

**COVID-19 PANDEMIC - WHAT AN EMPLOYER SHOULD CONSIDER BEFORE ALLOWING EMPLOYEES TO RETURN TO WORKPLACE****1. INTRODUCTION**

With a view to mitigate hardship to the public and to ensure continuity of operations, the Ministry of Home Affairs (the "MHA"), Government of India, has issued the consolidated revised guidelines dated April 15, 2020<sup>1</sup> (revised from time to time), wherein it has allowed certain permitted industries to continue work, provided they implement the standard operating procedures (the "SOPs") and comply with the National Directives for COVID-19 Management, at workplace.

As the Government of India or state governments may look at easing restrictions to allow businesses to reopen, employers need to be mindful of legal and practical considerations with respect to ensuring health and safety aspects at their workplace(s).

**2. LEGAL FRAMEWORK FOR ENSURING HEALTH, SAFETY AND WELFARE OF EMPLOYEES IN INDIA**

Currently, the Indian labour and employment statutes, regulating the safety and health of persons at workplace, exist in a fragmented manner and have very specific objectives, relating to safety and health aspects of employees to a limited extent.

The Factories Act, 1948 provides for the health, safety and welfare of the workers in the manufacturing sector. It also imposes an obligation on the employer to maintain a safe and healthy workplace for employees when dealing with hazardous processes or substances in a factory. The respective state specific legislations regulating the shops and commercial establishments provide for the conditions of work and terms of employment of employees engaged in shops, commercial establishments, theatres, restaurants, among others.

Apart from the aforesaid statutes, the Mines Act, 1952 aims at consolidating laws relating to the regulation of labour and safety in mines, the Building and other Construction Workers (Regulation and the Employment and Conditions of Service) Act, 1996 provides for regulating the employment and conditions of service of building and other construction workers and also provides for their safety, health and welfare measures, and the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 contains provisions for the health and safety of workers engaged in particular occupations.

The proposed Occupational Safety, Health and Working Conditions Code, 2019<sup>2</sup> (the "Code"), provide duties of an employer which, among other things, include providing a workplace that is free from hazards that may cause injury or diseases, providing free annual health examinations to employees in notified establishments, informing relevant authorities in case an accident at the workplace leads to death or serious bodily injury of an employee. Additional duties are prescribed for employers in factories, mines, docks, plantations, and building and construction work, including provision of a risk-free work environment, and instructing employees on safety protocols. It is possible that the current situation may

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[https://www.mha.gov.in/sites/default/files/MHA%20order%20dt%2015.04.2020%2C%20with%20Revised%20Consolidated%20Guidelines\\_compressed%20%283%29.pdf](https://www.mha.gov.in/sites/default/files/MHA%20order%20dt%2015.04.2020%2C%20with%20Revised%20Consolidated%20Guidelines_compressed%20%283%29.pdf)

<sup>2</sup> The draft of Occupational Safety, Health and Working Conditions Code, 2019 was introduced in the Lok Sabha on July 23, 2019 and is yet to be made a law. It subsumes and replaces thirteen (13) existing labour laws relating to safety, health and working conditions.

force the government to bring some additional changes to the Code, same or similar to as provided in the SOPs.

### 3. SOPs PRESCRIBED BY MHA

As part of the consolidated revised guidelines dated April 15, 2020, the MHA, exercising its power under the Disaster Management Act, 2005, has prescribed the '*National Directives for COVID-19 Management*'<sup>3</sup> (the "**National Directives**") and the '*Standard Operating Procedure for social distancing for offices, workplaces, factories and other establishments*'<sup>4</sup> with an aim to ensure that workplaces and public places, allowed to be opened during the lock-down period, are safe.

The National Directives for COVID-19 Management are to be enforced by the concerned district magistrates and the SOPs for social distancing for offices, workplaces, factories and establishments are to be enforced by industrial and commercial establishments, workplaces, among others. These safety measures have to be put in place prior to starting the operation of permitted industries or workplaces, during the lock-down period.

It is important to note that the safety measures as provided under the aforesaid National Directives and SOPs are in the nature of directions. Failure to implement or ensure the same by anyone may lead to a penalty being imposed under the provisions of the Disaster Management Act, 2005 and the Indian Penal Code, 1860.

The state governments have the liberty to further add to the SOPs laid down by the MHA, and some states have laid down further stringent requirements.

It is a strong possibility that the aforesaid National Directives and SOPs (with or without any additional state specific amendments) may continue even post lock-down and employers may want to consider incorporating such aspects in their health and safety policy. It is yet to be seen whether, in future, any non-compliance will be subject to a penalty under the laws discussed in the earlier paragraph.

#### 3.1. Safety measures prescribed under the National Directives for COVID-19 Management with respect to workspaces and manufacturing establishments.

