

Issue 3: April 12, 2020

# COVID-19

## EMPLOYMENT LAW GUIDANCE TO EMPLOYERS: COVID 19 PANDEMIC

Nearly four weeks into the Government of Jamaica intervention measures aimed at dealing with the COVID 19 pandemic, Prime Minister Andrew Holness announced on Wednesday April 8, 2020 that a third Ministerial Order would be promulgated under **The Disaster Risk Management Act 2015**. As such **The Disaster Risk Management (Enforcement Measures) (No. 3) Order, 2020** was Gazetted on April 8, 2020 and became effective the same day. The provisions will remain in effect until April 22, 2020 under varying terms and conditions.

The effect of these measures on employment are noted below for your information.

The following data is being provided as generic guidance to employers with respect to employment related issues. This information does not constitute legal advice; should you require legal advice, please contact Karene N. Stanley Jones at [knsjones@knscolaw.com](mailto:knsjones@knscolaw.com) or Carla-Anne Harris-Roper at [chroper@knscolaw.com](mailto:chroper@knscolaw.com). You can also visit us at [www.knscolaw.com](http://www.knscolaw.com) or [www.employmentmatterscaribbean.com](http://www.employmentmatterscaribbean.com)

# THE DISASTER RISK MANAGEMENT (ENFORCEMENT MEASURES) (NO. 3) ORDER, 2020

## 1. BAN ON GATHERINGS OF MORE THAN 10 PERSONS REMAINS IN FORCE:

Paragraph 6(1) of the Order continues to prohibit gatherings of ten (10) or more persons in any public place. In such cases each person at such a gathering must maintain a distance of at least 91.44 centimetres (or 3 feet) away from other persons. The exception to this, is when gatherings of more than 10 persons are required for attendance at work in accordance with guidance further provided by the Order in Paragraph 7.

In addition to the list of exempted places, institutions or establishment previous noted under the second Order, the following have been added.

- The Office of Disaster Preparedness and Emergency Management (ODPEM).
- The Independent Commission of Investigations (INDECOM).
- Factories as defined in the Factories Act.
- The previous provisions related to hospitals, and nursing homes remain in place for the period.
- The previous provisions related to infirmaries remain in place for the period; additionally no visits will be permitted to infirmary patients.

## 2. WORKING FROM HOME AND THE EMPLOYER'S DUTY TO PERMIT WORKING FROM HOME:

Paragraph 7 (2) of the Order stipulates that an employer has a duty, if satisfied that an employee is able to discharge their duties from the employee's place of residence, to grant the employee permission to do so, without imposing any adverse consequences to the employee in respect of undertaking such work from home.

This implies that the employer should make an assessment to ascertain whether the employee's duties can be performed from their home. Thereafter should they be assured that this can be accomplished, they should allow as far as possible the employee to do so. The employer must make sure that they do not prejudice the employee. While the Order does not specify what "adverse consequences to the employee" are, obvious possibilities could include the following, where there are no other legitimate reasons to do same:

- Reduction of OR no payment of wages/salary.
- Reduction of OR suspension of fringe benefits or other related employment benefits.
- Unilateral changes to vacation or sick leave policy
- Dismissal/Termination/Suspension of employment.

As such, employers are encouraged to be careful and seek legal guidance when considering deploying this scheme of operations.

### **3. PROHIBITING CERTAIN PERSONS FROM ATTENDING THE PHYSICAL WORKPLACE:**

Paragraph 7(3) of the Order stipulates that employers shall not require the following persons with specified characteristics to attend work at the physical workplace:

- If He/She has attained the age of 70 years or more;
- If He/She exhibited flu-like symptoms or respiratory symptoms;

With this prohibition, it does not appear that while the person is away from the workplace that they are exempted from undertaking work assignments. In other words, such persons can still work from home. This is important, as while the Order stops them from attending work, there is no guidance on the important issue of payment of salary. As such it can be assumed that if the person does not actually work, there is no requirement for the employer to continue paying them for the period.

In the case of the person exhibiting flu-like symptoms, or respiratory symptoms, these persons could be considered as being ill and sick leave provisions under the Holidays with Pay Order, employment contract or Collective Agreement would then apply (based on eligibility and availability).

### **4. EMPLOYER MAY PERMIT EMPLOYEE WHOSE JOB CANNOT BE DONE REMOTELY TO REMAIN AT HOME IN CERTAIN CIRCUMSTANCES:**

Paragraph 7(4) of the Order allows the employer to permit an employee who is unable to work from home, to nevertheless remain at home to:

- Care for an elderly or ailing family member.
- Care for the employee's child(ren), if there are no other suitable child care arrangements available.



This provision is discretionary on the part of the employer. If they do exercise this discretion, it appears clear that they can also decide how to address the crucial issue of pay. The law does not mandate that the employee is to be paid if they are allowed to stay at home in these circumstances.

## **5. EMPLOYEE'S LEAVE ENTITLEMENTS PROTECTED IF WORKING FROM HOME:**

Paragraph 7 (5) of the Order stipulates that if the employer grants permission to employees to work from home, time away from the place of employment is not to be counted as part of employee's leave entitlements, unless otherwise agreed between the employer and employee.

## **6. EMPLOYER'S DUTY TO PROVIDE HANDWASHING/SANITIZING STATIONS:**

Paragraph 7(6) of the Order stipulates that an employer has a duty, to provide sufficient number of areas, at the workplace, where any person who is an employee or customer of the employer, or any other visitor to the workplace, is able to readily access facilities for washing or otherwise sanitizing, that person's hands.

