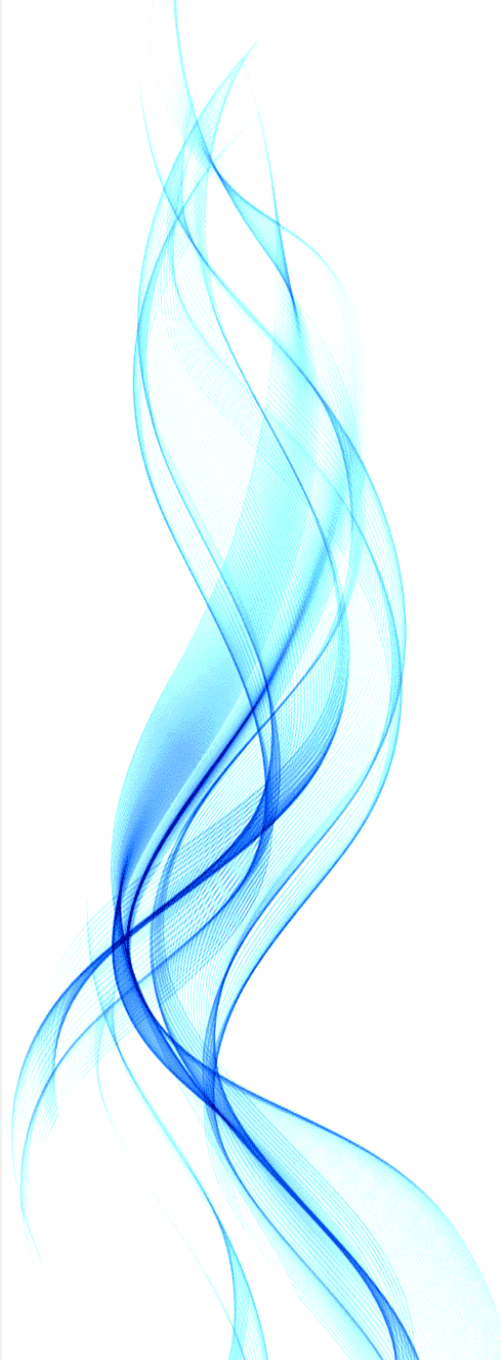




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Employer's Liability to pay wages to absentee employees, forced to remain absent from work during COVID-19 lockdown period.

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Issue

Whether an employer is liable to pay wages to its absentee employees for wage period or part thereof falling during COVID-19 Lockdown/Restrictions?

Class of Employees

For the purpose of answering the aforementioned issue strictly in terms of law, it is necessary to consider various provisions of law that categorise employees as follows:

STATUTORY CATEGORY	The employees covered under the Payment of Wages Act, 1936 fall under this category. Such employees need to fulfil the following conditions: Firstly, the wage payable to the employee must be Rs. 24000/- per month or less. Secondly, the employment should be: i. In Factory ii. In Railway iii. In Industrial or other establishments under the provisions of the Act or so notified by the Government.
INTERSTATE MIGRANT WORKMAN CATEGORY	Section 2 (e) of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 defines "inter-State migrant workman" to mean any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State, whether with or without the knowledge of the principal employer in relation to such establishment;
EMPLOYMENT CONTRACT CATEGORY	The employees not covered under the provisions of the Payment of Wages Act, 1936 fall under this category, such as: 1. The employees receiving wages more than Rs.24000/- per month. 2. The employees not engaged in factory, industry or establishment where the Payment of Wages Act applies.

However, because of the words and language used in different Govt. Orders and notifications and because of situational variations, there could be further categorization of the employees for the purpose of understanding the liability of Employers' to pay wages/salary to their employees for the period when they were forced to remain off their duty (fully or partially) because of Covid-19 situation and/or restrictions imposed by governments or the authorities concerned.

Such categorization is as follows:

A.	Interstate Migrant Workmen:	<p>They are such workmen, who have registered themselves with the authorized agent in one state for working in another State.</p> <p>Such workmen are a few in numbers.</p>
B.	Other Migrant Workmen:	<p>There is no legal provision defining ‘Migrant worker’, accordingly there is no fixed legal criteria for their classification or identification. However, there are situational issues which need to be/ can be considered in this regard, such as:</p> <ul style="list-style-type: none"> i. Persons taking employment in a different state without registering themselves with the authorised agent in their state in terms the provisions of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 or by migrating on their own; ii. Persons taking employment in different districts of the same state. iii. Persons taking employment in the city/town of the same State. iv. Duration of their stay in the State other than their home State without having their own house therein etc.
C.	Workmen other than the Migrant Workmen:	<p>Workmen employed in their home State. A large part of the workforce is provided by population of the same state and sometimes their financial situation is no better than the ‘migrant workmen’.</p>
D.	Employment Contract Category:	<p>In this category there are two classes of employees:</p> <ul style="list-style-type: none"> i. Employees/Workmen receiving wage/salary up to Rs.24000/- per month but working in managerial and supervisory position. ii. Employees/Workmen receiving wage/salary more than Rs.24000/- per month whether or not working in managerial and supervisory position.

