



Law and policy update

Practice area: Labor & Employment

May 20, 2020

MHA Order of May 17, 2020 – Impact on wage payment obligation

In wake of lockdown 4.0, the Ministry of Home Affairs (**MHA**) vide its Order dated May 17, 2020 (**Order**) provided for all orders issued by the National Executive Committee (**NEC**) under Section 10(2)(l) of the Disaster Management Act, 2005 (**DMA**) to cease to have effect from May 18, 2020, save as otherwise provided in the guidelines annexed to the Order.

Section 10(2)(l) of the DMA empowers the NEC to “lay down guidelines for, or give directions to, the concerned Ministries or Departments of the Government of India, the State Governments and the State Authorities regarding measures to be taken by them in response to any threatening disaster situation or disaster”

This Order will have major implication on obligation of payment of full wages as mandated under the MHA order dated March 29, 2020 (**Previous Order**), which imposed restriction on employers regarding reduction in the salary of employees. The Order nullifies the Previous Order by MHA, and, as a natural effect, all the State Government orders which derived their authority from the Previous Order will also subsequently stand repealed. Therefore, with effect from May 18, 2020, employers are no more bound under Previous Order issued by MHA and are not obligated to pay full wages to employees, including workmen. Even though there is no doubt that minimum subsistence level of payment should still be paid to employees based on humanitarian grounds, the present Order has come as sigh of relief to many private sector employers saving them from obligation of mandatory payment of full wages to all employees and potentially taking following the principle of ‘no work-no wages.’

It must be clarified that ‘labor & employment’ is a subject matter of the Concurrent List of the Indian Constitution. Therefore, states which do not intend providing relaxation on mandatory payment of full wages, for some reason or the other, shall have the liberty to issue orders/notifications in this regard. For the same set of reasons, the Ordinances promulgated by several states (Uttar Pradesh, Madhya Pradesh, Gujarat) for providing exemptions/relaxation to companies from various labor laws will also remain unaffected by the MHA Order. However, these remain open to judicial scrutiny.

The constitutional validity of Previous Order issued by MHA has been questioned in several matters filed before the Supreme Court of India. For purpose of uniformity, the Court has provided interim relief while hearing a batch of petitions including *Ficus Pax Pvt. Ltd. v. Union of India*, where the Court asked authorities to take no coercive action against private employers for not complying with the Previous Order on payment of full wages and instructed the Government to file its adequate reply. On last hearing on May 15, 2020, the Central Government sought more time to respond on the petition. While the matter is sub-judice, the applicability and validity of MHA Order pertaining to the payment of full wages concerning period of the lockdown from March 29, 2020 to May 17, 2020, remains to be determined and the Court is yet to decide the fate of the employers/employees.

State governments relax labor and employment laws

Through a spate of Ordinances and Executive Orders, a number of state governments have recently allowed significant flexibility with respect to labor law compliances in a bid to attract new industrial and economic activity. Some of these announcements are as follows:

- The Government of Uttar Pradesh has decided to exempt businesses for period of 3 years from all Labor & Employment laws, except Building and Other Construction Workers Act, 1996, Workmen's Compensation Act, 1923, Bonded Labor System (Abolition) Act, 1976, Section 5 of the Payment of Wages Act, 1936. However, laws related to employment of women and children shall continue to apply.
- Along similar lines, the Governments of Gujarat and Madhya Pradesh are in process of coming out with their respective Ordinances. Gujarat reportedly seeks to exempt businesses and establishments from the purview of all labor laws except Minimum Wages Act, 1948, Employees' Compensation Act, 1923 and certain Industrial Safety rules. Whereas Madhya Pradesh, has announced plans to allow need-based hiring and significantly reduced/waived norms relating to registration and inspection of industries. It has already passed an Ordinance to exclude establishments having less than 100 employees from the purview of the state's Standing Orders Act.
- States of Odisha, Goa and Karnataka have also announced similar measures, including an increased limit on daily work hours to 12-14 hours.

