

# **LEGAL IMPLICATIONS OF THE COVID-19 PANDEMIC**

## **ON LABOUR AND EMPLOYMENT LAWS**

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### **INTRODUCTION**

The outbreak of any epidemic in any country does not restrict the problem to a mere health emergency but distorts the well knit social and economic fabric of a nation. The impacts are far more severe in case of a pandemic. The COVID-19 pandemic has not only caused the loss of lives around the globe but has had its fair share of influence on every other component of society, economics and geo-political relations. It remains to be seen how nations will revive their economies post this virulent outbreak.

The pandemic has compelled several nations to seal their international borders resulting in a temporary break in the foreign trade and commerce of the nations. However, to contain the disease mere sealing of international borders of a nation does not suffice and countries have had to take drastic measures of lockdown within their territories to ensure that community spread of the virus does not happen and in cases where community spread has already occurred the numbers of further infections are limited. The resultant effect is the complete shutdown of industries and establishments of all sectors with the exception of those engaged in essential commodities and services till the lockdown is in place. While work from home has been advised by almost all governments across the globe, the same is not feasible or possible for various sectors and industries.

While the national economy in India will be severely hit with the temporary lockdown, the ripple effect will be felt worst by the classes of employees who stand at the base of the hierarchy of the labour stratification. With infections crossing 11,000 (as on this

date), it is only justifiable that the nationwide lockdown continues. However, industries need to be prepared that obviously the duration of the lockdown will have a reverberating effect and steps will need to be taken to stem this workforce haemorrhage. The containment of a pandemic is not the sole responsibility of any one but a collective responsibility of all. Hence every individual, industry and establishment ought to strictly follow the Government directions on lockdown in a joint effort to not only stand strong against this dangerous outbreak but also help the millions of workforces in India.

**"There's always an opportunity with crisis. Just as it forces an individual to look inside himself, it forces a company to re-examine its policies and practices."**

**Judy Smith**

(One of world's premier crisis management Experts & Author of Good Self, Bad Self: Transforming Your Worst Qualities into Your Biggest Assets)

In the face of lockdown, the employers in several industries, establishments and companies will be faced with severe economic losses and might not be in a favourable position to discharge the wages and salaries of their employees and would require some time to mitigate the losses suffered. However, the employees of such industries, establishments or companies who are solely dependent on their wages or salaries may have no alternative means to sustain themselves and justifiably demand the payment of wages or salaries on the ground that such absence from work was not a voluntary or intentional act on their part but rather on account of them being incapacitated owing to the lockdown and had there been no lockdown they would have attended their work place like before. This is one among the several issues that employers will be faced with during the lockdown and even after the lockdown is withdrawn.

Further, every employer may need to take several precautionary measures, post the lockdown in terms of maintaining health records of employees to prevent any possibility of the spread of the disease at the establishment. However, obtaining medical records of employees require compliance of strict rules in accordance with laws. In the light of the outbreak of the COVID-19 and the ongoing lockdown,

employers of all establishments shall need to take adequate measures to prevent themselves from getting into any legal turmoil whether in terms of disbursement of wages or complying with data privacy and data protection laws or filing of several labour returns and tax returns. The possible measures that may need to be taken by employers in compliance with directives of the government issued specifically in the context of the present COVID-19 pandemic are discussed in this Article.

### **PAYING OF WAGES OR SALARIES TO EMPLOYEES DURING COVID-19 PANDEMIC**

The paying of wages or salaries to employees during the national lockdown owing to the outbreak of COVID-19 is an issue which has sparked a lot of discussion on media across platforms. The immediate worry with any steps on discontinuing wages or salaries is that employees/workforce stuck during the national lockdown will stop having access to money which is crucial for them to be able to access essential services. Disruption in access to money would potentially lead to an exodus of working population coming out on the roads to show dissent which would undoubtedly have a disastrous effect in the pandemic numbers. It is important to consider the legal implications of the COVID-19 pandemic on the laws relating to the payment of wages or salaries. The legal implications of the COVID-19 pandemic and the national lockdown can be ascertained only after taking into account the Advisories and Orders issued by the Government in the light of the outbreak of the COVID-19 pandemic, the statutory laws applicable and the contractual terms of employment.

