

Guidance to employers amidst the COVID-19 (novel coronavirus) outbreak

With the World Health Organisation (WHO) having declared the COVID-19 outbreak a pandemic, it is essential to recognize the public health risk the disease poses. Employers must prepare their employees and effectively manage their workplaces in wake of this rapidly escalating situation posing large-scale threats to health. In view of the above, below are some frequently asked questions (FAQs) and answers to help employers mitigate concerns relating to the novel coronavirus at their workplace.

Q. 1. What are the various legal obligations upon the employer amidst the COVID-19 outbreak relating to safety of employees?

Under the applicable (Indian) State Shops and Establishments Act or the Factories Act, 1948, every employer is obligated to ensure the health, welfare and safety of employees during the course of their employment. In light of the imminent threat posed by the COVID-19 outbreak, the employer is obligated to provide all the necessary measures for ensuring the safety of the employees at the workplace, which include, *inter alia*, maintaining good hygiene practices at the workplace, providing hand sanitizers, face masks, paper tissues, displaying posters promoting respiratory hygiene, facility of hand wash with soap and water, etc.

It is pertinent to note that under the Employees' Compensation Act 1923, occupational diseases include '*Infectious and parasitic diseases contracted in an occupation where there is a particular risk of contamination*' which makes the employer further obligated to ensure the safety of the employee at the workplace in the current scenario.

Besides ensuring the safety of the employees, the employer is also obligated to ensure the privacy of their medical information under the Information Technology Act, 2000 and in compliance with other applicable laws relating to data protection.

Q. 2. What are the various measures/ guidelines to be observed by the employer at the workplace?

Though the current (Indian) labour statutes are silent in terms of measures to be taken during the outbreak of communicable diseases, the employer may follow the guidelines/ measures/ travel advisories issued by the World Health Organisation (WHO)¹ and the Ministry of Health and Family Welfare, Government of India ('MoHFW')², from time to time, in this regard.

¹ <https://www.who.int/docs/default-source/coronaviruse/getting-workplace-ready-for-covid-19.pdf>

² <https://pib.gov.in/PressReleaseDetail.aspx?PRID=1604942>
<https://www.mohfw.gov.in/AdditionalTravelAdvisory1homeisolation.pdf>
<https://www.mohfw.gov.in/AdditionalTravelAdvisory10032020.pdf>
<https://www.mohfw.gov.in/ConsolidatedTraveladvisoryUpdated11032020.pdf>

The employer should follow the guidelines for taking pro-active steps and to address the concerns at the workplace:

(a) Work from Home ('WFH')

In case an employee shows symptoms of COVID-19 and/or informs the employer of the same, the employer may ask the said employee to refrain from coming to the workplace, and request him/her to WFH. The employer may also provide said employee with the necessary assistance to seek medical advice. The employer ought to then undertake the exercise of sanitizing/ disinfecting the workplace, and may also urge the other employees (who may or may not have come in contact with the COVID-19 symptomatic employee) to avail the option of WFH.

(b) Travel Restrictions

As the COVID-19 is spreading across the world, it is advisable that the employers consider temporarily deferring non-essential business travel. Further, the employer may consider using alternatives to avoid any business loss due to the said restricted travelling, such as video/ web conferencing, which will ensure minimal disruption to its business. As per the advisory by the MoHFW, mass gatherings³ should be avoided. Hence, in case the employer was planning to organize any conference or event, the same should be avoided or deferred for some time.

(c) General Awareness

As the COVID-19 outbreak has created a global panic, it is advisable for the employer to provide reliable and verified information about COVID-19 to ensure that employees are aware of the risks posed by the disease and undertake the necessary precautionary and preventative measures. The employer may display posters promoting personal and workplace hygiene and offer guidance for the same. The employer should educate the employees to not circulate any false or unverified information over social media or otherwise create unnecessary panic at the workplace.

Q.3. If employers recommend WFH to their employees, are they required to pay their employees who choose to stay home but cannot work remotely (for no fault of their own)?

If employers decide to close down their offices/factories, they are still required to pay their employees their salaries as per applicable Indian laws. Further, if employers request their employees to WFH, they are still required to pay 100% of their employees' salaries, even if the employees are unable to work (or may not work efficiently and productively) due to

³ <https://www.mohfw.gov.in/advisoryformassgathering.pdf>

circumstances beyond their control, viz. natural calamity, nature of their jobs, inability to access servers, suspension of internet services, etc.

The above can be interpreted relying on the applicable labor laws, including principles of 'continuous service' and 'close days'. While discussing these concepts, Indian Courts have observed that if an employee's service is interrupted due to sickness, accident, leave, lay-off, strike or lock-out, the leave period is not excluded as a period of interrupted service, and employers are required to pay their employees their normal salaries for this duration.

Q.4. Is the employer obligated to report to suspected cases of COVID-19 to the government?

Presently, employers are not under any obligation to report suspected or identified cases of COVID-19 to a governmental body. This obligation is, however, vested upon medical practitioners/ hospitals.

Q5. Are the medical expenses incurred relating to COVID-19 infection covered under medical insurance policies?

The Insurance Regulatory and Development Authority of India ("IRDA") has issued guidelines⁴ for all insurance companies on handling claims reported under COVID-19 irrespective of type of policy. Per the IDRA's instructions, insurance companies are to expeditiously handle cases of COVID-19, covering costs of the medical expenses borne by the patient over the course of treatment, inclusive of cost of treatment during quarantine period. All payments shall be settled in accordance with the terms and conditions of the insurance policy.

⁴ https://www.irdai.gov.in/ADMINCMS/cms/whatsNew_Layout.aspx?page=PageNo4057&flag=1

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