It must be noted that such Ordinances can be kept in force only up to 6 months, prior to which these shall have to be enacted. As established by Supreme Court of India in *Dr. D.C. Wadhwa & Ors. v. State of Bihar & Ors.*,¹ an Ordinance cannot be re-promulgated. While the Directive Principles of State Policy enshrined in Part IV of Indian Constitution espouse India as a welfare state, these efforts by state governments have been widely critiqued for being 'overtly capitalistic' and will, almost certainly, have to undergo the test of judicial review.²

Summary of recent cases

- A PIL was filed by Uttar Pradesh Worker Front in Allahabad High Court challenging UP Notification dated May 08, 2020 on relaxation of working hours under Factories Act. After a notice from the Allahabad High Court, the UP government recently withdrew its order mandating 12-hour shifts for workers in industrial units.
- Another petition has been moved in the Supreme Court of India seeking to quash various Ordinances and Executive Orders issued by States of Uttar Pradesh, Gujarat and Madhya Pradesh that extend long term exemptions to businesses from almost all labor laws, barring few. It is argued that such acts on part of state governments would only deprive lower income oppressed classes of welfare measures of state and, as such, would do more harm to lower income group than it will benefit economy. The employers will go unchecked in their exercise of 'hire and fire policy' and forcing employees/workmen to work increased hours.

¹ 1987 AIR 579.

² *S.R. Bommai v. Union of India*, 1994 AIR 1918.

- A single Judge Bench of the Bombay High Court's Aurangabad Bench declined to agree with the principle of 'no work no wages' in case *Rashtriya Shramik Aghadi v. State of Maharashtra*, and held that contract laborers who have been unable to work in the wake of the pandemic, are to be paid full wages till the month of May 2020. Though, the Court also took notice of the inability of the principal employer to allot any work to the workers offering their services, however, it observed that these are extraordinary circumstances where the principle of 'no work-no wages', cannot be applied.
- In the case of *Align Components Pvt Ltd & Anr. v. Union of India & Ors*, the Bombay High Court declined to interfere in the plea challenging the MHA notification of March 29, 2020 that required employers to pay salaries to their employees during the period of the Covid-19 lockdown. Notably, the Court clarified that in industrial areas where the State of Maharashtra has partially lifted the lockdown, the employers can deduct the wages of employees who fail to report for duty. In this regard, the Court observed that "since the State of Maharashtra has partially lifted the lock down recently in certain industrial areas in the State of Maharashtra, the workers would be expected to report for duties as per the shift schedules subject to adequate protection, from Corona Virus infections, by the employer. In the event such workers voluntarily remain absent, the Management would be at liberty to deduct their wages for their absence subject to the procedure laid down in Law while initiating such action. This would apply even to areas where there may not have been a lock down."

As can be inferred from the above instances of ongoing judicial review of various labor law centric measures, there is a significant amount of confusion at present regarding the steps taken by various governments. Whatever be the outcome, there is not an iota of doubt that a balance needs to be struck between economic goals and welfare, both of which are integral to economic development. A robust economy would only enhance government's effort towards a welfare state.

New Delhi

81/1 Adchini
Sri Aurobindo Marg
New Delhi – 110 017

Phone: (+91) (11) 6638 7000
Email: newdelhi@hsalegal.com

Mumbai

Construction House, 5th Floor
Ballard Estate
Mumbai – 400 001

Phone: (+91) (22) 4340 0400
Email: mumbai@hsalegal.com

Bengaluru

Aswan, Ground Floor, 15/6
Primrose Road
Bengaluru – 560 001

Phone: (+91) (80) 4631 7000
Email: bengaluru@hsalegal.com

Kolkata

No. 14 S/P, Block C,
Chowringhee Mansions
Kolkata – 700 016

Phone: (+91) (80) 4631 7000
Email: kolkata@hsalegal.com

Stay connected

 www.hsalegal.com

 mail@hsalegal.com

 HSA Advocates

Disclaimer: This document is for general guidance and does not constitute definitive advice.

For limited circulation only | © 2020 HSA Advocates