### **Advisory and Order with respect to Labour and Employment issued by the Government of India in light of the Covid-19 Pandemic**

- I. **The Secretary to the Government of India vide Letter dated 20.03.2020 (having No. D.O. No. M-11011/08/2020-Media) issued an Advisory to the Department of Public Enterprises,<sup>1</sup> Ministry of Housing and Urban Affairs,<sup>2</sup>**

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<sup>1</sup>Government of India, Ministry of Labour & Employment; Advisory to Secretary , Department of Public Enterprises to the employers on Covid-19 outbreak  
<https://labour.gov.in/sites/default/files/Shri%20Sailesh.%20Secretary%20DPE.pdf>

<sup>2</sup>Government of India, Ministry of Labour & Employment; Advisory to secretary, Ministry of Housing and Urban affairs to ease the hardship being faced by workers due to COVID-19 outbreak

**the Chief Secretaries of all States and Union Territories<sup>3</sup> and All Employers' Association<sup>4</sup>** with the following advisory guidelines to be issued upon all employers both PUBLIC and PRIVATE establishments to extend their cooperation by:

- a. not terminating their employees, particularly casual or contractual labourers;
- b. not to reduce their wages;
- c. even if any worker takes leave, he should be deemed to be on duty without any consequential deduction in wages for the period;
- d. if the place of employment is to be made non operational due COVID-19, the employees of such unit will be deemed to be on duty.

**II. The Deputy Secretary to the Government of India vide Letter dated 19.03.2020 (having No. Z-11025/1/2020-LC) issued an Advisory to All Workers' Organization and Employers' Organization**, with a number of guidelines on health hygiene and precautionary measures against health, hygiene and precautionary steps to contain the spread of COVID-19. Among other the important measures to be taken note of are as follows:

- a. encourage the staff to work from home wherever possible;
- b. meetings as far as feasible may be done through video conferencing
- c. minimize or reschedule meetings involving large number of people unless necessary;
- d. employees to undergo self quarantine if they feel unwell;
- e. employees at higher risk, for instance, older employees, pregnant employees and employees who have underlying medical condition to take

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[https://labour.gov.in/sites/default/files/DO\\_letter\\_to\\_secy.pdf](https://labour.gov.in/sites/default/files/DO_letter_to_secy.pdf)

<sup>3</sup>Government of India, Ministry of Labour & Employment; Advisory to the Chief Secretaries of States and UTs to ease the hardship being faced by workers due to COVID-19 outbreak

<https://labour.gov.in/sites/default/files/file%201.pdf>

<sup>4</sup> Government of India, Ministry of Labour & Employment; In this critical time of the coronavirus (COVID-19) epidemic, the Ministry of Labour and Employment advises all public and private employers to support their employees and workers

[https://labour.gov.in/sites/default/files/Central\\_Government\\_Update.pdf](https://labour.gov.in/sites/default/files/Central_Government_Update.pdf)

extra precautions and not to expose such employees to any front line work requiring direct contact with public.<sup>5</sup>

