

## **COVID Times: Employer's Dilemma!!!**

*"Company A was doing good and post lockdown its operations have come to standstill, collection has gone to nil and handling of recurring expenses such as employees' salary has increasingly become difficult. This raises the million-dollar question of- Pay or not to Pay."*

The Coronavirus (COVID-19) outbreak has led to panic and vulnerability impacting all business with no exception. The Central Government and the State Government/s during this period has issued various notifications/advisories directing employers of private establishments to not terminate and pay full salaries to its employees. Given this exceptional scenario, companies are looking to understand their legal obligations as an employer. We have dissected the current scenario from the perspective of legal and commercial approach in case of **white collar employees**.

### **JURIS CORP'S VIEW**

Whilst some of the notifications issued by the Central/State Government are issued as an advisory, some notifications have been issued under the provisions of Disaster Management Act, 2005 ("**DMA**") under which the authorities have wide powers. It is to be noted that failure to comply with the regulations issued under the provisions of DMA would be an offence punishable under the DMA. Given the circumstances, it is advisable to continue paying basic salaries during the time lockdown continues at the same time restructuring certain components of the salary. As regards termination or lay-off of employees, it is advisable that employers revisit their employment contracts to assess the scenarios covered under its contracts. Further, the employers should examine the notifications issued in their respective states before making a decision for termination or lay-off.

#### **1) Scenario 1: Termination of Employees**

**A company wants to terminate, lay-off the employees or downsize in order to reduce the burden on the company**

Company needs to evaluate the local guidelines issued by the respective State Governments. Our view is that before termination or lay off or downsizing, the companies should assess its employment contract and policies and act accordingly.

#### **2) Scenario 2: Paying salaries vis-à-vis cash reserves**

**(a) A company which has ceased to operate and is low on cash reserves:**

In the current circumstances, such companies should adhere to the notifications/advisories issued by the Government to the extent possible and should plan keeping in consideration the status of the company.

At the same time, it is harsh reality that till date there are no government orders/grants guaranteeing the payments to such companies and at some point of time cash flow issue will become unavoidable. For such a company, its more of a cash flow issue than the intent of paying in full to its employees. In such situations, from a legal stand point the restructuring of the salary with a component of salary being treated as

deferred payment or linking it with restarting of the operations or cancelling the perks/emoluments would be in spirit of the Government's advisory. It is advisable to the company to consult their employees, auditors and legal advisors to have proper mechanism for working this out.

**(b) A company which is in good financial condition but wants to restructure the salary payment for the betterment of the company and its employees given uncertain future:**

In the event a company wishes to restructure the salary payment system/ reduce some benefits (perks/emoluments)/withhold variable component of the salary whilst continuing to pay the basic salary, such measures should not be seen as a violation of the notifications/advisories issued by the Central/State Government. Further, it also cannot be denied that the future is uncertain, and company may want to restructure the cash flow so that it can survive for the longest period of time. In such planning, a company in consultation with its employees, auditor and legal advisor should also think of grading the employees whereby the maximum protection is given to the lower end of pyramid and minimum at the top. We believe that this would be in compliance with legal and commercial perspective. A company may also ascertain the possibility of asking staff to accept a temporary reduction in pay proportionate to reduced hours or otherwise.

## **PROVISIONS OF DMA/NOTIFICATIONS/ADVISORIES**

- 1) The Central Government invoked the provisions of DMA on 24<sup>th</sup> March 2020. The authorities under the DMA are vested with broad powers and are authorised to lay down guidelines for, or give directions regarding measures to be taken by them in response to any threatening disaster situation or disaster.
- 2) 20<sup>th</sup> March 2020 circular advised all employers of public/private establishments to not terminate their employees, particularly casual or contract workers from job or reduce their wages<sup>1</sup>. The Circular was issued by the Ministry of Labour and Employment.
- 3) 29<sup>th</sup> March 2020 order was issued *inter alia*, requiring all the employers, be it in industry or in the shops and commercial establishments to make payment of wages to their workers without any deduction, for the period their establishments are under closure during the lockdown.<sup>2</sup> The order was passed by the Ministry of Home Affairs under Section 10(2)(I) of the DMA to all State Governments and Government Ministries and Departments.

Subsequently, various state departments and ministries have issued advisories/directions to employers to not terminate their employees, particularly casual or contract workers or reduce their wages. The directions issued by the Central Government, State Government and the concerned departments are in accordance with the generic powers conferred on them under the DMA and are in the nature of steps taken for prevention of a disaster.