- (a) All persons in charge of workplaces shall ensure social distancing as per the MHA guidelines.
- (b) No organisation or manager should allow gathering of 5 or more people.
- (c) All workplaces shall have adequate arrangements for temperature screening and provide sanitizers at the convenient spots.
- (d) All workplaces shall have a one-hour gap between shifts and staggered lunch breaks for the staff to ensure social distancing.
- (e) People above 65 years of age and those with co-morbidities and parents of children aged 5 years of below may be encouraged to work from home.
- (f) Encourage all employees to use Arogya Setu app.

<sup>3</sup> Annexure I of the consolidated revised guidelines dated April 15, 2020.

<sup>4</sup> Annexure II of the consolidated revised guidelines dated April 15, 2020.

- (g) All organisations to sanitize work places between shifts.
- (h) Large meetings to be prohibited.
- (i) With respect to manufacturing establishments, it is prescribed that frequent cleaning of common surfaces and mandatory hand washing shall be enforced. No overlap of shifts, staggered lunch breaks and intensive communication and training on good hygiene practices shall be taken up.

**3.2. SOPs for social distancing for offices, workplaces, factories and establishments:**

- (a) All workplace premises including building entrance, canteens, cafeteria, meeting room, conference halls, open areas, the entrance gate of sites, bunkers, porta cabins, building, verandah, lifts, washroom, toilet, sink, water points, walls and other surfaces shall be disinfected completely using user-friendly disinfectant mediums.
- (b) Special transportation facilities to be arranged for workers coming from outside without any dependence on the public transport system. The vehicles should work only with 30- 40 percent passenger capacity.
- (c) Mandatory disinfection of all vehicles and machinery entering the premises.
- (d) Mandatory thermal screening of all people entering and exiting workplaces.
- (e) Mandatory medical insurance for the workers.
- (f) Provision of hand wash and sanitizer in sufficient quantities, preferably with touch-free mechanism at all entry and exit points and common areas.
- (g) Workplaces shall have a one-hour gap between shifts, with staggered lunch breaks for staff.
- (h) Discourage large gatherings or meetings of 10 or more people. Seating of people to be fixed at least 6 feet away from each other on job sites and other sessions.
- (i) Not more than 2-4 persons, depending upon the capacity of the lift, to be allowed to travel in one trip.
- (j) Encourage the use of stairs.
- (k) Strict ban on gutka or tobacco use and spitting.
- (l) Total ban on non-essential visitors on site.
- (m) Identification of nearby hospitals and clinics that have been authorised to treat COVID-19 patients and the list should be made available at workplaces at all times.

In addition to the above, the manufacturing and other industrial establishments with access control in special economic zones (SEZs) and export oriented units (EOUs), industrial estates and industrial townships shall make arrangements for stay of workers within their premises as far as possible or in

adjacent buildings. The transportation of workers to work-place shall be arranged by the employers in dedicated transport by ensuring social distancing.

#### **4. ADDITIONAL MEASURES TO BE UNDERTAKEN BY EMPLOYERS**

Given that the lock-down may completely or gradually be lifted in certain or most states and Union territories in the coming weeks, the employers would need to start commencing the ground work, treating the National Directives and SOPs as the base threshold (even in post lock-down stage), before allowing return of employees to workplace.

We discuss some steps that employers may want to consider, in preparing for the return of employees, while ensuring compliance with other applicable laws.

##### **4.1. Medical Desk**

Apart from the establishments statutorily required to have a medical team or medical arrangements at workplace, employers at other establishments may also constitute a medical team at workplace (or have an arrangement with a healthcare institute, as permissible or possible) to not only disseminate the right information to returning employees but also be available to deal with any healthcare related emergencies, including initial diagnosis of a person at workplace, showing symptoms of an illness that could be a cause of worry for the employer. This would also allow the employer to take steps involving the concerned employee as well as other employees at workplace.

Having such a team or an arrangement would also ensure that health and hygiene related aspects, at workplace, are handled and supervised by the people competent in such field, besides affirming faith of employees in practices adopted at workplace.

The concerned official of such a desk or any person trained by them should be assigned the responsibility of temperature screening of every person allowed to enter the workplace and keep a record thereof. All such records should be subject to confidentiality and maintained in compliance with Indian laws relating to data privacy and sensitive or personal information of an employee (or any other person).

##### **4.2. Social distancing norms**

While ensuring compliance with applicable laws, orders, guidelines, directives and SOPs, employers may consider the following practices.

- (a) Adopt staggered opening of workplace, that is, having employees report to work at different times or on alternating days in order to limit the number of employees arriving, leaving or working at the premises at the same time. This could also be applied for operations that run in shifts and more than one shift, if possible, could be operated to divide the workforce.
- (b) Consider allowing employees, who may be able to work remotely, to continue to work from home, so as to have reduced number of persons at workplace.
- (c) Ask employees, who are sick, to stay at home, and avail the leaves as available to them.
- (d) Depending on business needs, decide on the department or employees who should first report at workplace or are needed to continue to visit the workplace.

