



Issue 2: March 26, 2020

COVID-19

EMPLOYMENT LAW GUIDANCE TO EMPLOYERS: COVID 19 PANDEMIC

As Jamaica continues to grapple with the effects of COVID 19 on the nation, Prime Minister Andrew Holness announced on Monday March 23, 2020 that a second Ministerial Order would be promulgated under **The Disaster Risk Management Act 2015**. As such **The Disaster Risk Management (Enforcement Measures) (No. 2) Order, 2020** was Gazetted on March 24, 2020 to become effective on Wednesday March 25, 2020.

The terms of the Order are **in effect for a period of 14 days (March 25, 2020 to April 7, 2020)**.

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 Carla-Anne Harris-Roper
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THE DISASTER RISK MANAGEMENT (ENFORCEMENT MEASURES) (NO. 2) ORDER, 2020

1. BAN ON GATHERINGS OF MORE THAN 10 PERSONS:

Paragraph 5(1) of the Order prohibits 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 (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 6.

This provision does not however apply to the following places, institutions and establishments:

- The Jamaica Constabulary Force and the Jamaica Defence Force.
- Services concerning the provision of health, water, electricity, sanitation, fire-fighting, civil aviation, or telecommunications.
- Correctional services.
- Tourist establishments, as defined in the Public Health (Tourist Establishments) Regulation, 2000.
- Retail services (such as markets, supermarkets, pharmacies and “corner shops”) for the provision of food, medicine or other necessities of life.
- Sittings of the Houses of Parliament, and meetings of the Cabinet or any committees thereof.
- Ministries, Departments and Agencies of Government and Municipal Corporations.
- Tax Administration Jamaica, the Bank of Jamaica and the Jamaica Customs Agency.

- Banking business, as defined in the Banking Services Act; Services connected with oil-refining and with the loading, distribution, transportation or retail of petroleum fuel, liquefied natural gas or any renewable energy source.
- 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.
- The provision of public transportation by bus (including buses operated by the Jamaica Urban Transit Company or the Montego Bay Metro Company Limited), limited to seated passengers only.
- The provision of public transportation by motor car, limited to one person less than the maximum number of persons allowed to be carried under the relevant licence.
- The Judiciary and persons employed to a court.

Note specifically that:

- Hospitals, infirmaries and nursing homes are exempt to the extent that the operator must ensure that no person visits a patient more than once per day, and that each patient does not have more than one visitor per day.
- No patient of the infirmary should be permitted to go outside the infirmary and no new patient be admitted to an infirmary during the stipulated time frame.
- Markets must operate only during the hours of 6:00 am to 2:00 pm.



2. GOVERNMENT EMPLOYEES 65 YEARS AND OVER NOT REQUIRED TO ATTEND WORK:

Paragraph 6(1) (a) of the Order stipulates that persons who are employed to the Government and who have attained the age of 65 years are not required to attend work. However if any such persons fall within the exempted categories noted above, they may, notwithstanding, be required to be at the physical place of employment.

However, to the extent possible such non-exempted persons should continue to discharge their responsibilities while working from home.

3. OTHER EMPLOYEES TO WORK FROM HOME:

Paragraph 6(1) (b) of the Order stipulates that all other persons who can work from home should do so.

4. EMPLOYER'S DUTY TO PERMIT WORKING FROM HOME:

Paragraph 6(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.

5. EMPLOYEES' WHOSE JOB'S DO NOT ALIGN WITH HOME WORKING ARE REQUIRED TO ATTEND WORK UNLESS OTHERWISE ADVISED:

Paragraph 6(3) of the Order stipulates that employees whose assigned tasks can only be performed at the place of employment, are required to be at the workplace, unless otherwise permitted not to do so by the employer, as part of their measures to combat the risk of transmission of COVID-19 at the place of employment.

Employees could therefore be required to be at the physical work location dependent on the nature of their duties. However, employers should examine their COVID-19 mitigation strategies and make an assessment of whether their employees must be at the location, given that they also have a duty to provide a safe place of work for their employees.

6. EMPLOYEE'S LEAVE ENTITLEMENTS PROTECTED IF WORKING FROM HOME:

Paragraph 6(4) 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.

COVID ALLOCATION OF RESOURCES FOR EMPLOYEES (CARE) PROGRAMME

1. SUPPORTING EMPLOYEES WITH TRANSFER OF CASH (SET CASH)

SET Cash will provide temporary cash transfers to individuals where it can be verified that they lost their employment or were laid off since March 10, 2020, (the date of the first Covid case in Jamaica). This programme will be available to employees from **any sector** who lost their employment after March 10 and before June 30.

- Employees will be required to apply by filing out an application online.
- To verify that the applicant was actually employed before March 10, 2020 the last three previous monthly statutory deduction will be checked.
- The employer should fill out and upload a P45 form to verify that the employee was laid off/terminated
- Once verification is complete the file will be passed to the Accountant General and payment made electronically directly to the bank account of the applicant.

- Applicants who are successfully verified will receive payment at the rate of \$9,000 per fortnight, paid monthly from the month of application until June 2020 provided that the application is made before the cut-off point for that month.
- Once applications are made before the cut-off point in April 2020, verified applicants will receive a total of \$54,000 by June 30, 2020.
- A multi-disciplinary team from the Ministry of Finance, the Accountant General's Department, Tax Administration Jamaica will design and launch the online interface processes and protocols.
- The intent is that individuals can begin to apply by April 9, 2020 assuming that the Supplementary Budget is passed by that time
- SET Cash is directed towards individuals who earn below the income tax threshold of \$1.5m and who are most vulnerable to the effects of being suddenly laid off.

2. BUSINESS EMPLOYEE SUPPORT & TRANSFER OF CASH (BEST CASH).

BEST Cash will provide temporary cash transfers to registered businesses operating in the hotel, tours, attraction companies, segments of the **tourism industry** who are licensed with the Jamaica Tourist Board based on the number of workers they keep employed who are under the income tax threshold of \$1.5 Million.

- To qualify, each tourism business will need to apply for BEST Cash by filling out the required form online.
- File and pay their payroll returns as usual on the 15th of April, May and June.
- For each employee, with taxable income that is less than \$1.5M on whose behalf statutory returns are applied, the Government will transfer funds at a rate of \$9,000 per fortnight to that

tourism related business, by direct transfer to their bank account, paid monthly for the months of April, May and June 2020.

- This will equate to \$54,000 for each employee they retain whose taxable income is less than \$1.5 million
- A multi-disciplinary team from the Ministry of Finance, the Accountant General's Department, Tax Administration Jamaica will design and launch the online interface processes and protocols.
- Intent is that individuals can begin to apply by April 9, 2020 assuming that the Supplementary Budget is passed by that time.

3. COVID GRANTS FOR MARGINALLY SELF-EMPLOYED AND THE INFORMALLY EMPLOYED.

Where employment status is considered to be informal and there are no statutory payments, this makes electronic verification difficult to establish, especially as these employers are unlikely to upload P45 on termination of employment. This will make it difficult to assess whether these persons in fact been laid off.

- In these cases the Government will work with umbrella organisations (e.g. Craft Vendors Associations, JUTA, JCAL) to assist in the verification process.
- Once this arrangement is worked out, and verification is concluded these persons will receive a payment.
- The specific amount will depend on further details becoming available. to that
- The Government will allocate \$1 billion in additional funding to the Ministry of Labour and Social Security and will work with them as they seek to implement this element of the CARE Programme.

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.