



## COVID-19: FAQ's on the Employment Law in Mauritius

The disease first appeared in December 2019 in the city of Wuhan, China, and has since then spread globally, resulting in the ongoing 2019-2020 Coronavirus (COVID-19) pandemic. One of the numerous and inevitable impacts of this pandemic has been the implementation of a lockdown period around most countries of the world, compelling the population to confinement for weeks or even months. With the prevailing crisis, businesses are not operating as they should.

In Mauritius, according to the Government and its communication team, the first three cases were detected on the 18<sup>th</sup> of March 2020 and since then, the number of cases has only been increasing and, it would not be erroneous to state the growth in the number of contaminated patients is exponential. Following national lockdown promulgated by the Prime Minister as from the 20<sup>th</sup> of March 2020 at 6.am., the Minister of Health and Wellness has issued the Prevention and Mitigation of Infectious Disease (Coronavirus) Regulations 2020 "**The Regulations**" under the Public Health Act 1925. With the number of growing cases, the Prime Minister has declared, in the first place, sanitary curfew up to the 2<sup>nd</sup> of April 2020 which has been extended to the 15<sup>th</sup> of April 2020. Employers around the world are facing similar situations; having to deal with lockdowns, quarantine, isolations and work from home arrangements as well as economic and financial constraints.

Our team at Nolands Law (Mauritius) Limited remains accessible and committed to providing legal advice to clients in the wake of the COVID-19 pandemic which has unfortunately already started to leave adverse traces on the business flow of organizations within the Mauritian landscape. The curfew has been announced under Regulation 14, which stipulates that the Minister, where he is satisfied that it is necessary to prevent the spread of the coronavirus, shall by a curfew order, direct that no person or class of persons remain outdoor.

The issue of the aforementioned Regulations having closely shadowed the curfew declarations, employers are currently confronted with the situation of running their business(es) with the "work-from-home" concept. The question that is lingering in the mind of employees is whether their annual leaves will be deducted and will these deductions impact on their remuneration.



The below brief highlights these recurring issues during this pandemic situation.

**1. Is the Employee required to attend his place of work? In the affirmative, how?**

The Regulations and the curfew order under regulations assert that the Commissioner of Police may issue a permit to a person for the sole purpose of attending his place of work and returning to his place of residence only. They also state that classes of persons who may be outdoor during this curfew periods will include employees of private sector providing strictly essential minimum services. Therefore, it can be concluded that an Employer may request/require the Employee to attend his/her workplace if the nature of his/her profession falls into the category of the “strictly essential minimum services”. The onus of providing the Employee with a valid work permit falls on the Employer, and the latter, when requesting his employees to attend the place of work, has to take all precautions as required under Occupational Health and Safety Act 2005 “**OSHA 2005**”. In the case the Employer is fulfilling all the safety measures required under the law, failure by the Employee to attend his place of work can lead to disciplinary actions.

**2. Can the Employee refuse to attend his place of work when in possession of a valid work permit issued by the Commissioner of Police?**

The Employer has to ensure that the Employee, in the performance of his duty, is not exposed to serious and imminent danger. Therefore, failure by the Employer to negate the exposure of his Employee to imminent danger, can provide a ground for the Employee to stop his work. This right to the Employee is provided under Section 12(3) of the OSHA 2005 which stipulates that where the Employee has stopped work on reasonable belief that it presents a serious or imminent danger to his life or health, he shall not be liable to any civil or criminal action or any form of Disciplinary Proceedings. Therefore, in case of exposure to serious and imminent danger, the Employee can leave his place of work and refuse to attend without any sanctions and without the consent of the Employer. However, this right to the Employee must be exercised responsibly since, under Section 14 of the OSHA 2005, there are certain duties imposed on the Employee where the latter is required to take reasonable care for the safety and health of himself as well as other persons and to cooperate with his Employer in the discharge of any duty.

