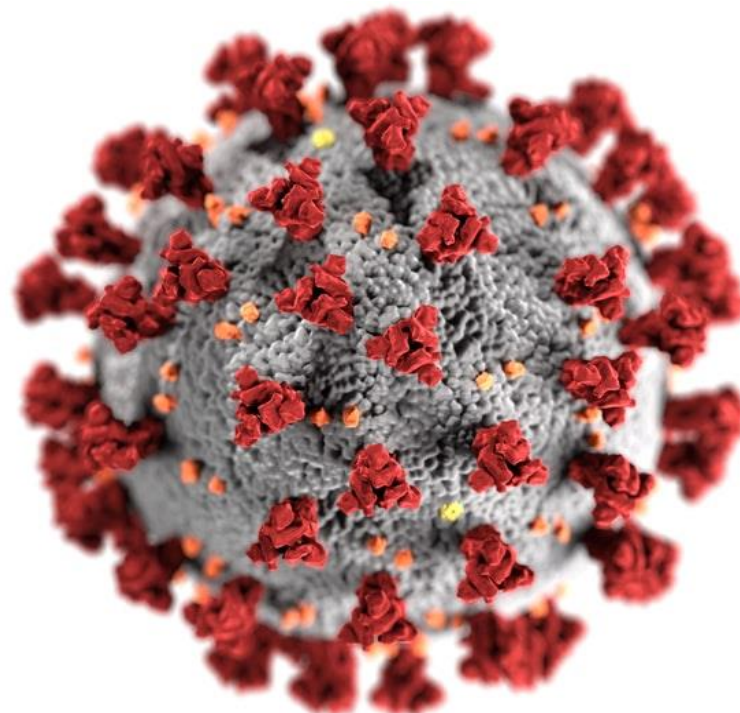
COVID -19 LEGAL FAQ SERIES

FOX MANDAL & ASSOCIATES



COVID-19 GLOBAL PANDEMIC

The sudden outbreak of the pandemic and the nation-wide lock-down has put a heavy constraint on individuals as well as the economy. To minimise the impact of the pandemic on the general public as well as business establishments and ensure minimum disruption in the supply chain, many amendments, advisories and announcements have been introduced which would ideally subsist during the containment period but could have long-term implications. Understanding the ramifications of these developments is essential for the smooth operation of enterprises. We decode the queries that have surfaced appurtenant to the multitudinous notifications that attorneys across our diverse practice domains have responded to.



What operations are exempt during the national lock-down of 21 days?

Effective from March 25, 2020, a national lock-down has been imposed in India across the country for a period of 21 days. For the duration of the lock-down, all commercial and industrial establishments across sectors are to be closed with the only exceptions being:

- Central Govt entities / authorities pertaining to Defence, Armed Police Forces, Treasury, Public Utilities (including fuel), Disaster Management, Power Generation & Transmission, Post Offices, National Informatics Centre, Customs Clearance, MCA 21 Registry, RBI, related financial markets regulatory entities, payment system operators and Early Warning Agencies
- State Govt. entities / authorities pertaining to Police, Home Guards, Civil Defence, Fire and Emergency Services, Disaster Management, Prisons, District Administration, Treasury, Electricity, Water, Sanitation, Essential services of Municipal bodies, forest operating authorities, social welfare department, agricultural products procurement and mandis
- Hospitals and all related medical establishments including their manufacturing and distribution arms, labs and related transport services
- Shops selling essential commodities (rations, food, groceries, dairy, meat, etc.)
- Restaurants (for home delivery only)
- Delivery services for essential goods including food, pharmaceuticals, medical, etc.
- Banks, Insurance, ATMs
- Print and Electronic Media
- Telecommunication, internet, broadcasting and cable services
- IT and ITeS service – only critical / essential functions
- Fuel stations
- Gas retail and storage
- Farming operations
- Capital and Debt Market Services notified by SEBI
- Cold Storage and Warehousing Services
- Private Security Services
- Manufacturing Units of Essential Commodities including related packaging and transportation
- Manufacturing Units which require continuous process only with permission of the Government

- Coal production
- Production of pesticides, seeds, etc.
- Transport for essential services, fire, law and emergency services
- Hospitality only for those persons stranded in the country or for quarantine purposes

All the above entities except medical establishments need to run with minimum number of employees. [Click here](#) to access the lock-down guidelines.

Is the Work from Home option for Employees mandatory?

