

COVID-19 and Labour Law: Pakistan

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Abstract

Other than certain exceptions (food manufacturing, export-oriented industries and those connected with the construction sector), all other types of enterprises are shut temporarily due to the provincial lockdowns. There is a fear of mass dismissals, and job disruptions are expected for 21 million workers. While Government has initiated social transfers paying PKR 12,000 to more than 18 million households, employment retention has been ensured only through administrative orders and a refinancing scheme to enterprises (for wage payment).

Keywords: Covid-19; Labour Law; Ehsaas Emergency Cash Program; Gig economy; Health and Safety; Lockdown; Microenterprises; Telework.

1. Introduction

As of 25 April, the COVID-19 pandemic has infected almost 2,858,000 people in 185 countries, resulting in more than 200,000 deaths¹. Pakistan had its confirmed two cases on 26 February². By 25 April, confirmed cases crossed over 12,000, with 256 deaths reported³.

Envisioning different scenarios, it is estimated that structural unemployment, due to the slowing down of the economy in Pakistan, will range from 3 million to 5 million. The temporary unemployment due to the lockdown is estimated at 10.5 million workers, including daily wage and contract/casual workers in establishments⁴. Centre for Labour Research estimates job-disruptions for around 21 million workers in the country.

Similarly, there are estimates that 9 to 15 million people will fall below the poverty line due to COVID-19 induced crisis⁵. Estimates from PIDE depict a bleaker a picture, forecasting 20 million to 70 million persons falling below the poverty line. The poverty line

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¹ Johns Hopkins University Center for Systems Science Engineering Dashboard; Figures for 25 April 2020

² <https://www.bolnews.com/health/2020/03/timeline-of-coronavirus-outbreak-in-pakistan/>

³ Pakistan Daily Situation Report on COVID-19; Figures for 25 April 2020: <http://covid.gov.pk/>

⁴ Asian Development Bank has also estimated that in the hypothetical worst-case scenario, there could be 946,000 job losses in Pakistan: <https://tribune.com.pk/story/2171093/1-coronavirus-may-cause-61m-loss-pakistan-ADB/>.

⁵ Unemployment and poverty estimates are taken from Coronavirus: Economic impact and relief package by Dr Hafiz A Pasha and Shahid Kardar: <https://www.brecorder.com/2020/03/31/585150/coronavirus-economic-impact-and-relief-package/>

was last estimated for 2015-16, which indicated that 24.3% of the population was living below the poverty line⁶.

In a bid to flatten the curve' of the spread of pandemic COVID-19, the Federal Government announced the closure of all schools, colleges, universities and madrassahs throughout the country till 31 May⁷. Provincial lockdowns, initiated on 23 March, have now been extended to 28 April 2020. The province of Balochistan has extended the lockdown to 05 May. On 24 April, the Federal Government announced to further extend the lockdown by two weeks to 09 May⁸.

Pakistan has a population of 207 million persons, of which 63.4 million are engaged in the labour force (aged 15 years and above). The services sector is the largest employer engaging 38% of the labour force, followed by agriculture (37%) and the industrial sector (25%). Of the 59.8 million employed labour force, Punjab (60%) has the highest share followed by Sindh (23%), Khyber Pakhtunkhwa (12%), Balochistan (4%) and Islamabad (1.15%).

Pakistan's employed labour force (59.8 million) is composed of employees (43% or 25.7 million), self-employed (36%), unpaid family workers (20%) and employers (1.4%). Only 10.6 million non-agricultural workers (28%) work in the formal sector with labour law protections. The remaining 72% are toiling in the informal sector⁹.

Data further show that of the 25.7 million wage employees, only 14.6 are monthly paid workers. Remaining 11 million are either daily wagers (5 million), weekly earners (4 million) and piece-rated workers (1.8 million).

Due to the closures, many of these casually and irregularly paid workers have lost their jobs. Generally, unemployed would engage in self-employment or move to another location. However, considering the imminent lockdowns and curfew-like situations, this might also not be possible.