**3. Redundancy during the pandemic period.**

The Workers’ Right Act 2019 states that there is a Redundancy Board established under Section 73 to deal with all cases of the reduction workforce and closure of business for economic, financial, structural, technological or any similar reasons. An Employer, therefore, has to strictly follow the statutory process laid down under the Workers’ Right Act 2019 to make an Employee redundant during this pandemic period. The Employer has to demonstrate valid and reasonable cause for the



proposed redundancy. If there is no agreement reached between the Employer and the Employee, the former shall give written notice to the Redundancy Board together with a statement showing cause for reduction or closure at least 30 days before the intended closure or reduction. The Redundancy Board has 30 days to complete the proceedings and this period can be extended as may be agreed by the parties. The Employee cannot be made redundant before the Board completes its proceedings. If the Board finds the reason for closure or reduction unjustified, the Employer shall pay the Employee severance allowance at the rate of 3 months' remuneration per year of service or reinstate the Employee with his consent. Any breach of the statutory process for redundancy will be deemed to be an unjustified dismissal.

#### **4. Work from Home Aspect**

In most employment contracts, the parties expressly agree on the place of work and generally, these contracts also provide that the Employer may, after notifying the Employee, indicate any other place of work as the former may deem fit. Therefore, an Employer may, as per the employment contract itself, require his Employee to work from home. Additionally, the "work from home" possibility is catered for under the Workers' Right Act 2019 provided the necessary working tools and equipment are made available to the Employee. Given the prevailing pandemic situation, the work from home concept has become a reality.

#### **5. Remuneration Aspect**

**a.** Following the curfew order imposed by the Government restraining the movement of most Employees for the safety of the population, work permits are delivered by the Commissioner of Police for essential services and the work from home concept is a reality, as aforementioned. However, it must be kept in mind that, given the nature of the work for some Employees, in those cases, the work from home concept is not implementable. In any circumstances, the full salary has to be paid, even if the Employees are not working during the curfew order. There are, on the other hand, certain allowances such as the travel allowance, that can be deducted. Any unilateral reduction in the remuneration will trigger a redundancy situation.

**b.** In certain specific circumstances, an Employer may require an Employee to work temporarily for a shorter time than what is specified in the employment agreement at a reduced remuneration rate. However, under Section 32(2) of the Workers' Right Act 2019, this can only be done with the approval of the supervising officer, that is, the Ministry of Labour, Industrial Relations and Employment. One noteworthy aspect is that, a worker who is required to work for a shorter time



with a temporarily reduced remuneration, has the right to accept work from another employer during the time work is not provided to him/her.

## 6. Annual Leaves

Since the start of the confinement, the topic which has attracted the most interest is whether the workers' annual leaves can be offset against the days of the confinement span. Can the Employer force the worker to take his annual leave during the curfew period?

Every worker who has been in continuous employment with the same employer for a consecutive period of 12 months, is entitled to 20 working days of annual leave. Section 45(6) of the Workers' Right Act 2019 provides that, where the Employer and the worker are unable to agree as to when leave shall be taken, half of the leave period shall be decided by the Employer and the other half of the leave period shall be determined by the worker.

As the law stands, therefore, the Employer can decide half of the leave period but this is only possible in case of disagreements between the parties as to when leave shall be taken. Addressing the question as to whether the Employer can decide that half of the leave period coincides with the present curfew period, there are several ongoing debates, but in our view, a distinction has to be made between workers who can work from home and those who cannot, and the matter should be tackled as follows:

- (i) For those who cannot work from home given the nature of the work, the Employer cannot force the worker to take his annual leave in the curfew period, for the worker, despite himself, does not have any option before him, other than staying confined at home.
- (ii) On the other hand, in the case the work from home concept is applicable, the Employer can decide that half of the leave period be deducted in the confinement period, PROVIDED THAT there is a disagreement between the latter and his worker on this issue. We are of the view that a unilateral decision of the Employer on this matter, without consultation with the worker, cannot be implemented.

It is pertinent to note that workers who refuse to work from home can face disciplinary actions on part of their Employer.

**The** present brief is intended for the general use only, and is in no way a conclusive advice. For specific advice on specific matter, you can contact us on the following:

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