



KAY LEGAL & ASSOCIATES LLP

**IMPLICATION ON
PAYMENT OF WAGES/SALARIES**

IMPLICATION OF THE ORDERS DATED 17TH MAY, 2020 PASSED BY THE
NATIONAL EXECUTIVE COMMITTEE AND THE STATE EXECUTIVE COMMITTEE,
MAHARASHTRA ON PAYMENT OF WAGES/SALARIES

The lockdown, on account of the existing COVID-19 or Novel Coronavirus pandemic, announced on 25th March, 2020 has been extended thrice already and as of now is to continue till 31st May, 2020. The economy of the country has suffered major blows due to the lockdown as the industries, other than the essential services organizations, have had to stop their operations during the lockdown to curb the spread of COVID-19. One of the most controversial aspects during the lockdown has been payment of wages/salaries by private employers to their employees.

While such a situation existed in the country and inspite of the national lockdown declared in the country with effect from 25th March, 2020, it was noticed in the next few days that number of people, who basically were migrant workers were keen to reach their home towns located in other states in clear violation of the guidelines of the lockdown. Considering the fact that the movement of migrant workers would adversely affect the measures taken on maintaining social distancing and in order to mitigate the economic hardships of the migrant workers the Secretary, Ministry of Home Affairs, Govt. of India in his capacity as Chairperson, National Executive Committee issued an Order dated 29th March, 2020 under section 10 (2) (1) of the Disaster Management Act, 2005 directing the State/UT Govts and the State/UT Authorities to take necessary action and to issue necessary orders to their DMs/Dy. Comm. and Sr. Suptd. of Police/Suptd. of Police/Dy. Comm. of Police to take additional measures as under

- i) *State/UT Govts shall ensure adequate arrangements of temporary shelters and provision of food, etc. for the poor and needy people including migrant labours, stranded due to lockdown measures in their respective areas.*
- ii) *The migrant people who have moved out to reach their home states/home towns, must be kept in the nearest shelter by the respective State/UT Govt. quarantine facilities after proper screening for a minimum period of 14 days as per the standard health protocol.*
- I) *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 establishments are under closure during lockdown period.***
- i) *Where ever the workers including the migrants are living in rented accommodation, the landlords of those properties shall not demand payment of rent for a period of one month.*

- I) *If any landlord is forcing labourers and students to vacate their premises, they will be liable for action under the Act.*

It is further stated that in case of violation of any of the above measures, the respective Union/State Govt. shall take necessary action under the Act.

Pursuant to the aforesaid Order issued by the National Executive Committee, the Chief Secretary, Govt. of Maharashtra, in his capacity as Chairman of State Executive Committee, issued a Govt. Resolution dated 31st March, 2020 under section 24 of the Disaster Management Act, 2005. The title to this Govt. Resolution is 'No deduction in the salary/wages and not to terminate from employment of any homeless/displaced workers/workers from other states during the lockdown period effected for the containment of COVID-19'. The directions issued under the said Govt. Resolution are as under:

“All the workers (including those working on contract basis or outsourced workers/employees, temporary workers/employees or daily wage workers) working in private establishments, factories, companies, shops (except essential services organizations), etc, who are required to remain in their home due to spread of COVID-19 virus shall be deemed to be on duty and shall be paid their full salary and allowances to which they are entitled to. This order shall apply to all semi-governmental, industrial, commercial, trading and shops establishments within the State of Maharashtra.”

The State Executive Committee of different States have issued similar orders/directions regarding payment of full wages to the employees/workers employed in the private establishments in their respective States. The said orders/directions issued by the Executive Committees in respect of direction to pay full wages by private establishments which are non-operational during the period of lockdown are being strongly debated amongst the legal circles throughout the country.

It is pertinent to note that the said Order and the Government Resolution is under challenge before the Apex Court in **Hand Tools Manufacturers Association Vs. Union of India & Ors. WP (Civil) Diary No. 11193/2020** and the Apex Court has on 15th May, 2020 passed an order stating that no coercive action be taken until the next date of hearing which is 23rd May, 2020. This order can be interpreted as no coercive action be taken against the employers for non-payment of wages and salaries till the next date of hearing and also that the employers shall not take any coercive action against the employees till the next date of hearing. Nevertheless, the Hon'ble Supreme Court has not granted any interim relief as of now and it is safe to say that the Order dated 29th March, 2020 and the Government Resolution dated 31st March, 2020 as good in law.

Thereafter, on 17th May, 2020 the National Disaster Management Authority passed an Order extending the lockdown till 31st May, 2020. In the light of the Order dated 17th May, 2020 passed by the National Disaster Management Authority extending the lockdown till 31st May, 2020 further guidelines were issued vide Order dated 17th May, 2020 passed by the National Executive Committee. Further, the State Executive Committee, Maharashtra has also issued guidelines vide order dated 17th May, 2020. The Order passed by National Executive Committee and the State Executive Committee, Maharashtra are the subject matter of discussion in this article. Paragraph No. 3 of the Order dated 17th May, 2020 passed by the National Executive Committee is reproduced herein below for the sake of convenience.

“Whereas, save as otherwise provided in the guidelines annexed to this Order, all Orders issued by NEC under Section 10(2)(l) of the Disaster Management Act, 2005, shall cease to have effect from 18.08.2020.”

The said Order specifically mentions that every Order passed by the National Executive Committee under section 10(2)(l) of the Disaster Management Act, 2005, before the Order dated 17th May, 2020 shall cease to exist unless otherwise provided. Therefore, the operation of the Order dated 29th March, 2020 passed by the National Executive Committee, in the light of the Order dated 17th May, 2020, shall cease and by implication it further means that as of today it is not mandatory of private employers to pay full wages/salaries to their employees.

However, the Order dated 17th May, 2020 passed by the State Executive Committee, Maharashtra must also be taken into consideration. Paragraph No. 4 of the Order dated 17th May, 2020 passed by the State Executive Committee, Maharashtra is reproduced herein below for the sake of convenience.

“It is further directed that all earlier orders shall be aligned with order and shall remain in force up to and inclusive of 31st May, 2020.”

The Order of the State Executive Committee, contradicts the Order of the National Executive Committee by directing that all the earlier Orders passed by the State Executive Committee, Maharashtra, which includes the Order dated 31st March, 2020 with regards to payment of full wages/salaries by employers of all private establishments to their employees, shall be aligned and remain in force.

It is pertinent to note that both of the Orders dated 17th May, 2020, passed by the National Executive Committee and the State Executive Committee, Maharashtra, remain silent about payment of wages/salaries by private employers. There is no clarification on the same as of today and the Orders in this regard seem contradictory to each other. Therefore, it is only natural that a clarification about the aspect of payment of wages/salaries by private employers can be expected to be issued by the National Executive Committee and the State Executive Committee, Maharashtra in the coming days.



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