

Current Scenario

In view of this pandemic situation Covid 19, the Government issued an advisory that the wages to be paid by the employers during the lockdown. Ministry of Home Affairs, North Block issued **Order No. 40-3/2020-DM-I(A) dated 29th March 2020**; wherein it was stated in Clause iii that

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 the lockdown;

It is further directed that in case of violation of the above measures, the respective State/ UT Government, shall take necessary action under the Act. The DM/DC and Senior SP/SP/ DCP will be personally liable for implementation of the above directions and lockdown measures issued under the above-mentioned orders.

Undersigned by the Home Secretary on 29/03/2020

*Further, Order from The Principal Secretary to Govt of Haryana, Labour Department vide **No. 7047-7127 dated 25th March 2020** being Necessary advisory to the employers/ owners of Private Establishments in the State of Haryana for not terminating the services of their employees or reduce their wages in view of outbreak of COVID-19 pandemic.*

Intention of the Government

The Govt wants to reduce or mitigate the loss which can be suffered by the workers due to stoppage of work in various factories/ establishments, which is very appreciable and demands a standing ovation for the thought and intent.

What the Government Missed

The Govt missed the hardship which can be faced by the employers/ establishments due to enforcing of such decisions. The industry was already plagued by Global Crisis in the last few

months and sudden stoppage of the factories/ establishments/ shops would push them deeper into the crisis. Every decision has two sides of the coin. Every debit entry has a corresponding credit entry. But the Govt did not foresee the other side of the employer while issuing the above advisories. The industry has to bear some fixed costs without any incoming revenues which is going to eat its capital. And if the lockdown gets extended, which seems to be an instant possibility, the industry would have to bear the wage expenses for March and April and maybe for May 2020 (or part of these months; if the advisory/ order is implemented as and when)

Legal Issues

1. The directions issued by the government to employers to pay wages to all the workmen neither comes within the framework of the Disaster Management Act, 2005 and Epidemic Diseases Act, 1897 nor is backed by a statutory law
2. The Government of India and State governments have called upon employers to pay wages for the lockdown period not only to the permanent workmen of an industrial establishment but also to contract workmen and inter-State migrant workers. On humanitarian grounds, there can be no two opinions about the need to pay wages to employees. However, whether such an obligation should be that of **private employers** or that of **the State** needs to be considered.

Understanding DMA, 2005

The scope of the Act is to have a unified command over disaster management and empowers committees to frame plans to meet disasters. A reading of the provisions of the Act would show that **powers have not been vested** with either the State or the Central Government to direct private employers to pay wages during a disaster despite the employees not working.

Understanding EDA, 1897

It prescribes such temporary regulations to be observed by the public or by any person or class of persons as it shall deem necessary to prevent the outbreak of such disease or the spread thereof, and may determine in what manner and by whom any expenses incurred (including compensation if any) shall be defrayed.”

The substantial part of the Act is Section 2 and it only enables the government to prescribe measures to prevent the outbreak of such disease or the spread thereof. The same certainly **does not** empower the government with a power to direct a private employer to pay wages.

Understanding IDA, 1947

The Industrial Disputes Act 1947 is a Special Law which mandates payment of lay-off compensation in the event of a natural calamity or other connected reasons. The liability in this Special Law which is specific has restricted the payment of 50 per cent of wages as compensation. Being so the various directions/circulars/communications of the government can at best **be advisory and not mandatory**. The government would need to appreciate this legal position.

Analysis of Above Three Acts

As above, neither DMA nor EDA empowers the Govt to issue any direction to pay wages to a private employer. IDA is also advisory and that too with a capping of 50%

Economic Contribution

The direction/ advisory issued by the government to pay full wages is a Diwali bonanza to the employees, not merely because they earn it without having to work. The directions of the government have in fact resulted in the employees taking home more wages/salary than they normally would earn. The PF deduction will not be here and the conveyance would not be spent in to and fro and the PF, if borne by the Govt as part of their relief package, would be subject to fulfilment of some conditions. The worker would have more take-home salary without contributing a single rupee to the employer or to the GDP.

Probable Solutions

The Govt has to see the legalities of the above decision and need to come out with a balanced approach to mitigate the losses for both sides of the stakeholders.

Maybe, if the Govt insists on releasing wages, the gov't can think of some weighted deductions as of weighted deduction on scientific expenditures or under Chapter VI-A in the line of Section 80JJAA for the period of the lockdown.

Maybe, the Govt can advise the establishments to bear/ pay only the necessary amount which is required for subsistence of living or payment of some school fee expenses, which are bare minimum for running the household; which is today being run with zero petrol expenditure, and zero entertainment expenses. Only a proportion of wage expense can be borne by the employers.

The Govt has all the data of all the income tax returns of all the running units with break up of wages and salaries expense in proportion to the turnover; the Govt can come up with some range turnover sector wise formula to extend any assistance to the business.

Alternatively, the gov't can think of some wage subsidy scheme being a portion of the wages which will the State can bear.

The Govt has think out of the box by assuming some lowered profit margins for business community, professional community and can think of accepting their lower profit margins/ profit ratios so as to reduce their tax burden which will eventually help to ease out some liquidity.

Also, The Govt need to give some highly dosed stimulus financial package (apart from relief package, RBI package, refund packages) to the economy, since the financial health and economic dip is bound to happen and which may take six to eight months to one year to get back to the break even or normal prevailing scenario.

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