

Update

17 March 2020

COVID-19 - WHAT EMPLOYERS IN INDIA NEED TO KNOW

The Indian Central and State governments are on high alert to contain the spread of COVID-19 cases in the country. We have assessed various measures taken by the government and addressed common questions that companies would have in this environment to help them better deal with COVID-19.

India is on high alert as the number of confirmed novel coronavirus (**COVID-19**) cases in the country has escalated to 125 (as of 17 March 2020). The Disaster Management Act, 2005 (**DMA**) has been invoked, giving wide powers to the Ministry of Health and Welfare to enhance preparedness and containment of the virus. Various State Governments have also classified COVID-19 as an 'epidemic disease' under the Epidemic Disease Act, 1897 (**EDA**), giving local administration authority to impose various containment measures, such as quarantine, closures and surveillance. The Central and several State governments have been issuing numerous advisories and regulations on matters of travel, employment and healthcare.

In this constantly evolving space, it is important for Indian companies to find the right balance between business continuity and concerns over employees' health and safety. To equip companies to better handle the situation, we have addressed below some frequently raised queries in relation to COVID-19.

Frequently Asked Questions

1. Travel

Have all Indian visas been suspended?

Yes, India has quite comprehensively closed its borders, with only few exceptions. Effective 13 March 2020, all existing visas to India have been suspended till 15 April 2020, including for Overseas Citizens of India. Exceptions only relate to holders of employment, project and diplomatic visas.

Any foreigner wanting to travel to India now would need to apply for a consular visa and demonstrate compelling reasons for entry.

What quarantine rules are in place?

As per the Central government's travel advisories till 16 March 2020, all incoming travellers including Indians who:

- arrive from or have visited China, Italy, Iran, Korea, France, Germany and Spain after 15 February 2020 shall be quarantined for at least 14 days. FAQs released by the Bureau of Immigration have clarified that transit through airport is not considered stay.
- passengers travelling from or transiting through UAE, Qatar, Oman, and Kuwait shall also be subject to mandatory quarantine requirements.

Given the varying use of verbiage in various advisories and FAQs, there is a risk that even transit through some of the above countries (in the first point) may result in quarantine being imposed. Further, absolute restrictions have been imposed on any travel from United Kingdom, Turkey, EU and countries of European Free Trade Association which is discussed later.

Incoming travellers from other countries too can be quarantined for a minimum of 14 days. In fact, a previous travel advisory (10 March 2020) required all passengers having travel history to China, Hong Kong, Republic of Korea, Japan, Italy, Thailand, Singapore, Iran, Malaysia, France, Spain and Germany to undergo self-imposed quarantine for a period of 14 days from the date of their arrival (all countries mentioned here being referred to as **Affected Countries**).

Some State governments may also expand these requirements. For example, the Karnataka government, through a written order dated 13 March 2020, is widening quarantine requirements, requiring international travellers from any COVID-19 impacted country to self-isolate for 14 days if asymptomatic, and to undergo mandatory testing if symptomatic.

The regulations issued by several State Governments under the EDA further require individuals to mandatorily self-report to the nearest government hospital if they have travel history to a country or area where COVID-19 has been reported, and to self-isolate/home quarantine for 14/28 days.

Some foreign nationals from our group company are already in India. How are they impacted?

The visas of foreign nationals who are already in India remain valid. They should however contact the nearest Foreigners Regional Registration Office (**FRRO**), for visa extension/conversion, or grant of consular service.

What other travel restrictions should companies be aware of?

Through its latest travel advisory dated 16 March 2020, the Central government has prohibited travel of passengers from United Kingdom, Turkey, and member countries of the EU and the European Free Trade Association, with effect from 18 March 2020 till 31 March 2020. This can therefore impact even Indians who are currently in these countries for holiday or work, who may be stranded there till the restrictions are lifted.

While entry of foreigners (with limited exceptions for employment visa holders, etc.) has become almost impossible right now, even Indian nationals have been strongly advised by the government to avoid non-essential travel abroad (and especially refrain from travelling to Affected Countries).

Travel within India - No specific advisories have been issued prohibiting domestic travel. State labour departments (such as, in Karnataka) have advised employees in Information Technology (**IT**) and Business Technology (**BT**) sectors to report to the health authorities in the State if they have a travel history in the Affected Countries or other south-east Asian countries. Further, such persons in Karnataka are required to take permission of the health department before leaving the State.

Key Takeaways for Employers

- Visas of foreign nationals employed in India (or those based in India for execution of power/steel sector projects) are not impacted due to the latest visa-suspension. If foreign nationals are already in India, employers should assist them with contacting the local FRROs.
- Employers should avoid overseas business travel for its employees due to the constantly developing uncertainties associated with the spread of COVID-19 and the very real possibility of being quarantined upon return. To the extent feasible, it is also advisable that business travel within India is restricted.
- Employers may not be able to prevent employees' personal travel. However, HR should ask employees returning from or proceeding on leave to provide details on their travel history/plans. Preventive measures can be taken by HR based on a review of this information (such as, advising the concerned employees to work from home, go on self-quarantine, etc).