---

<sup>1</sup> [https://labour.gov.in/sites/default/files/Central\\_Government\\_Update.pdf](https://labour.gov.in/sites/default/files/Central_Government_Update.pdf)

<sup>2</sup> [https://www.mha.gov.in/sites/default/files/PR\\_MHAOrderrestrictingmovement\\_29032020.pdf](https://www.mha.gov.in/sites/default/files/PR_MHAOrderrestrictingmovement_29032020.pdf)

Recently, few matters have been filed in the Supreme Court challenging the constitutional validity of the aforesaid circular and the order. On the other hand, some matters have been filed in the Supreme Court seeking directions to implement the advisory issued *vide* the aforesaid circular.

We will keep you posted on the developments in the matters filed in the Supreme Court and this article will get updated in this behalf.

### **STAY CONNECTED FOR MORE UPDATES...**

#### **How Juris Corp can help?**

Juris Corp is known for its business facilitating advises. The Firm consists of a multi-disciplinary group of lawyers who have extensive experience in tackling employees, human resource, salary planning etc. The Firm can assist you in the following ways:

- (a) Advising on the employees/ human resource and other issues;
- (b) Drafting and vetting the future salary plans from legal standpoint;
- (c) Preparing, drafting and standardizing internal processes, policies and documents etc. to bring operational efficiency on work from home policy; and
- (d) Training employees on do's & don'ts for entities on the path of digital transformation.

**In case of any queries/clarifications, please feel free to contact:**

**Arunabh Choudhary**

Partner

Email: [arunabh.choudhary@jclex.com](mailto:arunabh.choudhary@jclex.com)

**Avikshit Moral**

Partner

Email: [avikshit.moral@jclex.com](mailto:avikshit.moral@jclex.com)

**Preeti Dhar**

Senior Associate

Email: [preeti.dhar@jclex.com](mailto:preeti.dhar@jclex.com)

---XXX---XXX---XX φ XX---XXX---XXX---

### About Juris Corp

Founded in 2000, Juris Corp is a law firm adding value in Foreign Investments into India, Banking, Securities, Derivatives, Corporate Commercial, Joint Ventures, M&A Private Equity, Real Estate, Dispute Resolution and International Arbitration, Bankruptcy and Restructuring.

### Firms' Objective

Provide unbiased and unmatched legal services in our areas of practice. Be the Preferred Law Firm for our clients and take that relationship forward by becoming more than a legal advisor: Being their business advisors.

### Accolades And Recognition

Juris Corp has been consistently ranked in the top tiers over the years in Banking & Finance, Capital Markets, Corporate M&A, Dispute Resolution, Foreign Direct Investment, Real Estate, Private Equity, Securitisation & Structured Finance and Taxation by several institutions.

### Contact us:

#### MUMBAI OFFICES

##### Corporate Office

307, Century Bhavan, 3<sup>rd</sup> Floor  
Dr Annie Besant Road, Worli,  
**Mumbai** - 400 030, India  
Tel: +91 22 6720 5555 / +91 22 4057 5555  
Fax: +91 22 2421 2547

##### Dispute Resolution Office

148, Jolly Maker Chamber II,  
14<sup>th</sup> Floor, Nariman Point,  
**Mumbai** - 400 021, India  
Tel.: +91 22 4920 5555  
Fax: +91 22 2204 3579

#### DELHI OFFICE

809, Ansal Bhawan, 8<sup>th</sup> Floor,  
16 Kasturba Gandhi Marg,  
**New Delhi** - 110 001, India  
Tel: +91 11 4175 1889  
Fax: +91 11 4014 4122

#### BENGALURU OFFICE

Kheny Chambers, Upper Ground Floor,  
4/2 Cunningham Road,  
**Bengaluru** - 560 052, India  
Tel: +91 80 4669 8200  
Fax: +91 80 2226 6990

Follow us on



Visit us at: <http://www.jclex.com> for more information.

### DISCLAIMER:

This material and its contents are intended to provide general information on the topic covered herein and it shall, in no way, be treated as an exhaustive or comprehensive treatment of the subject scoped herein or as an advertisement about Juris Corp or any of its lawyers. Any graphics, images etc. used in this material is for informational purposes only and not as advertisement, promotions etc. of any organisations or institution. Further, this article and its contents in any of its form including facts specified, opinions expressed, views given etc. shall not be construed as a legal opinion of the author or that of Juris Corp ("the firm") directly or indirectly. The reader of this article must exercise due caution while using the contents of this article for any of their personal purposes such as, business implication, personal finances, investment decisions, reproduction of this article in any of the forum(s), circulating this article within the user group(s), publication of this article in any form or manner etc. It is strongly asserted herein that, if this article creates any financial / legal implication to the reader or user of this article, a formal opinion from a qualified professional be sought. The author(s) and the firm hereby expressly disclaims any and all claims, losses, damages, adversity in any of its form whether financial or otherwise arising to the reader or user of this article.