- III. **The Central Government launched the Pradhan Mantri Garib Kalyan Yojana (PMGKY) Package on 26.03.2020** with a view to help the low wage earning EPF members and simultaneously help establishments covered by EPF which have employment strength of up to one hundred employees and ninety percent of whose employees earn less than fifteen thousand in a month. By virtue of the said the Scheme, the Central Government proposed to grant relief by payment of EPF and EPS contribution (24% of wages) in the EPF account of wage earners earning less than Rs. 15,000 (Fifteen thousand) per month. The Scheme shall be valid for the months of March, 2020, April, 2020 and May, 2020.<sup>6</sup>
- IV. **The Central Government vide Notification dated 27.03.2020 issued the Employees' Provident Fund (Amendment) Scheme, 2020** thereby inserting a new sub-paragraph (3) to Section 68L of the Employees' Provident Fund Scheme, 1952 providing that any member of the said scheme employed in any establishment or factory located in any area which is declared as being affected by any epidemic or pandemic by the appropriate government shall be permitted a non-refundable advance from the from the provident account of such member not exceeding the basic wages and dearness allowances of such member for three months or 75% of the total amount standing to his credit in the fund, whichever is less.<sup>7</sup>

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<sup>5</sup>Government of India, Ministry of Labour & Employment; Advisory to all Workers and Employers' Organisations on COVID-19

<https://labour.gov.in/sites/default/files/Preventive%20measures%20against%20COVID-19%20outbreak.pdf>

<sup>6</sup> Government of India, Ministry of Labour & Employment, Employees' Provident Fund Organisation, India; Press release Central Government has launched the Pradhan Mantri Garib Kalyan Yojana (PMGKY) to help the poor fight the battle against Corona Virus

[https://www.epfindia.gov.in/site\\_docs/PDFs/Circulars/Y2020-2021/PR\\_PMGKY.pdf](https://www.epfindia.gov.in/site_docs/PDFs/Circulars/Y2020-2021/PR_PMGKY.pdf)

<sup>7</sup> Government of India, Ministry of Labour & Employment; Insertion of provision in the EPF scheme, 1952 to provide advance to the EPF members in the situation emerging due to COVID-19 pandemic.

[https://labour.gov.in/sites/default/files/EPF\\_scheme%2C1952.pdf](https://labour.gov.in/sites/default/files/EPF_scheme%2C1952.pdf)

- V. **Order dated 29.03.2020 (having No. 40-3/2020-DM-I(A)) issued by the Ministry of Home Affairs, Government of India**, had in the wake of the movement of the migrant workers from one State to another, directed the observation of the said. Clause (iii) of the said Order directed all employers, be it in the industry or in the shops or commercial establishments, shall make payment of the wages of their workers, at their work places, on the due date, without any deduction, for the period their establishments are under closure during lockdown. It was further provided that in case of any violation of any provision of the said Order the respective State/ Union Territory Government shall take necessary action under the Disaster Management Act, 2005.<sup>8</sup>

**Statutory Provisions with respect to Labour and Employment which may be applicable during the Covid-19 pandemic:**

Under pressing circumstances like the instant case of the COVID-19 pandemic wherein with the exception of a few industries of essential commodities and services, all other industries are struggling to thrive with the current lockdown in place, such industries may opt for the following recourses which are available under Statute:

- I. **Lay off** – Lay off has been defined in Section 2(kkk) and the provision for implementing lay off has been enumerated in Chapter VA and Chapter VB of the Industrial Dispute Act, 1947. Lay off refers to the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery [or natural calamity or for any other connected reason] to give employment to a workman.

The Hon'ble Supreme Court of India, had observed in a very recent Public Interest Litigation filed for ensuring the safety of Health and Medical

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<sup>8</sup>Government of India, Ministry of Home Affairs; MHA Order restricting movement of migrants and strict enforcement of lockdown measures - 29.03.2020  
[https://mha.gov.in/sites/default/files/MHA%20Order%20restricting%20movement%20of%20migrants%20and%20strict%20enforcement%20of%20lockdown%20measures%20-%2029.03.2020\\_0.pdf](https://mha.gov.in/sites/default/files/MHA%20Order%20restricting%20movement%20of%20migrants%20and%20strict%20enforcement%20of%20lockdown%20measures%20-%2029.03.2020_0.pdf)

