



**IMPLICATIONS OF
MHA ORDERS ON**

**PAYMENT OF WAGES /
SALARIES BY EMPLOYERS
TO EMPLOYEES DURING
LOCKDOWN**



WAGES DURING LOCKDOWN



**MHA Order of 29th March,
'20,**

directed payment of salaries

to WORKERS without

deduction DURING



WAGES DURING LOCKDOWN

Clause iii of MHA Order of 29th

March, 2020 u/s 10(2)(1) of

Disaster Management Act, 2005

provides:



WAGES DURING LOCKDOWN

"All the employers, be it in the **industry** or in the **shops** and **commercial establishments** shall make **payment of wages** of their workers at their work places on the due date, without any deduction, for the period their establishment are under closure during the lockdown period."

WAGES DURING LOCKDOWN

- **“All the employers, be it in the industry or in the shops and commercial establishments**
- **shall make payment of wages of their workers at their work places on the due date, without any deduction,**
- **for the period** their establishment are under closure during the lockdown period ”



WAGES DURING LOCKDOWN



VARIOUS State Governments issued

Advisories & Orders under :

**National Disaster Management Act, 2005
& Epidemic Diseases Act 1897**

advising / directing employers that:-



WAGES DURING LOCKDOWN



***"the employers **not to reduce wages,**
retrench, terminate their workmen and **to**
pay them full wages during the period of
the lockdown arising out of the outbreak."***



WAGES DURING LOCKDOWN

GR No. Misc 2020/4/9 Mantralaya dated 31st

March 2020, was issued by Maharashtra, Govt

GR: In reference to the *workers and the displaced workers from the other State*



WAGES DURING LOCKDOWN

**working in several businesses, shops &
other institutions affected by the prior
directions of lockdown declared by the
Government of Maharashtra for the
purpose of stopping the spread of
corona virus**



WAGES DURING LOCKDOWN



.....and in light of powers and functions of chairman, State Executive Committee Maharashtra State Disaster Management Authority under section 24 of Disaster Management Rules 2005 following order have been given;



WAGES DURING LOCKDOWN



All the workers (Either on contract

basis or outsourced workers / employees, temporary workers / employee or daily wage workers) working in private organisations , industries, companies, shops (except essential services organizations) etc,



WAGES DURING LOCKDOWN

- **.....who have to stay at their home due to spread of covid - 19 virus shall be**
 - assumed to be on work; and**
 - these workers/employees shall be given complete salaries and allowances to which they are entitled to.**



WAGES DURING LOCKDOWN



**.....These orders shall apply to all
Semi-Governmental, industrial,
commercial institution, traders and
shops within the State of
Maharashtra."**



COVERS ALL EMPLOYEES



The directions do not distinguish between
“workmen” u/s 2(s) of the Industrial
Disputes Act, 1947

and the
supervisory, administrative and managerial
employees, or temporary, casual, or contract
workmen hired through a Service provider /
contractor.



WAGES DURING LOCKDOWN

The Disaster Management, Act, 2005 &
the Epidemic Diseases Act, 1897

**does not contain any provision
empowering either Central or State
governments to direct private
employers to pay their workmen
employees full wages during the
period of the epidemic.**



2 (d) 'disaster' means

- | a **catastrophe**, mishap, **calamity** or **grave occurrence** in any area, arising from **natural** or man made causes or by accident or negligence which **results in substantial loss of life or human suffering** or damage to, and destruction of, property, or damage to, or destruction of, environment, **AND** is of such a nature or magnitude as to be **beyond the coping capacity** of the community of the affected area."



Sec. 51 :: DM Act 2005



- **51. Punishment for obstruction, etc.**-Whoever, without reasonable cause-
 - a. obstructs any officer or employee of the Central Government or the State Government, or a person authorised by the National Authority or State Authority or District Authority in the discharge of his functions under this Act; or



Sec. 51 : DM Act 2005



- **b. refuses to comply with any direction given by or on behalf of the Central Government or the State Government or the National Executive Committee or the State Executive Committee or the District Authority under this Act, shall on conviction be punishable with imprisonment for a term which may extend to one year or with fine, or with both, and if such obstruction or refusal to comply with directions results in loss of lives or imminent danger thereof, shall on conviction be punishable with imprisonment for a term which may extend to two years.**



Sec 58:: DM Act, 2005



- **58. Offence by companies.-**
- 1. Where an offence under this Act has been committed by a company or body corporate, every person who at the time the offence was committed, was in charge of, and was responsible to, the company, for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:



Sec 58:: DM Act, 2005



- Provided that nothing in this subsection shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised due diligence to prevent the commission of such offence.



