

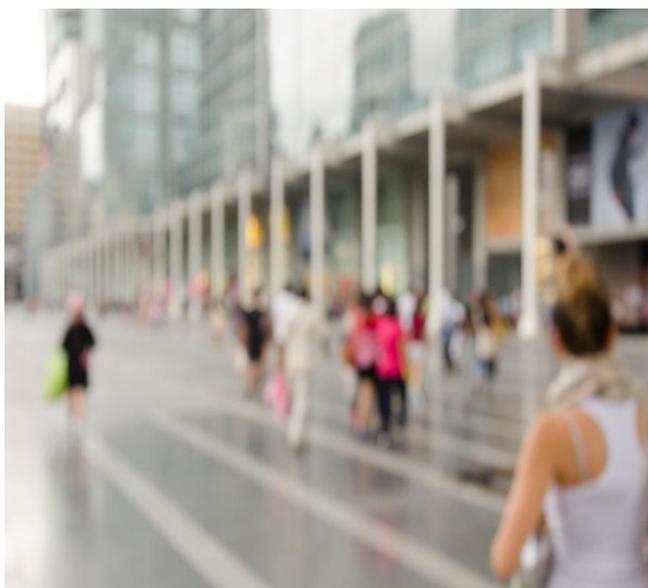
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COVID-19 AND THE IMPLICATION OF THE LAGOS STATE INFECTIOUS DISEASE REGULATIONS, 2020.



Covid-19 pandemic continues to chart a devastating course all over the world leaving in its wake, a trail of illness, death, overwhelmed health institutions and crumbling economies. The index patient of Covid-19 in Nigeria was discovered in Ogun State and brought to Lagos State on the 27th day of February, 2020 and since then there has been a surge in the number of cases in the country especially in Lagos and Abuja. In a bid to control the pandemic, the Governor of Lagos State on the 27th of March, 2020 executed the Lagos State

Infectious Disease (Emergency Prevention) Regulations, 2020 (the "Regulation") in exercise of the powers conferred on him by the Lagos State Public Health Law Cap P16, Laws of Lagos State 2015 and Section 8 of the Quarantine Act, Cap Q2, Laws of the Federation of Nigeria, 2004. Furthermore, the Federal Government imposed a curfew on Lagos, Abuja and Ogun State with effect from 30th March, 2020 for a period of two weeks which required everyone within the affected areas to stay at home, postpone interstate travels, close down all offices and businesses except for healthcare related services and other essential services. This was further extended by another two weeks on the 13th of April, 2020. Many other states in the country also imposed similar restrictions on their states to curb the spread of Covid-19.

With respect to Lagos State, the Regulation empowers the Governor to direct the restriction of movement of persons within, into and out of Lagos State save for transportation necessary for the supply and purchase of essential services as well as movement of essential services personnel. The Regulation also empowers the Governor to regulate gathering of persons for any reason including meetings, conferences, festivals and religious gatherings except where the written approval of the Governor is first obtained for such gatherings.

Without any doubt, the restriction on movements and closure of offices and businesses has caused adverse effects on individuals, businesses and the economy as a whole. Some of these effects which many businesses are unprepared for are as follows:

Impact on Contracts in general.

Many companies will find it difficult to perform their obligations under subsisting commercial contracts. When this happens, it is important to refer to the provisions of the relevant contract to decide what to do in order to avoid potential liabilities. Most commercial contracts contain provisions for “force majeure” which is a term used to refer to supervening events such as an act of God, civil unrest, wars, strikes, etc. This provision is usually triggered when one or both parties are unable to perform their obligations due to a force majeure event. The peculiar circumstances of the Covid-19 pandemic and the measures put in place to combat its spread is a typical example of a force majeure event.

In contracts where force majeure is provided for, it is important for the affected party to act in accordance with the provisions of the contract to trigger same. Some contracts require that force majeure events must be declared within a specified period from the occurrence of the force majeure event otherwise the affected party may lose the opportunity to rely on same. To this end acting in a timely manner is very important.

If a contract does not contain a force majeure clause, the parties would have to agree, depending on factors such as the nature of the contract, other legal remedies available under the Laws such as suspension of the contract (which has the same effect as a force majeure) or termination of the contract where suspension is not practicable.

Impact on Employment Contracts

The restriction on movement and closure of businesses and offices will affect the cash flow of many businesses which will in turn affect the ability to pay salaries as the lockdown persists. Some businesses have been able to put measures in place that would enable their employees work remotely from home but not all jobs can be done from home and for those that can be done from home, it would eventually be difficult to sustain the volume of work required to keep the business afloat as long as the lockdown persists.

With dwindling cash flow as well as the inability of the employer to provide enough work for the employee and the consequent difficulty in paying salaries, both the employer and the employee will have to agree on what to do.

It is unlikely for a contract of employment to contain a force majeure provision, but the employer and the employee can agree to alter or suspend the contract of employment to suit their peculiar needs until the resumption of normal economic activities.

A contract of employment is just like every other contract and as such can only be altered or suspended by the agreement of both the employer and the employee. Any unilateral action taken by either the employer or the employee would be considered invalid and may lead to legal liabilities. The option to terminate the employment contract can also be considered by either the employer or the employee but this must be done in accordance with the contract of employment and the law. Redundancy can also be considered by the employer, but this must be achieved through collective bargaining (where applicable) and in accordance with contracts of employment and relevant employee handbooks.

Above all, it is important for businesses to keep in constant communication with employees and to issue relevant policies for the facilitation of work during the lockdown period.

Restrictions Under the Regulation

There are several restrictions under the Regulation.

Restriction on Movement: The Governor has, in accordance with his powers under the Regulation, restricted movement of persons, vehicles, aircraft and watercraft save for movement for the supply and purchase of essential services and the movement of essential services personnel. The Regulation describes essential supplies to include food, water, pharmaceutical products and medical supplies and any other essential supplies as the Governor may deem necessary. The implication of this is that people are allowed to move with no restriction for the purposes above.

Restriction on Events, Gatherings and Premises: The Governor also prohibited any gathering of more than 25 persons in line with his powers under the Regulation.

This is applicable to conferences, meetings, festivals, religious services, private events, public visits etc. unless the written approval of the Governor is obtained. The Governor also ordered the temporary closure of public places such as bars, event centres, places of worship, educational institutions, markets except for markets for the sale and manufacture of food, water, pharmaceutical products, medical supplies and other places providing other essential services.

Restrictions on Trade and Commercial Activities:

Similar restrictions have also been placed on trade, business and commercial activities except for essential services. It is important to understand the extent of the restriction on movement.

It must be noted that any person who contravenes any of the directives given by the Governor under the Regulation is liable both under the Lagos State Public Health Law Cap P16, Laws of Lagos State 2015 and the Quarantine Act, Cap Q2, Laws of the Federation of Nigeria, 2004 and any other extant laws to a fine or imprisonment or both.

Conclusion

The purpose of the Regulation by the Lagos State Government is to provide a comprehensive and formidable framework and an effective emergency tool for combating the spread of Covid-19. It is therefore very important to adhere to the Regulation whilst at the same time take adequate steps to manage contractual and possible criminal liabilities during and after the lock down period.

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