workers, that, *“The pandemic which is engulfing the entire country is a national calamity”*.<sup>9</sup> Thus in light of the observation of the Hon'ble Supreme Court, it may be said that the recent lockdown owing to the outbreak of COVID-19 may be construed as a natural calamity qualifying as a ground for the employer to lay off its employees. However, the conditions precedent to lay off as well as the obligations of the employer during the period the employees are laid off as well as post that period shall have to be strictly complied with by the Employer as provided in Chapter VA and Chapter VB of the Industrial Disputes Act, 1947. Lay off entitles the employee laid off for a compensation of 50% of the total basic wage and dearness allowances. Lay off is generally for a period of 45 (Forty five) days post which the Employer may retrench the employee if the conditions do not turn favorable.

**II. Retrenchment (or Termination)** - Retrenchment has been defined in Section 2(oo) and the provision for implementing retrenchment has been enumerated in Chapter VA and Chapter VB of the Industrial Dispute Act, 1947. Retrenchment refers to the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and doesn't include voluntary retirement, retirement on superannuation, termination of service for non-renewal of contract or termination of service on ground of continued ill health.

In case of retrenchment as well, the conditions precedent to retrenchment as well as the obligations of the employer for retrenchment shall have to be strictly complied with by the employer as provided in Chapter VA and Chapter VB of the Industrial Disputes Act, 1947. In case of retrenchment, service of notice is mandatory. The employee retrenched is also entitled to compensation at the time of retrenchment. Retrenchment is basically

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<sup>9</sup> Jerryl Banait Vs Union of India & Anr.; 08.04.2020 [Writ Petition (Civil) Dairy No. 10795/2020]  
[https://images.assettype.com/barandbench/2020-04/46f9c9b2-6bda-4545-ab98-2a3dc9268036/Jerryl\\_banait\\_vs\\_UOI\\_08\\_04\\_2020.pdf](https://images.assettype.com/barandbench/2020-04/46f9c9b2-6bda-4545-ab98-2a3dc9268036/Jerryl_banait_vs_UOI_08_04_2020.pdf)

termination of an employee after following due process as laid down in the statute. After expiry of 45 (Forty five) days of lay off, an employer may proceed with the retrenchment of any employee and any compensation paid during the period of lay off shall be adjusted against the compensation to be paid on retrenchment of the employee (Proviso to Section 25C, Industrial Dispute Act, 1947). Retrenched employee may also be reemployed at a later stage and such retrenched employees who offer themselves for employment shall have a preference over other persons (Section 25H, Industrial Dispute Act, 1947).

- III. **Closure** - Closure has been defined in Section 2(cc) and the provision for implementing closure has been enumerated in Chapter VA and Chapter VB of the Industrial Dispute Act, 1947. Closure refers to the permanent closing down of a place of employment or part thereof.

Closure is opted for as a measure of last resort under circumstances beyond the control of the employer. In case of closure, the provision relating to the procedure for service of notice upon the employees and the compensation to be paid to the employee are the same as followed in the case of retrenchment (Section 25FFF). While in the case of retrenchment the establishment continues to function and only the employee's service is terminated, in case of closure the establishment is permanently closed and ceases functioning and consequently the service of the employees are dispensed with.<sup>10</sup>

**Contractual terms and other measures with respect to Labour and Employment which may be applicable during the Covid-19 pandemic:**

- I. **Terms of Contract of employment** - Any recourse or measure that the employer may want to adopt in an attempt to thrive in the current economic scenario has to be in compliance with the terms of contract of employment.

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<sup>10</sup> THE INDUSTRIAL DIPUTE ACT, 1947

[https://labour.gov.in/sites/default/files/THEINDUSTRIALDISPUTES\\_ACT1947\\_0.pdf](https://labour.gov.in/sites/default/files/THEINDUSTRIALDISPUTES_ACT1947_0.pdf)

Any measure to be taken under the statutory laws is also to be in compliance with the contract of employment. The terms and conditions and procedures relating to lay off, retrenchment, suspension or termination of service of employee shall be in accordance with the provisions relating to the same as laid down in the contract of employment. It is necessary and extremely important that the terms and conditions of the contract be referred to and adhered to before taking any measure by the employer. Assistance of legal professionals may be sought to prevent any dispute over non-compliance of contractual obligation by the employer.