This is mandatory provision albeit that there is no specific guidance as to what measures would be considered as being "sufficient". However given the nature of the COVID 19 and its mode of transmission and spread, this is a necessary requirement which employers are encouraged to implement.

## **7. CURFEW PROVISIONS AND EXCLUSIONS FOR THE SPECIFIC FUNCTIONARIES:**

Paragraphs 11 and 12 of the Order stipulates various curfew hours as follows:

- Wednesday April 8, 2020 - Thursday April 9, 2020 during the hours of 8:00 pm to 6:00 am.
- Thursday, April 9, 2020 (Holy Thursday) - Friday, April 10, 2020 (Good Friday) during the hours of 8:00 pm to 7:00 am.
- Friday, April 10, 2020 (Good Friday) - Saturday, April 11, 2020 during the hours of 3:00 pm to 7:00 am.
- Saturday, April 11, 2020 - Sunday, April 12, 2020 (Easter Sunday) during the hours of 3:00 pm to 7:00 am.
- Sunday, April 12, 2020 (Easter Sunday) - Monday, April 13, 2020 (Easter Monday) during the hours of 3:00 pm to 7:00 am.
- Monday, April 13, 2020 - Tuesday, April 14, 2020 during the hours of 3:00 pm to 5:00 am.
- Tuesday April 14, 2020 - Wednesday April 22, 2020, on each day during the hours of 9:00 pm to 5:00 am.

The following functionaries/employees are excluded from the curfew restrictions and will be allowed to be outside for the purposes of their employment, service, activity or authorization, or duties:

- Members of the Houses of Parliament and persons employed to the Houses of Parliament;
- Permanent Secretaries, the Solicitor-General and the Chief Parliamentary Counsel.
- Members of the Jamaica Constabulary Force and the Jamaica Defence Force.
- Persons employed in a service concerning the provision of health, water, electricity, public works, sanitation, firefighting, civil aviation or telecommunications;
- Veterinary surgeons, licensed under the Veterinary Act.
- Immigration officers and customs officers.
- Correctional services officers.
- Persons employed in the transportation of agricultural produce or livestock or employed in the poultry industry (including catching crew, poultry processing plant staff and the staff of feed mills).
- Persons employed in the sugar cane industry.
- Persons employed to “tourist establishments” as defined by the Public Health (Tourist Establishments) Regulations, 2000.
- Persons employed in services connected with oil-refining and with the loading, distribution or transportation of petroleum fuel, liquefied natural gas or any renewable energy source.
- Persons employed in services connected with the loading and unloading of ships and with the storage and delivery of goods at, or from, docks, wharves and warehouses operated in connection with docks or wharves.
- Persons employed in the provision of public transportation by the Jamaica Urban Transit Company or the Montego Bay Metro Company Limited.

- Judiciary and persons employed to the courts.
- Persons employed to the business process outsourcing sector.
- Persons employed to the media (such as journalists, television or radio presenters, camera operators, announcers, engineers, technicians and newspaper delivery personnel).
- Persons employed to businesses providing private security.
- Persons employed to the Jamaica Printing Services Limited;
- Persons employed to the Toll Authority established under the Toll Roads Act.
- Persons employed to courier services.
- Persons employed in the bauxite or alumina industries.
- Persons engaged in the transportation of manufactured products.
- Persons employed to Factories as defined in the Factories Act.
- Mayors and Councillors of Municipal Corporations.
- Persons employed to the Independent Commission of Investigations.
- Persons employed to the Cabinet Office, the Office of the Prime Minister, the Ministry with responsibility for finance and the public service, Tax Administration Jamaica, the Accountant General's Department or eGov Jamaica Limited;
- The Director-General of the Office of Disaster Preparedness and Emergency Management and persons authorized in writing by the Director-General.
- Persons employed in any service or activity designated in writing by the Minister with responsibility for national security, with the prior approval of the Cabinet, as an exempt service or activity

Also included in the exemptions are persons employed in the maintenance of infrastructure for the provisions of financial services as defined under the Banking Services Act and Credit Unions registered under the Co-operative Societies Act.

Note that such persons are required to have satisfactory proof of identification in respect of their exemption.

## **8. EMPLOYER'S DUTY TO PROVIDE TRANSPORTATION DURING CURFEW HOURS:**

Paragraph 11 (5) of the Order places a duty on the employer to ensure that transportation is provided for exempted persons between the place of employment and the employee's abode or place of residence during the hours of the curfew, once required to work.

## **9. DUTY IMPOSED ON CERTAIN PERSONS TO WEAR MASKS IN PUBLIC PLACES:**

Paragraph 13 of the Order mandates that when in a public place, the following persons must wear a mask fitted to their face to cover their nose and mouth:

- A person aged 65 years or more.
- A person who has the "flu" or a respiratory illness.
- A person who has the care of another person who is in quarantine or isolation, another person who is suspected or confirmed with COVID-19 or another person who is exhibiting flu-like symptoms or respiratory symptoms.
- A person who has comorbid illnesses - usually referred to as 'preexisting conditions'.

We will continue to monitor developments and provide you with updates. We encourage employers, employees and their representatives (where collective bargaining exists), to as far as possible seek to find amicable mutual agreements, falling within or above legislated minimum standards to address concerns as they navigate these unprecedented circumstances.