- (e) Depending upon the nature of business, ask employees to use hand gloves or other personal protective equipment (PPE) as a precautionary measure.
- (f) Effectively communicate and inform the employees about the norms and SOPs issued by the appropriate government, or being implemented by the employer, with respect to safety of persons at workplace along with the consequences of non-compliance thereof.
- (g) Constitute a team of relevant officers or managers or delegate them, if already in place, the responsibility to assist the employer in restarting its operations, including ensuring compliance of relevant laws.
- (h) Consider making structural changes at workplaces to create more distance between employees and avoid close proximity to one another.
- (i) Restrict common use or sharing of office equipment such as printers, pen-drives, office stationaries, and implement measures to disinfect them after each use, and consider installing facial or voice-based recognition or attendance systems.

#### **4.3. Disinfecting workplace**

Office area including conference, meeting, and training rooms, canteens cafeteria, work desks, parking, lifts, open areas, cabins, washrooms, and any area which may be visited by any person, including any area used for storage of goods or material, should be disinfected at regular intervals.

In case of a manufacturing unit, special focus on disinfecting the machines, equipment and areas in and around machines should be laid down.

Employees should also be entrusted the responsibility or obligation to ensure disinfecting and sanitizing their work desks or spaces at regular intervals. Although the prevailing law casts a duty on the employers to ensure a safe and healthy workplace, yet the combined effort of employers and employees to disinfect and sanitize and keep the workplace clean should be implemented.

Employers should also consider introducing disinfection and sanitisation equipment outside the workplace before allowing entry to any person to workplace.

#### **4.4. Transportation**

Employers should consider examining the transport facility extended by its transport provider and also ensure that such service provider undertakes to ensure compliance with applicable laws, guidelines, Directives, SOPs, and requirements laid down by the employer including disinfecting the transportation before every shift and temperature screening before on boarding of a person, There should also be an obligation to timely submit such records with the employer (besides maintaining the confidentiality thereof, in compliance with data privacy laws of India).

This may mean amendment of any existing agreement(s) that an employer may have with its service providers.

#### 4.5. Use of Personal Transport

Employers should consider sending an advisory to the personnel who use personal vehicles, expecting them to ensure compliance with the applicable directions of the government(s) during use of their personal vehicle.

In case the personal transport of an employee is to be parked within the building of the employer or leased space of the employer, employer may want to examine the aspects relating to disinfecting such vehicles.

If needed, employer may want to propagate the message of social distancing being followed during use of a personal vehicle.

Employers may also want to consider suggesting safeguards or protections that an employee must take, if using public transport, besides any additional steps that an employer should take when such a person reports at workplace.

#### 4.6. Personal Items

With an intent to ensure that no contaminated personal item brings any infection at workplace, employers may want to advise employees to bring only absolutely unavoidable and essential items at workplace that are either needed for their personal needs or to render services. They should be allowed to enter, subject to following the relevant guidelines and disinfecting such items (without contaminating the food, if brought).

#### 4.7. Spreading awareness

Employers should consider sending a guidance note to employees before they report to workplace regarding health and safety measures or protocols that they would be expected to comply at workplace. Necessary trainings and guidance should be provided to employees, when they report at workplace, including to employees engaged in security and housekeeping.

Posters and awareness material should be displayed at conspicuous places in workplace (including in regional language) as a reminder of safety and hygiene. The awareness material prepared should be consistent with the requirements laid down by the government(s).

#### 4.8. Other measures

Several aspects discussed herein are relevant for the personnel employed by an establishment, however, a workplace may also be visited by third party employees including persons rendering house-keeping, cafeteria and security services. Therefore, it is essential that an establishment must ensure that it amends its contracts with the third party service providers, to cast an obligation on such a service provider, to send a healthy person (to the site of establishment) and also ensure that the service provider ensures that its personnel not only are healthy but also ensure compliance of health and safety norms at the workplace of an establishment.

Employers may also want to seek indemnity to cover its exposure or loss due to non-compliance by the personnel of a service provider or a service provider itself.

## 5. **INDUSLAW VIEW**

The present labour and employment statutes make provisions for maintenance of basic hygiene at the 'workplace'. However, the last several months have proved that not only the workplace but the definition of workplace may also change in the coming times.

Also, new health and safety norms would be amongst the key drivers to not only motivate existing employees to visit the workplace but also a prospective employee to join an employer.

Possible changes in laws would not only mandate the need for an employer to look at the practices followed at workplace but also ensure that the employer is not subjected to any financial exposure besides any legal action either by the government bodies or the employees. The measures discussed herein are not absolute but only measures which, if followed by an employer would deem the employer compliant under applicable laws or otherwise. However, it is a work in progress and the aspects discussed herein are to encourage employers to start thinking in the direction of changing workplace norms and practices, consistent with applicable laws or government directions, guidelines, or orders, in addition to any practical or legal aspects associated with their businesses.

Moving forward, health and safety of employees is also likely to be a key driver in client relationships, hence not only the service providers but also service seekers would need to start paying attention to such essential and unavoidable changes.

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