

Legal Protection of Wages during Lockdown

In these testing times of nationwide lockdown induced by the spread of Coronavirus, the wheels of our economic growth are severely impeded. The progress of India's economy in most sectors stands compromised and India's hospitality industry in particular stands crippled. Under these circumstances, it is quite natural to wonder whether there is any law or enactment to empower or give legitimacy to the expectations of the employees of this particular industry, which includes the Chefs, bartenders, waiters, etc. to claim wages as a matter of right?

Nishant Kumar Srivastava here examines what our laws have to offer to these employees.



It is common knowledge that the governments, both at the Centre as well as in the States, have issued fiats to the employers (whether it is a Government organisation/PSU or a private employer/industry/establishment, etc.) to pay the entire wages to not only to those who as per the provisions of the various labour laws fall in the category of 'workmen' of their respective industries/industrial establishment/establishment, but also to those groups of the temporary workmen hired on contractual basis who happened to be working on the said date in their respective establishments.

EXPLORING LEGAL RECOURSE

We have to keep in mind that there is no law in existence, either in India or anywhere in the world, which may compel the employer to pay wages despite the employees not working. However, most countries have provided in their respective laws, provisions concerning the relationship between the employer and the employees and the welfare provisions inter alia concerning the rights, duties, obligations, entitlements, stability, conditions of service, wages, bonus, leave, health, social security and compensation, etc. for the employees.

If we sieve through the existing laws and legal provisions in India, more particularly The Epidemic Diseases Act, 1897, The Industrial Disputes Act, 1947 and The Disaster Management Act, 2005, etc. along with the various rules framed thereunder, making use of which the respective governments have lately been issuing notifications and fiats, we to our chagrin will find that none of these Acts empowers the respective governments to issue such fiats as to compulsorily pay the wages to employees.

So, in these peculiar circumstances, especially for the benefit of the employees of the hotels, bars and restaurants, the Central Government may make use of The Sales Promotion Employees (Condition of Service) Act, 1976 (No.11 of 1976) and the rules framed there under (hereinafter referred to as 'the Act') which extends to the whole of India, obviously with certain modifications to suit for this segment of employees.

This enactment very interestingly provides for 'Quarantine leave' [Rule 16 of The Sales Promotion Employees (Condition of Service) Rules, 1976]. Sub-Rule (1) of Rule 16 provides that, "where in consequence of the presence of an infectious disease in the household of a sales promotion employee, his

attendance is considered hazardous to the health of other people, the employee concerned may be granted quarantine leave. Sub-section (2) provides that the quarantine leave may be granted for a period up to 30 days on the recommendation of the authorised medical attendant or Public Health Officer and Sub-rule (3) provides that a sales promotion employee on quarantine leave shall be treated as on duty for all purposes.

This Act at the first instance applies to every establishment engaged

in pharmaceutical industry [sub-section (4) of section 1]. However it empowers the Central Government by notification in the Official Gazette to apply the provisions of this Act with effect from such date as may be specified in the notification to any other establishment engaged in any notified industry [sub-section (5) of section 1].



both, the conditions of service of such employees and such other factors which, in the opinion of the Central Government are relevant, declare such industry to be a notified industry for the purposes of the Act.

THE ACT EMPOWERS

Thus it is clear that the Central Government, by suitable and relevant notification in the Official Gazette, may declare the hotel/ bar/ restaurant, etc. to be a notified industry for the purpose of application of the provisions of the Act; to be applicable to all employees irrespective of the salary drawn by him/her. It may also declare that the term "an infectious disease, in the household of a sales promotion employee" to mean and be understood as "the Covid-19 pandemic in the community/ across India/ relevant territory as notified in the said notification" to enable an employee engaged in these specific services to avail the benefit of the Quarantine leave, for the time being.

The above recourse is in no manner a derogation of the exclusive power of the Executive - both at the Central and the State level - to promulgate a suitable ordinance ordaining all categories of employers to pay wages to their all categories of employees during this lockdown duration.

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UNEMPLOYMENT PROSPECTS IN INDIA'S HOSPITALITY SECTOR

According to a report by Federation of Associations in Indian Tourism and Hospitality (FAITH), published in the context of COVID 19, it is being estimated that due to Coronavirus impact around 70 percent out of a total 5.5 crore workforce in India's tourism and hospitality sector could get unemployed, which is around 3.8 crore people. According to the same report, hospitality sector accounts for over 8.78 percent of the total workforce in India. This presents a very precarious scenario for India's economy.

Further in terms of Section 3 of the Act, the Central Government may, having regard to the nature of any industry (not being pharmaceutical industry), the number of employees employed in such industry to do any work relating to promotion of sales or business or