Sec 58:: DM Act, 2005



- 2. Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company, and it is proved that the offence was committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also, be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.



Sec 58:: DM Act, 2005



- Explanation.-For the purpose of this section -
 - a. "company" means any body corporate and includes a firm or other association of individuals; and
 - b. "director", in relation to a firm, means a partner in the firm.



RIGHT TO LAY OFF & RETRENCH U/IDA

Only the Industrial Disputes Act 1947, which is a 'Special enactment' deals with the right of an employer to lay off / retrench employees due to inability to give work on account of "natural calamity"

DM Act or ED Act has no such provision on this subject.



Payment of wages to employees:

is governed by the provisions of another

‘Special enactment’ -

The Payment of Wages Act, 1936,
(which alongwith Minimum Wages
Act, 1948, Payment of Bonus Act, 1965 &
the Equal Remuneration Act will be
replaced by the Code on Wages)



Permissible deductions under PWA



The Payment of Wages Act, 1936, provides for permissible deduction from wages for “Absence from duty”.

Hence deduction from wages can be made under PWA, if an employee is absent from duty during the lockdown,.

No provision for payment of wages in the DMA for “Absence from duty”



WAGES DURING LOCKDOWN



Section 72 of the DM Act, 2005, provides that it will have an overriding effect, over any other law; (in case of inconsistency)

But since in the DM Act & ED Act there is no such provision for payment of wages

The ID Act and the PW Act being special enactments on the subject, they will prevail over the DM Act, 2005.



WAGES DURING LOCKDOWN



Principle of “No Work No Pay” declared by
the Supreme Court in case of Bank of India
versus T. S. Kelawala has been given a go by.



WAGES DURING LOCKDOWN =SC

**Petitions filed in Supreme Court state
that the Directives / Orders are :**

Unilateral, Arbitrary, in gross violation of
the Principles of natural justice & contrary
to Public policy as well as



WAGES DURING LOCKDOWN = SC

**Petitions filed in Supreme Court
state that Directives / Orders are :**

Contrary to existing statutes viz IDA &
PWA on the subject of payment of
wages, lay offs, retrenchment etc.,

&

patently beyond the powers vested in
them under DM Act, 2005 & ED Act,
1897.



WAGES DURING LOCKDOWN =SC



**The orders are also
unreasonable, irrational, capricious and**

Contrary to:

Article 21 dealing with the fundamental
right to life of the employers;

Article 300A in terms of which no person
shall be deprived of his property save by
the authority of law.



Funds u/ DM Act, 2005

U/s 46 (1) DM Act the Central Government has constituted:

A National Disaster Response Fund

for meeting any threatening disaster or disaster & response, relief & rehabilitation as per guidelines.



Funds u/ DM Act, 2005

u/s 46(2) DM Act National Disaster Response Fund is to be made available to the National Executive Committee

To be applied towards meeting the expenses for emergency response, relief and rehabilitation.



Funds u/ DM Act, 2005

S. 47 DM Act provides for a:

National Disaster Mitigation fund

For projects exclusively for the purpose of mitigation.

S. 48, provides for:

State and District Disaster Response and Mitigation Funds



Funds u/ DM Act, 2005



There is **“The PM Relief Fund”**;

A New fund : **“PM CARES FUND”**

(Prime Minister's Citizens Assistance and Relief in Emergency Situations Fund) has now been created where the contributions are being collected for COVID 19



WAGES DURING LOCKDOWN



SO WHY SHOULD PRIVATE EMPLOYERS BE MADE TO BEAR THE BURDEN OF THE WAGES OF THE EMPLOYEES DURING THE LOCKDOWN PERIOD WITHOUT WORK WHEN THE OBLIGATION IS OF THE GOVERNMENT AS IN OTHER COUNTRIES WHICH HAVE SOCIAL SECURITY SCHEMES.



