



Chamber Update

At A.S. & Associates, we have been in the forefront disseminating information and orders of the government in relation to COVID-19. Since 21st March 2020, we have been compiling and sharing the orders of the different government agencies including the Central Bank of Bangladesh, Foreign Minister, Health Department, Home Office etc.



In our website (www.as-associates.net), we have added a COVID-19 Resource center which is a compilation of the economic and health response to the coronavirus situation in brief, with hyperlinks to visit the circular/order.

We encourage all our readers to visit our website and review the information in order to assess risks and opportunities arising from the impact of COVID-19 on you and your organization.

Our team will be available to assist/ guide you during this crisis moment through legal advice and innovative strategies for dealing with unprecedented challenges.

Legal Insights

COVID 19: WHAT EMPLOYERS MUST KNOW TO AVOID LEGAL RISKS ?



COVID-19 is currently the most pressing topic of the whole world. Almost all the countries of the world are affected by this pandemic and it has created global crisis in all the sectors. While whole world is locked down under the threat of this treacherous disease, international transactions are almost closed and all the business sectors are struggling for surviving the vehement effect of the financial loss resulted from this pandemic.

Bangladesh is also stranded with this pandemic. The Government has declared mandatory general holiday (lockdown), which was initially for 10 days and then it extended for multiple times, currently up to 5th May 2020. It seems the lockdown will continue for an indefinite and uncertain period, until the situation is under the control. Most of the business organizations are suffering huge loss in terms of business and financial aspects. During this period only certain specific sectors i.e. hospital, healthcare center, grocery shop, vegetable market etc. emergency services will remain open for a limited period. So most of the business organizations and private sectors have closed all of their professional and business works involuntarily. The choices have boiled down to either closing of businesses or to find ways to minimize costs by whatever means to fight another day.

Under these circumstances most of the employers are intending to mitigate the cost by either reducing the salary or initiating lay-off or, in extreme cases, retrenching or terminating the workers. However, the decisions are not easy to take as any impact on workers must be balanced against the provisions against the legal provisions, in particular the Bangladesh Labor Act 2006 and its 2015 Rules, as amended respectively. It is worth exploring what are the governing laws and how the governing law can mitigate the risk factors by finding the correct balance? The employers must be acquainted with and adhere to the exact legal provisions to ensure what actions are permissible under the legal regime. This article consolidates the permissible actions that the employer can adopt to avoid legal risks while achieving their cost cutting measures in a legally compliant manner.

Legal Treatment

Actually it is an exclusive and exceptional situation. Unfortunately there is no direct provision or guideline to handle the recent situation in our Labour Act, 2006 amended on 2018 (the "Act") and Labour Rule, 2015. However as per section 12 of the Act the employer may stop the work of the organization on the ground of fire, sudden catastrophe, **epidemics**, breakdown of machinery or any other cause which is beyond of his/her control. **Cont. in page 2**

In pursuant to section 12(8) of the Act, if such stoppage of work exceeds 3 days, the workers can be laid-off under section 16. However it is pertinent to mention here that the compensation for lay-off as discussed later shall be applicable for maximum 45 days in a years. Such lay-off shall be effective from the first day of stoppage of work. As per section 16(5) of the Act, the employer may, in absence of any contract to the contrary, extend the lay-off period for further 15 days or more.

Again if a worker is laid-off for a period 45 days and then further extension of 15 days or more is required, in that case the employer, instead of laying-off, may retrench the worker under section 20 of the Act. In case of such retrenchment the employer need not to serve the notice of 1 month, however the worker shall be entitled to get other retrenchment benefits as well.

In short under this circumstance, the employer may stop the work of the organization for 3 days. In case of extension of stoppage of work, which is the case for this pandemic, the employer may lay-off the workers for initial period of 45 days and after completion of the initial 45 days lay-off, the employer may extend the term of lay-off for a period of 15 days and then retrench the workers without further notice.

For ease of reference, the steps are given below:

Stoppage of Work for 3 days.

Lay-Off for 45 days.

Extension of Lay-Off for further 15 days or more.

Retrench under Section 20 without further notice

However, these rights of the employers are not free of obligation on their part and are associated with benefits for the workers, noted below.

Rights & Benefits of Workers

Rights and benefits of the workers for such stoppage of work, lay-off and retrenchment are as following:

In case of stoppage of work, if such stoppage continues for more than 1 working day, the concerned worker (except casual and/or substitute workers) shall be entitled to get full wages for each day of stoppage of work exceeding 1 (One) day.

It is pertinent to mention here that in case of lay-off followed by stoppage of work, the employer shall be entitle to adjust the compensation amount which paid to the worker for the first 3 days with the lay-off compensation.

In the event of lay-off, the worker who has completed minimum 1 year with the entity shall be entitled to be paid half of his basic wages and dearness allowances and full amount of his housing allowance for all days during which he is laid-off, except for weekly holidays. However, the above payment shall only be applicable for maximum 45 days in a given year and if the lay-off continues more than 45 days, for the next 15 days, the worker shall be entitled to 1/4th of his basic wages and dearness allowance and full amount of his housing allowance.

Furthermore if following the above mentioned 60 days of lay-off (45+15 days), the workers are being retrenched, a worker who has completed 1 year of his continuous service, shall be entitled to get compensation in an amount equivalent to 30 days' wages for his every year of service or gratuity, if any, whichever is higher. It is worth noting that the employer shall be exempted from serving 1 (One) months' notice to the worker, otherwise required under the law, if such the employer is retrenching the worker after completing the full lay-off period as referred above under Section 16 of the Act. Otherwise, if 60 days lay-off period has not been observed and adhered to, the employer needs to serve 1 (One) month's prior notice or salary in lieu and a copy of the said notice needs to be send to the Inspector General or any other officer specified by him.