2. Who is affected by the pandemic?

The sectors, facing the most economic risk, are construction, manufacturing, accommodation and food services, wholesale and retail trade, transport and storage, and real estate and business activities. All these sectors are labour intensive and employ 28.45 million

⁶ PIDE COVID Bulletin No. 1

<https://www.pide.org.pk/pdf/PIDE-COVID-Bulletin.pdf>;

<https://tribune.com.pk/story/2189904/2-coronavirus-forecast-render-18-5m-jobless/>

⁷ The period shall be considered summer vacations. Generally, summer vacations start in June and continue till mid of August.

⁸ <https://www.dawn.com/news/1552089/govt-extends-lockdown-till-mid-ramazan>

⁹ Informal sector is an enterprise-based concept (whether certain enterprises come under legal jurisdiction), however informal employment is a job-based concept and covers also those who are working in the so-called formal sector but have informal jobs. It includes all those formal sector employees who are not registered with EOBI/ESSIs and have no access to various employment security benefits, i.e., advance notice, severance pay/gratuity etc. Informal employment, in this sense, is more than 85% of total employment.

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workers, most of which are low-paid and low-skilled workers. The share of total employment in these high-risk sectors is 47% of total employment in the country.

The services sector is the worst hit due to the COVID induced lockdowns in the country. All sub-sectors, be it food and accommodation services (tourism and hospitality industry), educational institutions, retail, and the transportation sector, have been the worst hit.

The Labour Force Survey of 2018 indicates that 1.18 million workers are engaged in the food and accommodation sector. Those working in the education sector are 2.5 million, while the transport and storage sector alone employs 3.5 million. The construction sector, employing 4.7 million workers, has come to a grinding halt owing to the lockdown and recommended social distancing. Construction is the most labour intensive sector, and most workers engaged in the sector are daily wage workers or employed on a piece-rate basis. Manufacturing sector¹⁰, also engaging 9.7 million workers, is impacted by the lockdown and cancellation/postponement of export orders.

Agriculture, to this moment, remains largely unaffected due to the Government's policy of allowing movement of goods across the country, including agricultural produce. Similarly, the Government has allowed food and beverage manufacturing units, pharmaceuticals as well as seeds and pesticides unit to continue working even during the lockdown. There can be issues of food security due to border closures. Workers in the sector and the whole food supply chain will be impacted if the virus spreads further into rural areas.

Total expected job disruption is 21.24 million of which 77% (16.49) million is working in the "at-risk" sectors including construction; accommodation and food service activities; manufacturing; transport, storage and communication; real estate, business and administrative activities; and wholesale and retail trade, repair of motor vehicles and motorcycles.

3. How is the Government handling the Crisis?

3.1 Economic Relief to the most Vulnerable

On 24 March, the Government of Pakistan announced a comprehensive economic relief package of PKR 1.2 trillion to protect the most vulnerable consumer and business groups in the country. It amounts to over 2% of GDP, which is estimated at PKR 44 trillion¹¹.

¹⁰ Food, beverage and pharmaceutical manufacturing firms are allowed to work during all provincial lockdowns. Government of Punjab has allowed the following industries to work during the extended lockdown: textile industries (36 units); sports goods (10 units); surgical/medical instruments (07 units); auto parts manufacturers (03 units); pharmaceutical (25 units); leather and leather garments (22 units); fruits and vegetables (07 units); and meat and meat products (08 units), notification dated 03 April 2020, by Home Department, Government of Punjab. Further enterprises have been exempted in a notification dated 04 April 2020. Provincial Governments in all provinces have allowed export-oriented industries to operate after following health and safety related standard operating procedures.