In case where a contract of employment fails to provide for any provision relating to lay off, retrenchment, suspension or termination of service of employees, the employer may need to negotiate with the employee in this regard and enter into a contract for the same.

- II. **Pay Cut (Payment of reduced wages/salaries)** – The concept of pay cut or payment of reduced wage/ salaries has not been specifically provided in any statute but this is the most common measure resorted to in case of any dire situation of economic hardship for an establishment. In pay cut mechanism the employment/service of the employees are not terminated and continues as before but the employee receives a reduced wage/ salary than they were previously receiving. Pay cuts are generally a temporary arrangement and the application of pay cut is done away with once the economic position of the establishment is restored to its former position and normalcy is achieved. Although pay cuts may cause temporary difficulty to employees, they are saved by this lesser of the two evils arrangements, which might have otherwise resulted in termination of the service of the employees.

In order to take the refuge of pay cuts as well, the contract of employment should contain specific provisions for allowing pay cuts in dire circumstances. Although companies may resort to the pay cut mechanism even without a contractual agreement on the same, it is not advisable to

resort to such mechanism in the absence of specific contractual agreement on the same.<sup>11</sup>

- III. **Executing a new contract** – As mentioned above any measure to be taken by the employer whether lay off, retrenchment, suspension or termination of the service of the employee shall not only be in accordance with the statutory laws but also in compliance with the terms of the contract of the employment entered into between the employer and the employee. Even in case of pay cuts, the employer may implement such measure only if the same has been provided under the contract of employment entered into between the employer and the employee and may not otherwise.

However, the question arises as to what will be the procedure if a provision relating to lay off, retrenchment, suspension, termination of service or pay cuts has not been provided for in the contract of employment. In such circumstances it is advisable to explain the exigencies of the circumstances to the employees and arrive at an agreement with the employees and sign a contract in that regard. Especially in case of pay cuts, an employer may enter into an agreement with the employee stating the new terms and conditions on the mutually agreed reduced pay scale for the services of the employees. Executing a new contract for a mutually agreed viable solution is quite feasible in pressing circumstances like the present one.

### **The way forward in the light of the advisory and directives issued by the Government, statutory provisions and the terms of employment of contract**

As per the statutory provisions, an employer may lay off or retrench its employee or may even enter into contract with employee to implement a pay cut. However, the Advisories issued by the Government specifically request the employer not to terminate the employment of the employees or even pay them reduced salary or

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<sup>11</sup> Business Standard: Coronavirus fear: Govt raises issue of layoffs, salary cuts with companies (06.04.2020) [https://www.business-standard.com/article/current-affairs/coronavirus-fear-govt-raises-issue-of-layoffs-salary-cuts-with-companies-120040600043\\_1.html](https://www.business-standard.com/article/current-affairs/coronavirus-fear-govt-raises-issue-of-layoffs-salary-cuts-with-companies-120040600043_1.html)

wages owing to the lockdown. It is also important to take into consideration that the Order dated 29.03.2020 issued by the Ministry of Home Affairs wherein Clause (iii) directed that all employers, be it in the industry or in the shops or commercial establishments, shall make payment of the wages of their workers, at their work places, on the due date, without any deduction, for the period their establishments are under closure during lockdown. It was further provided that in case of any violation of any provisions of the said Order, the respective State/ Union Territory Government shall take necessary action under the Disaster Management Act, 2005. A careful perusal of the said Order gives way to the logical inference that the Government has not kept the option of termination of employment available to the employers at all. Simultaneously the Order requires the employers to make payment of wages to the employees on due date without any deduction for the period their establishment is closed. Further, the Order even states that any violation of any provision of the said Order shall make a person liable to face actions under the Disaster Management Act, 2005. Thus, in view of the said Order, it is advisable that the employer shall not implement any pay cut as the same would end up in violation of the provisions of the said Order.