2. Flexible Working and Managing Leave

Should we allow employees' requests to work from home (WFH)? Can companies require employees to WFH?

Employers have a general duty of maintaining workplace health and safety, and to the extent employees have to distance themselves socially, organisations should consider WFH requests positively, where the job permits. In fact, in some locations like Bangalore, municipal authorities have strongly advised IT/BT companies to allow employees (asymptomatic or otherwise) to WFH.

However, State specific reactions have been varied. For example, guidelines issued for IT companies in Telangana state that they should maintain business as usual (with necessary preventive measures) to avoid unnecessary panic, and organisations should consult/discuss with the Commissioner of Police Cyberabad before shutting down facilities or sending all employees home.

Can we ask asymptomatic employees to proceed on leave?

Not really. Availing leave on a particular day is an employee's prerogative, and they cannot be forced to utilise their leave. Most organisations are therefore actively examining WFH solutions as a preventive measure.

In Karnataka, Delhi and Mumbai, State governments have ordered places of mass gatherings like malls, theatres, gyms, swimming pools, etc. to be temporarily closed. For such types of establishments, given there is a government order, it could be argued that the employees have been temporarily laid-off by the employers (as a result of their inability to provide work due to a natural calamity). Eligible 'workmen' level employees of such establishments could claim lay-off compensation (50% wages) for the period their establishments are closed.

If an employee has tested positive for COVID-19 and is absent from work, how do we manage this absence?

The manner of treating such absences would depend on the location of employment. In some States such as Karnataka, companies are required to provide COVID-19 infected employees with mandatory sick leave of 28 days (even if they contracted COVID-19 on a personal trip), over and above their regular statutory leave entitlement. Other States have not extended similar entitlements to employees so far. Therefore, the treatment of absence for positive-tested employees may differ based on location.

Schools have been closed in several cities. An employee is asking for leave to take care of his child. How do we manage this absence?

Employees would be entitled to bank on existing casual leave or annual leave balances to deal with such eventualities (where WFH is not a viable alternative). Subject to the company policy, any extended leave (paid or unpaid) would normally be at the employer's discretion.

Several creches have also closed as a preventive measure. What obligation does the employer have towards employees who are relying on such employer provided/arranged creche facilities?

Employees would be entitled to bank on existing casual leave or annual leave balances to deal with such eventualities (where WFH is not a viable alternative). However, given that there is a legal obligation on employers to provide creche facilities, it may be advisable (if not mandatory) for employers to voluntarily extend reasonable paid leave on an exceptional basis to impacted employees who can't perform their duties remotely. The Department of Factories in Karnataka has, in fact, suggested that creches be closed in factories and employees availing the facility may be placed on paid additional leave till the current crisis is resolved.

Key Takeaways for Employers

To avoid further outbreak of COVID-19, authorities are issuing multiple advisories and are taking (or encouraging) different preventive measures. Employers should carefully review advisories and regulations applicable in their locations, and accordingly make informed business decisions. In case of any doubt, legal teams should be consulted especially in reacting to more complex situations where creche vendors are voluntarily closing as a preventive measure, etc.

3. Salary Payments and Compensation

An employee has proceeded on self-quarantine. Should we pay salary for this period?

This would depend on multiple factors, including the circumstances resulting in the quarantine and the risk of COVID-19 infection. For example, an employee returning from a work trip should be paid in case they need to be quarantined or self-isolated (and they can't work during this period) as a preventive measure. However, if the employee was on a vacation or became at-risk for COVID-19 completely unconnected with the work or workplace, they could be asked to utilise existing leave balances. In some States, positive-tested employees may be entitled to special paid sick leave (for example, 28 days in Karnataka). Hence, pay obligations would need to be assessed on a case-to-case basis.

An employee claims he contracted COVID-19 while on business travel or at office. Should we pay him any compensation?

Indian employers have an obligation to pay compensation to employees who are injured (which includes partial or permanent disablement) or die due to accidents arising out of or in the course of employment. Hence, strictly speaking, unless it can be demonstrated that COVID-19 was contracted in the course of employment and it arose out of employment, there would be no legal obligation to pay compensation to impacted employees.

It is also relevant to note that the trigger for the obligation to pay compensation depends on various factors, including, the State of employment, the nature of the employee's work, and the circumstances in which the injury/death was caused. Hence, the requirement to pay compensation to COVID-19 affected-employees would need a case-specific assessment.

Key Takeaways for Employers

The obligation to make salary payments for leave availed by positive-tested employees would depend on the employee's work location and/or their leave balances. On the other hand, the obligation to pay employees' compensation would not ordinarily trigger, unless it is demonstrated that COVID-19 arose out of and in course of employment.

4. Employee Screenings and Medical Data

Can we require our employees or visitors to undergo thermal screenings at the entrance to our office premises?

Yes. Generally, employment contracts grant companies rights to require employees to undergo medical examinations/checks. Employers could rely on such contractual provisions and various government advisories to undertake preventive measures such as asking employees to undergo thermal screening at the workplace. Similarly, organisations would be entitled to ask visitors to consent to thermal screenings for gaining entry into the premises.