¹¹<https://www.thenews.com.pk/magazine/money-matters/632994-economic-consequences-of-covid-19>

Key measures include under the relief package are as under¹²:

Economic Relief Package (Pakistan)		
	Measure	Earmarked Amount (PKR)
1	Relief to daily wage workers	200 billion
2	Cash transfers to low-income families	150 billion
3	Accelerated tax refunds to the export industry	100 billion
4	Financial support to SMEs	100 billion
5	Accelerated procurement of wheat	280 billion
6	Financial support to utility stores	50 billion
7	Relief in fuel prices	70 billion
8	Support for health and food supplies	15 billion
9	Electricity bill payments relief	110 billion
10	Emergency contingency fund	100 billion
11	National Disaster Management Authority (NDMA) for the purchase of necessary equipment	25 billion

An important part of this economic relief package is the “Ehsaas Emergency Cash Program” under which Government plans to distribute one-time cash grant of PKR 12,000 to 12 million households (equivalent to PKR 144 billion). An amount of PKR 69 billion has already been distributed among 5.7 million families in the country under the Ehsaas Emergency Cash Program¹³.

Another major part of the economic relief package is an earmarked amount of PKR 200 billion to provide relief to daily wage workers. On 22 April, the Economic Coordination Committee (ECC) of the Cabinet approved the release of PKR 75 billion from Prime Minister’s Economic Relief Package of PKR 200 billion for targeted payments (PKR 12,000)¹⁴ to the low-income groups, especially labourers and daily wagers most severely affected by the lockdown situation in the country¹⁵. The program aims at 6.2 million low-

¹² <https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19#P>

¹³ <https://www.dawn.com/news/1552089/govt-extends-lockdown-till-mid-ramazan>

¹⁴ Interestingly, this social transfer (PKR 12,000) is 31.4% lower than the currently applicable minimum wage for unskilled work (PKR 17,500).

¹⁵ <https://tribune.com.pk/story/2204812/2-ecc-okays-rs75b-daily-wage-earners/>

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income workers in addition to the 12 million individuals already covered under Ehsaas Emergency Cash Program. The new 6.25 million workers will be covered under “Mazdoor Ka Ehsaas Programme” which aims at extending much-needed support to the low-income labour/daily wagers mostly involved in activities such as loaders, cleaning staff, contract employees, piece-rate workers, self-employed street vendors, construction workers, painters, welders, mechanics, carpenters, domestic help, drivers, etc. In total, now Ehsaas Program (Social Protection in Pakistan) covers 18.5 million beneficiaries¹⁶.

4. Employment Retention

4.1 Through Administrative Orders

There has been a focus on employee retention through the issuance of departmental notifications imposing lockdowns and prohibiting employers from laying off workers.

While provincial labour departments in all provinces, including Islamabad, have instructed employers not to terminate the employment contracts of workers during the lockdown and pay full wages to the workers, 74% (19 million) of the wage employees are working without any contract/appointment letters. Hence, the above instructions can be easily flouted. Only 5.3 million workers have permanent employment contracts and pensionable employment, a considerable majority of which is working in the public sector and large private sector enterprises. While other provinces have asked employers to consider the period of lockdown as “paid leave”, the province of KP has notified these days (more than six consecutive weeks) as public holidays. The province of Balochistan has required employers to pay at least the minimum wages (PKR 17,500) to their workers (irrespective of their contract status) on a regular basis during the lockdown period without any deduction.

Employers Federation of Pakistan, a representative body of employers in Pakistan, was even planning to go to the court against government orders of placing a ban on laying off workers and directions to make payment of salaries irrespective of the fact that the industry is closed down¹⁷. There are also reports of mass dismissals in the textile sector¹⁸. Overall, the sector engages more than 4 million workers in the country.

¹⁶ Pakistan has a population size of approx. 220 million and an average household size of 6.8 persons. This translates to approx. 32 million households in the country. Since Ehsaas Program covers 18.25 million households, it covers 56% of population.

¹⁷ According to the President, Employers Federation of Pakistan, “Not only does government’s decision of directives to industries to continue to make payment of salaries lack rationality, it also does not enjoy the legal sanction or constitutional propriety”.

¹⁸ Mazdoor Akath (Labour Collective) has estimated loss of more than 1 million textile sector jobs in Pakistan because of declining global orders amid the coronavirus crisis. A petition has also been filed before the Lahore High Court about mass dismissals and the Court has sought report from the Provincial Labour Department in Punjab.