GOVT ACTION AND NOTIFICATIONS IN THIS REGARD

Vide order No. 40-3/2020/DM-I (A) dated 29.03.2020 issued by the Home Secretary, Govt. of India, in his capacity as the Chairman, Executive Committee, exercising power under section 10(2) of the Disaster Management Act, 2005, the State Governments and the Govt. of Union Territories were directed to implement lockdown measures to prevent spread of COVID-19 and to mitigate economic hardship of migrant workers. Vide the said notification, the Chairman directed State Governments and the Governments of the UTs to issue order/direction to district administration/administration to take additional measures in the emergent situation arising because of spread of Covid-19, including one to ensure that all employers pay wages to their migrant workers at their establishment on time without any deduction even for the period the when the establishment remained closed due to lockdown.

Various district administration and state governments have also issued directions either in compliance of the above mentioned order dated 29.03.2020 of the Chairman, Executive Committee, National, or independently invoking provisions under section 24 of the Disaster Management Act, 2005, which confers power to the State Executive Committee to take disaster management measures. State of Andhra Pradesh and the State of Telangana have declared the locked down period as 'special holiday' under sections 13 and 31(2) of the Andhra Pradesh/ Telangana Shops and Establishments Act, 1988 and have passed similar directions directing the employers in the state to not deduct wages of the workers for the lockdown period.

LIABILITY TO PAY WAGES FOR LOCKDOWN PERIOD

Whether issuance of direction by Central Executive Committee or the State Executive Committee directing an employers or an owner of an establishments to pay full wages, without any deduction, to 'migrant workers'/ Workmen falls within scope of power conferred to the said Committees under sections 10 and 24 of the Act respectively is subject to legal debate. This issue is pending adjudication before the Supreme Court. However, without going into the legality of such directions, it has to be seen as to whether such directions are applicable in respect of 'migrant workers' only or the entire work force of an establishment.

What needs to be taken special note of is that such directions were issued with an object to mitigate economic hardship of the '*Migrant Workmen*'. While stating object of the directions, the word used in notification/order of the Central Government is "*Migrant Workers*"; whereas the word used in direction is 'Workmen' and not "*Migrant Workers*". But the word 'Employee' is not used in such direction, so it cannot be said that the direction to pay entire wages (for lockdown period) without deduction is applicable to the entire workforce of an establishment. Use of the word 'migrant' to describe the object and qualify the word 'Worker' definitely narrows the scope of application of the order and direction therein. Therefore, one thing that can be safely concluded is that the direction does not refer to the entire workforce of an establishment. The word '*Migrant Worker*' is not defined in any statute whereas the term '*Interstate Migrant Workman*' is defined under the provisions of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. However, the scope of such a definition is too narrow and cannot be considered

to be the purport and intent of scope of word '*Migrant Workers*' as used in the recently issued Government orders.

ANALYSIS

The legal implications of the directions/Orders directing the employers/owners of various establishments to pay wages to their workers/employees can be summarised as follows:

- The notifications and directions issued by the State Government (such as in Andhra Pradesh and Telangana) under the Shop and Establishment Act, directing the establishment owners to consider lockdown period as 'Special paid Holiday' have implications of directing payment of full wages and salary to all employees irrespective of their class, for the lockdown period.
- The employers shall be liable to pay entire wages without any deduction to all 'Interstate Migrant Workmen' and there is no confusion about identification of such workmen.
- There is no legal criterion to determine and identify '*Migrant Workmen*' which causes uncertainty in this regard. The word, even if taken by its literal meaning, leaves a lot of unanswered questions about the legal identification of the '*Migrant Workmen*'.
- In respect of workmen covered under the provisions of the Payment of Wages Act, 1936 i.e. where wages/salary is up to Rs. 24000/- per month and who are not '*Migrant Workmen*', the employer can deduct wages and salary in terms of section 9 read with section 7(2)(b) of the Payment of Wages Act, 1936. Any direction issued by any government or authority will not override the provisions of law. Therefore, the right of the employers, under section 9 read with section 7(2)(b) of the Payment of Wages Act, 1936, to reduce wages will override the directions issued under the provisions of the Disaster Management Act, 2005.
- In cases of employees falling under the Employment Contract Category i.e. not covered under the Payment of Wages Act, 1936, the liability of the employer to pay wages is governed by terms of employment, be it general terms of employment, standing order or individual employment agreement. In all such cases, the employers as well as the employees are exempted from their respective contractual obligations to pay wages and to provide services, by virtue of section 56 of the Indian Contract Act, 1872 since it becomes "practically impossible" to perform such contractual obligations because of the lockdown restrictions. However, in cases where service under the employment agreement is practically possible to render, obligations may not be discharged merely on the ground of economic hardship.