### **FILING OF ANNUAL AND MONTHLY RETURNS DURING COVID-19 PANDEMIC**

The date for submission of the Unified Annual Return under 8 Labour Laws and 10 Central Rules for the year 2019 was from 01.01.2020 to 01.02.2020. However, the same has been extended to 30.04.2020. **The Office of the Chief Labour Commissioner vide letter dated 20.03.2020 having No. F.No.14(112)/2013/Coord-IT Cell** informed all Regional Heads that in view of the spread of the novel Corona virus the last date for the submission of the Unified Annual Return under 8 Labour Laws for the year 2019 had been extended to 30.04.2020 and further requested the Regional Heads not to take any legal action against the establishments for non-filing of the Annual Returns.<sup>12</sup> Such extension comes as a relief measure for establishments who are already grappling with the outbreak of the COVID-19 and the consequent lockdown in place.

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<sup>12</sup> Government of India, Ministry of Labour & Employment, Office of the Chief Labour Commissioner(C) [https://clc.gov.in/clc/sites/default/files/mygov\\_15846889651.pdf](https://clc.gov.in/clc/sites/default/files/mygov_15846889651.pdf)

Further, with respect to the Mines industry, the Director General of Mines Safety (O) vide letter dated 20.03.2020 having No. DGMS/GENERAL/355, gave a relaxation of one month for the submission of notices, returns and other forms required under the provisions of different rules and regulations framed under the Mines Act, 1952. The said notices, returns and other forms which were due for submission in the month of March, 2020 and April, 2020 could be submitted one month after the respective due dates.<sup>13</sup>

Also, the last date for filing and for contributing to the Employees State Insurance for the month of February, 2020 and March, 2020 was also revised and extended. The Ins. Commissioner Rev. by issuing Notice dated 16.03.2020 having No. P-11/14/Misc./1/2019-Rev, declared that the Director General had relaxed the provisions of Regulation 26 & 31 of the Employees State Insurance (General) Regulations, 1950. Regulation 31 of the 1950 Regulations which provides for a time period of 15 days shall be increased to provide a time period of 45 days for the filing of and contributing to the Employees State Insurance in view of the outbreak of the COVID 19 pandemic. Accordingly, the last date for filing and contribution was extended from 15.03.2020 to 15.04.2020 for the month of February, 2020 and from 15.04.2020 to 15.05.2020 for the month of March, 2020.<sup>14</sup>

### **DATA PRIVACY & DATA PROTECTION COMPLIANCE DURING COVID-19 PANDEMIC**

Being a global health pandemic, COVID-19, involves obtaining and dealing with medical data of employees by the employer as precautionary measure to prevent any possibility of the spread of the disease at the work place. In India, the laws relating to data privacy and data protection can be found from The Information Technology Act, 2000 and the corresponding rule being the Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011.

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<sup>13</sup> Government of India, Ministry of Labour & Employment, Directorate General of Mines Safety  
[https://labour.gov.in/sites/default/files/return\\_notices.pdf](https://labour.gov.in/sites/default/files/return_notices.pdf)

<sup>14</sup> Employees State Insurance Corporation; Notice dated 16.03.2020 having No. P-11/14/Misc./1/2019-Rev  
<https://www.esic.nic.in/attachments/circularfile/6eba125d86727a7a7dd5fb2dc1c5b6e5.pdf>

The Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011, under Rule 3 sub-rule (iii), classifies information relating to physical, physiological and mental health condition and under Rule 3 sub-rule (v), classifies information relating to medical records and history as Sensitive personal data or information of a person.<sup>15</sup>

