



### **LATEST UPDATE ON THE OBLIGATIONS OF EMPLOYERS TO PAY FULL WAGES, ETC., DURING LOCKDOWN**

A number of petitions were filed before the Supreme Court (as well as various high courts) challenging the validity of the order bearing no. 40-3/2020-DM-I(A) dated 29 March 2020 (“**Order dated 29 March 2020**”) issued by the Union Home Secretary, Ministry of Home Affairs (“**MHA**”) (as the Chairperson of NEC), and related circulars issued by various authorities in some States that mandated employers to pay full wages to their employees during the lockdown.

On Friday 15 May 2020, the Supreme Court passed interim orders in two petitions filed by Hand Tools Association and Indian Jute Mills Association; listing the matter for hearing after one week i.e. on 22 May 2020 and directing the government not to take any coercive action in the meantime. This order was passed since the government requested one more week to file its response to these and other petitions.

Please [click here](#) to read the interim order of the SC in case of Hand Tools Association.

#### **Central Government**

On Sunday 17 May 2020, the MHA issued an order bearing no. 40-3/2020-DM-I(A) dated 17 May 2020 (“**Order dated 17 May 2020**”) extending the lockdown for the fourth time till 31 May 2020 and issuing new guidelines on measures to be taken for containment of COVID-19 in the country up to 31 May 2020.

The Order dated 17 May 2020 *inter alia* states that the operation of all earlier orders passed by the Chairperson NEC under the Disaster Management Act, 2005 (“**DMA**”) (which includes Order dated 29 March 2020) cease to have effect from 18 May 2020 onwards unless the operation of any orders are continued under the Order dated 17 May 2020.

The Order dated 17 May 2020 has extended the operation of the Standard Operating Procedures for movement of persons, as mentioned in Annexure I therein. Since, the Order dated 17 May 2020 has not specifically continued the operation of the Order dated 29 March 2020, it appears that it will cease to have effect from 18 May 2020 and therefore, it would seem that employers will no longer be mandated to pay full salary during the remaining period of lockdown with effect from 18 May 2020.

Please [click here](#) to read the Order dated 17 May 2020.

## ***Maharashtra State Government***

Pursuant to the Order dated 17 May 2020 of the MHA, the Government of Maharashtra via the Department of Revenue and Forest Disaster Management, Relief and Rehabilitation has issued an order No. DMU/2020/CR.92/DisM-1 dated 19 May 2020 (“**Order dated 19 May 2020**”) under the DMA providing the revised guidelines for the extended period of lockdown, which will remain in effect from 22 May 2020 to 31 May 2020.

The Order dated 19 May 2020 specifically states that it supersedes the provisions (and subsequent amendments/ clarifications thereto) of lockdown order dated 2 May 2020. The Order dated 19 May 2020 however states that all earlier orders shall be aligned to the Order dated 19 May 2020 and shall remain in force up to and inclusive of 31 May 2020.

The Maharashtra Government had earlier passed an order dated 31 March 2020 which mandated employers to pay full salary to workers in Maharashtra and this order was issued in reference to the MHA order dated 29 March 2020. The Maharashtra Government Order dated 19 May 2020 is silent on whether its earlier order dated 31 March 2020 ceases to operate in view of the MHA Order dated 17 May 2020. Therefore, it is debatable whether or not the obligation of the employer to pay full salary in Maharashtra remains operative.

Please [click here](#) to read the Order dated 19 May 2020 issued by Government of Maharashtra.

## ***Conclusion regarding obligation to pay wages***

Ceasing of applicability of the Order dated 29 March 2020 does not however (1) take away the employer’s liability for the period prior to 18 May 2020; and (2) mean that employers now have the flexibility to cut indiscriminately wages, etc. Proper processes must be followed and reduction in wages can always be open to challenge before a labour court.

One would have to await further orders from the Supreme Court with regard to the validity of the MHA Order dated 29 March 2020 for the period prior to 18 May 2020. Nevertheless the non-continuation of the MHA Order dated 29 March 2020 that mandated full payment of wages comes as a welcome step for businesses and industry who would hope that the Supreme Court takes a pragmatic view when determining the binding nature of these orders for the period prior to 18 May 2020.

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