So, if the businesses are trying to minimize cost by limiting their staff cost, irrespective of the pandemic and the financial crisis, they are required to either lay-off for a period of 60 days with benefit as pointed above and then can consider retrench or can consider direct retrenchment by paying necessary benefits as noted in this article. Unless these benefits are ensured, the employers will be exposed to legal risks and potential claims/legal proceedings for violation of legal rights of the workers.



Legislative Update

Penal sections applicable coronavirus (COVID-19) situation

Infectious Diseases (Prevention, Control and Elimination) Act 2018 (IDA 2018)

Section 24 - If a person spread/transmit or help in spreading the infectious, or knowingly conceals that another may be infected or risks being infected by coming in contact, shall be liable for 6 months of imprisonment or fine of 1 lac Taka or both.

Section 25 – If a person causes obstruction in the discharge of duty conferred on the Director General, Civil surgeon or authorized officer; and disobeys any orders of the same, he/she shall be liable for 3 months of imprisonment or fine of 50,000 Taka or both.

Section 26 – If a person knowingly provides false or misleading information about infectious disease, he/she shall be liable for 2 months of imprisonment or fine of 25,000 Taka or both.

Penal Code, 1860

Section 269 – Negligent act likely to spread infection of disease dangerous to life - Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Section 270 – Malignant act likely to spread infection of disease dangerous to life - Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Disaster Management and Relief Act 2012

Section 37 – Punishment for disobey directives or failure to comply. - If any body deliberately disobey or deliberately do not comply with the directives

given by the government, National Disaster Response Coordination Group or District Disaster Response Coordination Group, then it is to be considered that the person committed the offense under this Act and he would be punished for this offense for not more than 1 (one) year rigorous imprisonment or not more than 1 (one) lakh Taka fine or both punishment.

Section 38 – Punishment for presenting false, untrue or baseless claim. - If any individual or organization present any false, untrue or baseless claim to get aid or facility from disaster management program running under this Act, then it is to be considered that the person committed the offense under this Act and he would be punished for this offense for not more than 1 (one) year rigorous imprisonment or not more than 1 (one) lakh Taka fine or both punishment.

Section 40 – Punishment for increasing value of essential items in disaster area. - If any body increase or crate cause to increase value of essential items to earn illegal profit in disaster area, then it is to be considered that the person committed the offense under this Act and he would be punished for this offense for not more than 1 (one) year rigorous imprisonment or not more than 1 (one) lakh Taka fine or both punishment.

Section 43 – Punishment for disobey emergency order on disaster management. - If any body disobey the emergency directives, should be read with section 35, on disaster management mentioned in the schedule or do not take necessary steps according to those directives, then it is to be considered that he committed offense under this Act and he would be punished for this offense for not more than 5 (five) lakh Taka fine and if unrealized would be penalized for non rigorous jail term for not more than 3 (three) months

Government of Bangladesh and others VS the Board of Intermediate and Secondary Education, Barisal, represented by the Chairman, Barisal and another [Civil Appeal 159/2010]

Facts of the case

The respondent while serving as a Senior Assistant Judge, two departmental proceedings under the provisions of the Government Servants (Discipline and Appeals) Rules, 1985 were initiated against him on the allegation of corruption. He was placed under suspension and departmental inquiry were held. The Inquiry officers found no evidence of corruption against him in respect of one proceeding but in respect of the other, the report was somehow misplaced from the records maintained with the Ministry and the Supreme Court, the concerned Ministry reported that the allegations could not be established against him. Law and Justice Division of the Ministry of Law recommended to the Supreme Court for its approval to exonerate him from the charges and also to withdraw his suspension order.

The Supreme Court did not approve the proposal and on perusal of the inquiry report directed the Ministry to issue second show cause notice upon him. The respondent challenged the said order in a Writ Petition. The writ petition was summarily rejected on the ground that the recommendation of the Ministry was disapproved by the Full Court. Subsequently, it was detected that the proposal for suspension was neither placed before the G.A. Committee nor the Full Court in accordance with rule 3(d) of the High Court Division Rules. The respondent thereupon moved the High Court Division in another writ petition.

The High Court Division held that the proposal for suspension and the initiation of the disciplinary proceedings were not placed before the G.A. Committee and also the Full Court and therefore, the direction given by the Supreme Court was without jurisdiction.

Judgment by Supreme Court of Bangladesh Appellate Division

The Court decided the following points:

Any person in the service of Republic or any statutory authority cannot seek judicial review in respect of terms and conditions of service or action taken relating to him as a person to such service including transfer, promotion, and pension rights, except:

- a) in matters relating to challenging the vires of the law;
- b) infringement of fundamental rights in which case also, there must be sufficient pleadings of such violation keeping in mind that such plea also can be taken in the tribunal because the constitution being the supreme law of the Country, it can be taken in aid by any Court/tribunal.
- 2) The Administrative Tribunal shall be competent to deal with those matters and in appropriate cases of emergency; it can also pass interim order of injunction/stay subject to compliance of certain formalities.
- 3) The views taken in Mujibur Rahman 44 DLR (AD) 111 have been overruled.
- 4) If the action of the authority or order complained of in relation to the above matters are found to be coram non judice or without jurisdiction or is found malafide, judicial review is not available, and the administrative tribunal can deal with these issues also. On this point, the decisions in Shaheda Khatun V. Administrative Appellate Tribunal, 3 BLC (AD) 155, Ehtesham Uddin V. Bangladesh, 33 DLR(AD) 154, Ismail Hoque V. Bangladesh, 34 DLR(AD) 125, Mostaque Ahmed V. Bangladesh, 34 DLR(AD)222 and Helal Uddin Ahmed V. Bangladesh, 45 DLR(AD)1 have also been overruled.