4.2 Through Financial Support

In a bid to support the businesses in payment of wages and salaries to their workers and avoid layoffs and, State Bank of Pakistan (SBP) introduced a temporary refinance scheme for payment of wages and salaries to the workers and employees of the business concerned for the next three months (April to June 2020). The financing facility is available on the condition that no workers will be laid off during the first three months. Enterprises can get financing of up to PKR 500 million. Where the three months wage bill of an enterprise is lower than PKR 200 million, they can avail full amount¹⁹.

5. Employment Generation amidst the Pandemic

Food, beverage and pharmaceutical manufacturing firms were already allowed to work during all provincial lockdowns. Provincial Governments in all provinces have allowed export-oriented industries to operate after following health and safety-related standard operating procedures.

The Prime Minister of Pakistan, on 03 April 2020, announced that construction sector would be given the status of an industry and incentives for investors and businessmen to mitigate the economic impact of the coronavirus outbreak. Construction Industry Development Board will also be set up to support the sector. Prime Minister further said that industries connected to construction would continue to function even during the lockdown. This will not only positively impact 4.7 million workers, employed directly in the construction sector but millions of others, employed in allied industries. The Centre for Labour Research has prepared a policy brief on how to make construction work decent²⁰. The main policy recommendations include enactment of separate legislation for the construction sector, fixing the public sector contracting system and imposing a social protection levy on commercial and residential construction.

6. Following Health and Safety Procedures

Provincial governments have issued detailed standard operating procedures (SOPs) for different sectors in commerce, industrial and delivery services which have been allowed to work during the lockdown period. Enterprises have to ensure that workers are properly briefed about the COVID-19 and spread of diseases and they are giving detailed information and training on social distancing measures and other workplace cleanliness measures to ensure the health and safety of workers. Employers are prohibited from calling workers above the age of 55 years to work. Employers are required to submit an undertaking that

¹⁹ <http://www.sbp.org.pk/sme/d/circulars/2020/C6.htm>

²⁰ <https://clr.org.pk/wp-content/uploads/2020/04/Covid-19-Protecting-construction-workers.pdf>

SOPs are fully complied with, and they will be responsible for any contravention. On 24 April, the province of Khyber Pakhtunkhwa made the use of face masks compulsory for everyone, coming out of their houses.

7. Engaging in Social Dialogue

Tripartite social dialogue, both at the federal and provincial level, has been initiated to develop sustainable solutions to the various workplace issues emerging in the wake of COVID-19. The online meeting of Federal Tripartite Consultative Committee was also called on 16 April to discuss the labour market impact of the pandemic in Pakistan. Representative organizations of social partners, Employers Federation of Pakistan (EFP) and Pakistan Workers Federation (PWF), have issued a joint declaration demanding constitution of a special tripartite taskforce in each province for consultations on collective action and assistance in the execution of the plans for economic and social recovery. The Tripartite Committee for Implementation of Labour Laws has asked the employers in the Sindh province to implement the government orders of payment of salaries to all their staff during the lock down period. The tripartite Committee is monitoring the payment of wages and the ban on dismissal of workers during this period.

While the Government has taken certain steps, a lot is still missing.

7.1 Actions to take

While protecting workers and their families from this pandemic should be the first priority, demand-side measures are also needed to protect those facing income losses because of infection or reduced economic activity. There are three aspects of COVID-19 that created labour market shock: the number of jobs is declining due to closures leading to increased unemployment and underemployment; the quality of employment is worsening due to lack of income replacement programs in the event of sickness or unemployment, i.e., lack of social protection; and it is disproportionately impacting the already vulnerable and marginalized including elderly, women, young, and self-employed workers²¹.

Based on the above aspects, the following actions are recommended to ameliorate the pernicious effects of COVID pandemic on the labour market:

²¹https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_738753.pdf
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7.2 Short-term measures

1) Protect employment through incentives:

Those economic sectors and enterprises negatively impacted by the coronavirus, especially in the manufacturing and services sectors, should be protected through various incentive measures. Governments should ensure that workers suffer no wage losses due to quarantine or isolation.