Writ Petition in Bombay High Court

- In Align Components Pvt. Ltd., & anr Vs. Union of India & ors. on 30th April, 2020
Bombay HC (R.V.Ghuge J)
- **permits employers to deduct wages if employees do not report for duty in areas where restrictions are relaxed after the Lockdown.**



Writ Petition in Bom HC

Bombay High Court (R.V.Ghuge J.)

(on 30.04.2020)

In Align Components petition declined to interfere with the MHA order on the ground that the Supreme Court is dealing with a similar cause of action.



Writ Petition in Bom HC

Bombay HC (Justice R V Ghuge) held:
(on 30.04.2020)

“ would expect the petitioners to pay the gross monthly wages to the employees, save and **except conveyance allowance and food allowance**, if being paid on month to month basis in the cases of those workers who are not required to report for duties.”



WAGES DURING LOCKDOWN : HC Ker



Kerala High Court has stayed an order issued by the

Kerala Government Finance Department to defer

the payment of 50% salary



Writ Petitions in Supreme Court



- Writ Petitions were filed by Mumbai textile Co. **Nagreeka Exports**; Karnataka packaging Co., **Ficus Pax Pvt Ltd**; & Punjab Co - **Ludhiana Hand Tools Assn** for quashing & setting aside the MHA Order

Nagreeka Exports, withdrew its petition stating that it wanted to avoid conflict of submissions, considering the number of pleas in the Apex Court on the same issue.



Ficus Pax challenged: SC



- apart from the constitutional validity contended that the MHA Orders were “arbitrary, illegal, irrational, unreasonable and contrary to the provisions of law including Article 14 and Article 19(1)(g) of the Constitution of India.”
- that the MHA Orders would make ***“an otherwise stable and solvent industrial establishment, especially an MSME establishment, into insolvency and loss of control of business.”***



Ludhiana Hand Tools Association,

contended:

- that the MHA order of 29 March, 2020 under Disaster Management Act, 2005 is violative of Articles 14, 19(1)(g), 265 and 300, of the Constitution and that it should be “struck down.”



The Supreme Court Bench of :

Justices **NV Ramana, Sanjay Kishan Kaul** and **BR Gavai** on 27th April, 2020 granted:

the Central Government two weeks' time to put its "policy on record" & file Reply.

No Stay or Interim Relief was granted.



National Association of Journalists



filed a WP, in the Supreme Court, against salary cuts, non-payment of wages and job losses in the broadcasting media industry relying upon the MHA order.

The SC issued Notice to the Media Houses and asked the Petitioners to join the Central Government as well.



Twin City Industrial Employers Assn.

The Supreme Court on 30th April, 2020, refused to intervene & grant stay to the micro, small and medium (MSME) industries on the operation of the MHA order directing payment of full wages, in a Petition filed by Twin City Industrial Employers Association.



Instrument & Chemicals WP (SC)

11 MSME led by Instrument and Chemicals Pvt Ltd contended that they are entitled to lay off & retrench workers in terms of Sec. 2(kkk), 2(oo) & Sec 25C to 25N of the ID. Act, 1947.



MSME CONTENTIONS



- **That –u/s 25M of the ID Act, 1947 there is no bar to layoff or seek permission from the government, if such layoff is due to a natural calamity.**
- **that the Govt. cannot legally override the contracts between employers and contractors for contractual work.”**



MSME CONTENTIONS



- **That the obligation to pay wages during lockdown is on the government & not on the employer**
- **"That Orders are contrary to Article 300A of the Constitution in terms of which no person shall be deprived of his property save by the authority of law.**



MSME CONTENTIONS



“By way of enforcement of the Orders, the Govt is forcing the MSME’s to bear an expense which otherwise is the Govt’s obligation and not of the MSME”.



Clauses in Contract : Force Majeure

"Force Majeure" means an event or
circumstance which is beyond the
reasonable control of a party and
which makes a party's performance
of its obligations impossible



Doctrine of frustration



“The law recognizes that without default of either party, a contractual obligation has become incapable of being performed because the circumstances in which performance is called for would render it a thing radically different from that which was undertaken by the contract.”



Clauses in Contract



Section 56 of the Indian Contract Act,
1872 explains the provisions of
supervening impossibility leading to the
“doctrine of frustration”.