In light of the outbreak of COVID-19, it is necessary to adopt certain measures by the Employer at workplace to contain the further spread of the disease and also ensure the safety of all employees as well as the employer himself. In the event if any one employee is infected of COVID-19, then the said infected person poses a threat to all other employees, visitors visiting the workplace, the employer and any other person that might come in contact with the said infected person in the course of travelling to and from the workplace or visit to any other office in the course of employment. In order to prevent any such spread of the disease it may be advisable for the employers to obtain (i) the temperature of all employees, (ii) obtain recent travel history of all employees as well to make self declaration if they have come in contact with any person who have travelled from a COVID-19 affected country, (iii) advise the employees to make a self declaration in the event any employee is suffering from any symptoms of COVID-19, and (iv) advise the employees to make a self declaration if they have come in contact with any person suffering from COVID-19.

It is important to understand the legal implications of obtaining, storing, utilizing and disclosing such data ensuring compliance with data protection and data privacy laws. Obtaining the temperature of all employees constitutes information pertaining to the physical health condition of a person while requiring the employees to make a self declaration in the event they are suffering from any symptoms of COVID-19 constitutes information relating to medical records and history, both of which falls under the classification of Sensitive personal data or information of a person under Rule 3 sub-rule (iii) and (v) of the 2011 Rule. Whereas obtaining recent travel history

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<sup>15</sup> The Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011  
[https://meity.gov.in/sites/upload\\_files/dit/files/GSR313E\\_10511\(1\).pdf](https://meity.gov.in/sites/upload_files/dit/files/GSR313E_10511(1).pdf)

of all employees as well to make self declaration if they have come in contact with any person who have travelled from a COVID-19 affected country or requiring the employees to make a self declaration if they have come in contact with any person suffering from COVID-19 do not specifically fall under the classification of Sensitive personal data or information of a person and may fall under the classification of personal data.

Any data, whether, sensitive personal data or information or personal data, shall pass through a number of stages, which may include but not limited to – (i) collection, (ii) storage and retention, (iii) transmission and (iii) privacy and disclosure. It is crucial to note that specific guidelines have been laid down for each and every stage of the passage of data. An establishment must have comprehensive and unambiguous policy guidelines for the collection, storage, retention, transmission, privacy and disclosure of any information collected from its employees. Such policy guidelines should be communicated to the employees prior to the collection of the data and the employees must have consented in writing to such policy guidelines after understanding the contents thereof.

In the present circumstances since there is an indispensable need for the employer to collect the above mentioned data from the employees, it is important for an establishment to ascertain whether there is any policy guideline already in place relating to the collection, storage, retention, transmission, privacy and disclosure of any information from its employees and whether it has been consented to in writing by the employees or not. In case there is no such policy guideline already in place, it is important that such policy guidelines may be introduced in the establishment and communicated to the employees and obtain their written consent to such policy guidelines prior to the collection of any such data. Even after obtaining data in compliance with the procedure for collecting data it is extremely important to adhere to comply with and observe the reasonable security practices and procedures as provided under Rule 8 of the 2011 Rules. Further it is also crucial to comply with the other provisions relating to privacy policy, disclosure of information, transfer of information, etc. as laid down in the 2011 Rules. Any data collected shall only be used

for the purposes for which they have been collected and not otherwise [Rule 5 sub-rule (5)].

Thus, it is important for the employer or the establishment to strictly adhere to and comply with the applicable provisions of the 2011 Rules and the policy guidelines of the establishment consented to by the employee, failing which the employer or the establishment may be guilty of an offence punishable under the Information Technology Act, 2000.<sup>16</sup>