The national lock-down is mandatory for all commercial establishments. If an employer desires to continue to operate, then work-from-home (WFH) is the most feasible solution. The Ministry of Health and Family Welfare has issued an Advisory on Social Distancing, wherein it strongly encourages employers to opt for WFH wherever feasible. The Ministry of Corporate Affairs (MCA) has also issued an advisory note on 20th March, 2020 for all the Companies and Limited Liability Partnerships, as part of the preventive measure to contain the spread of COVID 19 and has introduced a simple web form, CAR (Company Affirmation of Readiness towards Covid 19)–2020 for Companies and LLPs to confirm their readiness to deal with the Covid -19 threat and provide their WFH policy, if any.



It may be noted that WFH is not mandatory, neither is the requirement to file [CAR-2020](#). However, in order to comply with both the restrictions of the national lock-down as well as keeping in line with the need for social distancing, employees are advised to move to WFH for all employees able to do so, for the next few months to (i) continue its business operations; and (ii) reduce and mitigate the spread of Covid-19.

For employees who cannot work from home, what are employer's obligations pertaining to reduction in leave, paid leave, unpaid leave and termination of employment?

On 29th March, 2020, the Ministry of Home Affairs has passed an order stipulating that all employees are to be paid full wages for the duration of the lock-down. Further there are various Central and State Government advisories requesting that employees are not to be terminated during such period. If they are unable to come to work on account of operations being closed, then it is requested that the same be treated as paid leave. Some States such as NCR, Telangana, UP and Chandigarh have passed orders stating that employees are not to be terminated and salaries have to be paid in full at least for the State lockdowns until 31st March, 2020.

Based on the government order it is recommended that for the time being, employers continue to pay employees their full salaries regardless of operations being closed. Post the lock-down of 21 days or at any later stage, if continuing to pay employees is not financially feasible and if no help is being provided by the Government, then employers may re-evaluate their stance, provided there are no subsequent order prohibiting such action.

Under the Industrial Disputes Act, 1947 (IDA), in the event that an employer is unable to provide work to the employee on account of a natural calamity (Covid-19 is being treated as such), but does not wish to terminate the employment, then it may opt to lay-off its workmen. But if an employee is laid-off, then the employer must continue to pay 50% of the salary for the period of lay-off.

Any reduction in salary or unpaid leave would be encouraged only by mutual agreement between the employer and the employee. Alternatively, for 'workmen' under the IDA, statutory notice of 21 days may be given for any change in employment conditions.

In the event of termination of employment of 'workmen' on account of financial duress or redundancy, the applicable provisions of the IDA need to be complied with.

What would be the Sick Leave Policy for infected employees?

Currently, Karnataka and Uttar Pradesh are the only two States which have specifically passed Orders stating that all Covid-19 infected employees are required to be provided 28 days of additional paid sick leave over and above their existing leave entitlement.

Employers may potentially be additionally liable for medical expenses if the employee contracted the infection specifically while in the course of employment, though there are no specific guidelines on the same.

The Insurance Regulatory and Development Authority of India (IRDA) has clarified that medical expenses pertaining to Covid-19 are to be covered under Health / Medical Insurance policies. Hence, if an Employer has provided its employees with insurance, then employees may claim any applicable expenses from the same. [Click here to access IRDA guidelines on handling of claims reported under Corona Virus.](#)



What are the financial relief or relaxations provided to employers to deal with the current situation?

The payment of ESI contribution for February and March 2020 has been deferred by an additional 30 days and can be paid within 45 days of the end of the month. [Click here](#) to access the notification.

The Finance Minister has announced that the 24% PF contribution (both Employer and Employee) shall be borne by the Government for a period of 3 months for those establishments with less than 100 employees and whose workforce comprises 90% of persons earning INR 15,000 or less per month. [Click here](#) to read the announcement.

For building and construction workers, the State Building and Other Construction Workers' Welfare Boards would pay the workers an appropriate sum from the funds available from cess collected. [Click here](#) to read the advisory issued by the Labour Ministry.

Can employers ask employees for medical tests and reports?

Employers may require employees who are coming into work or even working from home to undergo medical tests or temperature screenings with consent of the employee. Employers may also require employees to report any medical symptoms to the Employer. If an employee is found to be infected with Covid-19, then the Employer may make it mandatory to disclose to all the people within the organization who may have encountered the infected employee. These potential employees would also need to be intimated. The name of the infected employee is to be disclosed only with consent of the said employee. Employers need to be aware that medical information of an employee is covered under the Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011 and Employers shall maintain adequate security of the information and take consents for any dissemination.

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