Sec 51 :: DM Act, 2005



Section 51 DM Act, 2005 provides for penalty in case of non-compliance

"without reasonable cause" & a person shall be punished with imprisonment or fine or both.

(Can financial inability to pay wages be a reasonable cause ?)



Sec 58 :: DM Act, 2005



Section 58 deals with offence by companies which provides that a director, officer or secretary or a person responsible & in-charge of the affairs of the company shall be liable for punishment.



WORK FROM HOME



In India “Work from Home” existed in our villages till the Industrial Revolution in England when with the establishment of factories work shifted to the cities.

Various issues / problems need o be addressed before formalizing this concept. Our Contract of employment is establishment centric.



WORK FROM HOME



Issues re:

Hours of work = (24x7 ?); flex timings; Office visit day; transfers; privacy; disturbance of family members; paucity of space at home; team work; interaction with colleagues / superiors; chain of command; reporting; disciplinary action; infrastructure facilities; Framing New Rules; etc.

Distinction between business profession :

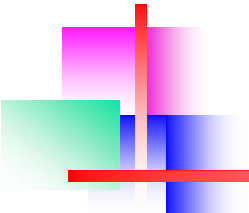


Article 19(1)(g) of the Constitution of India, which gaurantees to all citizens the right to practise any trade, business or profession, **has maintained a clear distinction between carrying on a trade or business as against practising a profession.**



Solicitors, Lawyers & Chartered Accountant's Firms not Commercial estt:

- Supreme Court in National Union of Commercial Employees v. IT, (1962) 22 FJR 25, held :
- that services rendered by a firm of solicitors, were only in the individual capacity of the partners and very dependent on their professional equipment, knowledge and efficiency.



Solicitors, Lawyers & Chartered Accountant's Firms not Commercial estts:



Supreme Court in *V. Sasidharan v. Peter and Karunakar*, (1984) 65 FJR 374 (SC), held that:

The office of a lawyer or a firm of lawyers is not a 'shop or a commercial establishment' under the Kerala Shops and Commercial Estts Act.



Solicitors, Lawyers & Chartered Accountant's Firms not Commercial estt:

In Phillipose & Co. v. the State of Karnataka, C.C. No. 21496 of 1987, it was held that:

The office of the partnership firm of CA's is not a 'commercial establishment' under Karnataka Shops & Commercial Estt Act,, as C.As. carry on profession like lawyers or doctors & do not carry on trade or business.



Solicitors, Lawyers & Chartered Accountant's Firms not Commercial estt :

In *Phillipose & Co* , it was also observed that:

“A profession is a vocation or occupation requiring special usually advanced education and skill. The work and skill involved in a profession is predominantly mental or intellectual rather than physical or manual.”



Solicitors, Lawyers & Chartered Accountant's Firms not Commercial estts:

- **CA office is not a Shop hence cannot be covered under ESIS**
-
- Singhvi Dev And Unni Chartered Accountants v. The Regional Director, Esi Corporation And Others
- Karnataka High Court
- 1 Dec, 2009



CODE ON WAGES



The Code on Wages, 2019, now an Act, received Presidential assent on Aug 08, 2019, after the nod from both Houses of Parliament replaced 4 labour Laws

- Payment of Wages Act, 1936;
- Minimum Wages Act, 1948; the
- Payment of Bonus Act, 1965; and the
- Equal Remuneration Act, 1976.



CODE ON I.R



“The **Industrial Relations Code, 2019**”
introduced in Lok Sabha on Nov 28, 2019,
seeks to replace 3 labour laws:

Industrial Disputes Act, 1947;
Trade Unions Act, 1926; &
Industrial Employment (Standing
Orders) Act, 1946.



CODE ON SOCIAL SECURITY

“The **Code on Social Security**, 2019”
introduced in Lok Sabha on Dec 11, 2019.
replaces 9 laws related to social security,
including:

Employees’ Provident Fund Act, 1952,
Maternity Benefit Act, 1961, &
Unorganised Workers’ Social Security
Act, 2008.



Code on Wages, IR & SS



While Code on Wages has not yet come into force, both the other Codes are referred to the Standing Committee on Labour, headed by Mr Bhartuhari Mahtab M.P. which has invited views / suggestions.



WAGES DURING LOCKDOWN

My sincere thanks to:

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WAGES DURING LOCKDOWN



THANK YOU

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