### **FILING OF TAX RETURNS DURING COVID-19 PANDEMIC**

In view of the unfavourable times where establishments are reeling under economic losses, the Finance Minister gave some favourable relief to the nation in terms of tax filing. The Finance Minister of India in a press conference announced the extension of the last date for filing of Tax Returns. The last date for filing of Tax Returns for the year 2018-19 has been extended to 30.06.2020. Further the interest on the delayed payment of Income Tax has been reduced from 12% to 9%. The deadline for filing GST for the months of March, 2020, April, 2020 and May, 2020 has also been extended to 30.06.2020. It was also announced by the Finance Minister that for companies with turnover of less than Rupees Five Crores no interest, late fee or penalty shall be charged. Whereas for bigger companies only interest shall be charged but no penalty or late fee for GST shall be charged. The Finance Minister also extended the deadline for newly incorporated companies to file commencement of business report by another 6 months. The Finance Minister had announced a slew of policies and measures for the relaxation of deadlines and other compliances for establishments as well as individual. It was further stated by the Finance Minister that further economic packages were being worked out to be implemented.<sup>17</sup>

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<sup>16</sup>The Information Technology Act, 2000

<https://indiacode.nic.in/bitstream/123456789/1999/3/A2000-21.pdf>

<sup>17</sup>livemint: ITR, GST filing, Aadhaar-PAN linking deadlines extended: Nirmala Sitharaman (24.03.2020)

<https://www.livemint.com/news/india/nirmala-sitharaman-live-announcements-on-compliance-issues-amid-coronavirus-lockdown-11585034625270.html>

In the context of the present circumstances owing to outbreak of the COVID 19 pandemic and the consequent national lockdown when almost every sector of the economy is facing a severe hit, the announcement of the Finance Minister comes as sigh of relief to the tax payers. The benefits and the relaxations announced by the Finance Minister are not only limited to tax filing but also to Bank regulations, Board meeting regulations, etc. On account of such move, the establishments as well as individuals have been saved from the brunt of penalties and interests which would have further increased the financial liability of establishment as well as individuals as they might have failed to adhere to the deadlines in the present state of affairs.

## **CONCLUSION**

Admittedly a lot of establishments, especially the micro, small and medium scale enterprises, might suffer financial losses during the period of lockdown. However, it may not be recommended that such loss may be mitigated by implementing pay cuts or any other method not authorized by the Government, as such would amount to violation of the Advisory and Order issued by the Government in this behalf. It is recommended that establishments may act in accordance with the Advisory and Order issued by the Government. Owing to the peculiarity of the situation, the Government is further issuing new Advisory, Orders, relaxations, etc. from time to time in its effort to effectively deal with the situation. It is necessary for all establishments to keep themselves aware of such Advisory, Orders or relaxations, etc. as the same may be beneficial to their interest and more importantly it may be necessary to comply with the same. For instance the relaxations announced by the Finance Minister with regard to the extension of the last date or the relaxation given by the Office of the Chief Labour Commissioner with regard to the extension of the last date for the filing of Labour Return or the relaxation given by the Director General of the ESIC extending the last date for the filing and contribution to the ESI fund are beneficial to the interest of the employer. It is important to understand that non-compliance of any Orders of the Government may put an establishment into legal turmoil or impose any form of penalty or make the establishment liable to pay compensation. It also may render the employers vulnerable to litigations before different legal forums. In such cases the

establishment will be burdened with further financial liability increasing the existing financial losses.

**"In crisis times, it's actually not more difficult to motivate your staff, because everyone gets much more focused on how they control their own economic destiny."**

**Reid Hoffman**

(Former Founding CEO at LinkedIn  
Former Executive Vice President, PayPal)

Of course, the worry for redundancies continue to loom with many businesses not having any other alternative but to opt for pay cuts or layoffs rather than go insolvent and be unable to continue business at all post the pandemic crisis and the lockdown. Considering the government initiatives to alleviate burden as much as possible for businesses and employers, it is hoped and expected that businesses shall consider the human element during this crisis more than the profits. Needless to mention, the economy of the nation will suffer amidst this global pandemic and the GDP will take a hit. But a resurgent India after a safe lockdown period and the nation's consolidated efforts including that of the workforce to stem the number of infected will give us a lifeline which will motivate the entire workforce to uplift the economy on the whole.