Can companies request employees to submit medical certificates on being tested positive for COVID-19?

Yes, as is normally the case with any illness requiring long term absence, organisations can ask employees to submit medical certificates. In fact, as per a Karnataka labour department circular, COVID-19 infected employees who are covered under the Employees' State Insurance Act, 1948 (**ESI**) should obtain a certificate from ESI officers and submit the same to their companies to avail 28 days' leave for COVID-19.

While other States have not issued notifications on similar lines, it would still be possible for companies to require their employees to submit medical proof if they apply for sick leave.

Key Takeaways for Employers

- If the medical screening results are captured in electronic form, an important requirement would be to ensure that employees have consented to the collection, processing, etc. of sensitive personal data (in this case, medical information). Typically, such consent would have been obtained in the employment contracts. For visitors, consent could be obtained prior to the screening.
- Companies can also require employees to submit medical certificates. However, given the sensitivities involved in COVID-19 cases, access to such documents should be on a strict, need-to-know basis. In fact, in Pune, authorities have warned penal action for disclosure of identity of positive-tested patients on social media platforms. Thus, companies should be wary of the internal and external communications they issue in relation to COVID-19.

5. Best Practices

What preventive measures are other Indian companies adopting to handle employment issues amidst COVID-19?

Based on advisories issued by Central and State authorities, and drawing on approaches adopted by corporates across the globe, we have seen some Indian companies implement the following preventive actions:

- Banning all non-essential business travel for employees (especially to the Affected Countries);
- Requiring employees to take senior management approval for any form of domestic and international travel;
- Sanitizing and disinfecting workplaces regularly;
- Distributing surgical masks and placing hand sanitizers at accessible locations at the office premises;
- Encouraging employees to conduct meetings via call or video conference;
- Disabling the biometric systems at offices;
- Advising employees to self-isolate in case of flu-like symptoms;
- Allowing employees to WFH until the situation improves and alternating separate teams to work from the office and from home in turns where the job requirements so necessitate, to maintain continuity;
- Requiring suppliers/vendors to ask contract workers to WFH;
- Regulating entry of third-party visitors to the office premises;
- Introducing thermal screenings for all persons at entry gates of the offices;
- Requiring employees to submit medical certificates to the HR upon their return;
- Setting up dedicated teams to address employee queries, and educating employees on DOs and DON'Ts;
- Postponing internal events that require large gatherings.

6. Reporting and Powers of Authorities in the times of COVID-19

Do companies have an obligation to report suspicious cases to the authorities?

A specific obligation has not been imposed on employers yet to report cases to the authorities. However, in the advisories and regulations issued by the Central and State authorities, individuals are requested to report symptoms and travel histories to COVID-19 Affected Countries to the authorities. Employers should provide their employees with information and support to ensure timely reporting.

Set out below are some helpline numbers and contact details that individuals can use to report the same based on their location -

Ministry of Health and Family Welfare: Helpline number +91-11-2397 8046;
ncov2019@gmail.com

Arogya Sahayavani (Karnataka): Helpline number 104; ssuidsphanqalore@gmail.com

Society for Cyberabad Security Council, and GHMC Control Room for Epidemic cell (Telangana): +91-9000257058; +91-9849902438; +91-8008456677

State Control Room (Maharashtra): 104; 020-26127394; 020-27290066

Health Department (Haryana): 108

Disha (Kerala): 24X7 Helpline number 0471-2552056

What powers do authorities have to prevent the outbreak of COVID-19? Central and State governments have been issuing advisories and regulations regarding COVID-19. Are these binding?

Powers have been invoked under the EDA and the DMA to issue various regulations on COVID-19.

Several Indian states have categorised COVID-19 as an 'epidemic' and have issued their respective Epidemic Disease, COVID-19 Regulations, 2020. These regulations largely provide directions to individuals (to report travel histories), and to authorities and hospitals (in relation to screenings, testing, etc.). A few regulations however could also impact employers. For example, in Himachal Pradesh, the regulations allow authorities to enter/inspect premises they consider as hazardous to public safety, enquire about or undertake physical examination of persons, etc. In Haryana, Maharashtra and Karnataka, if COVID-19 cases are reported from a defined geographic area, the district authorities could seal such areas, bar entry/exit from a containment area, etc. Thus, in this context, companies could also potentially be impacted.

In a few States (such as, Odisha), the governments have declared COVID-19 as a 'disaster' under the DMA. Similar to the EDA, authorities are vested with broad powers under the DMA to prevent disasters. For example, as per the DMA, district authorities can control and restrict the entry/movement/departure of persons from vulnerable or affected areas. Thus, if several impacted persons are employed by a particular company, authorities could choose to rely on such provisions under the DMA to take preventive measures in the company's premises.

The regulations issued by State and Central authorities under the provisions of the EDA and/or the DMA are binding on all persons concerned (including on employers, where relevant). Failure to comply with the regulations would be an offence punishable under the relevant law.

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