The Government can reduce or waive off payroll taxes (PESSI, EOBI) for four months (March-June 2020) to those enterprises who retain their workforce. The Government may also announce time-bound tax relief measures for enterprises who announce job-sharing schemes. Similar financial benefits can be announced for all such enterprises which register their workers with social security institutions²².

2) Layoff vs Termination

Labour legislation in Pakistan provides a procedure for laying-off workers in the event of a catastrophe or an epidemic. Under this, workers are granted 50% of their wages during the first 14 days of layoff. Instead of requiring employers to pay full wages, the Government should enforce this provision of labour law. During the extended lockdowns, a portion of wages, at least equivalent to the minimum wage (17,500 per month), can be paid by the Government through already available funding with PESSIs, Workers Welfare Fund and Employees Old-Age Benefits Institution²³.

3) Provide Unemployment Benefit

The Government can start giving unemployment benefits (at least equivalent to a minimum wage of 17,500 rupees per month) to unemployed and initiating public employment programmes. Local government system can help in identifying individuals who lost their employment due to the enterprise closures or cancellation of public events.

Workers Welfare Fund, an attached department of Ministry of Overseas Pakistanis and Human Resource Development, has an available fund of 120 billion rupees. An unreconciled amount of 48 billion rupees of the Workers Welfare Fund is also available in the Federal Consolidated Fund which is managed by the Finance Division. This can be used to initiate the emergency unemployment benefits program in the country. Later on, the unemployment

²² President Employers Federation of Pakistan, Mr. Majyd Aziz, in his op-ed, has given certain suggestions to deal with the current circumstances: allow individual enterprises to establish an Emergency Fund which would include the amount due to be paid to employees on account of bonus for the current year; amount distributable among employees on account of Workers Profit Participation Fund for the current financial year; the amount of 2% of profit payable on account of Workers Welfare Fund; suspending amount payable to the PESSIs and EOBI on account of their monthly contributions and transferring it to the Emergency Fund; and adjusting employees leave balances for the current and next years' leave entitlement

²³ Instead of making employers bear all the cost of closures due to lockdowns, State must pay a reasonable portion of wages to workers. <https://voxeu.org/article/economics-wage-compensation-and-corona-loans>
<https://doi.org/10.6092/issn.1561-8048/10930>

benefits can be based on the social insurance system where both workers and employers should contribute.

7.3 Medium-term Measures

1) Expand Access to Paid Sick Leave

While ensuring income security to those who are sick (quarantined or isolated) or are caring for family members. Paid sick leave is only eight days in Pakistan. For those registered with the provincial social security institutions (PESSIs), employment-secure sickness benefit is available for 121 days in a year; however, only 1.8 million workers are registered with PESSIs. Flat rate sickness benefits must be made available to the informal sector workers as well as self-employed workers, especially gig workers.

2) Register Workers with Social Insurance Institutions

BISP is adding 7.5 million more families in the system and plans to pay a sum of 12,000 rupees. Similarly, ECC has approved a budget of 200 Billion for formal sector workers. All these workers, irrespective of their work status, must be registered with the PESSIs and EOBI. Once this pandemic is over, special contributory social insurance schemes can be launched for self-employed, informal and agriculture sector workers.

3) Make Social Protection a Fundamental Right

Recently, the Ehsaas Policy Statement had mentioned the Government's aspiration to introduce a new constitutional amendment to move article 38(d) from the "Principles of Policy" section into the "Fundamental Rights" section. This change would make provision of food, clothing, housing, education and medical relief for citizens who cannot earn a livelihood due to infirmity, sickness or unemployment, a state responsibility. The time to introduce such constitutional change is now since healthcare, sickness benefits and unemployment benefits must be universally accessible. Federal Government has already announced Emergency Cash Programme of 12,000 rupees to 12 million families (72 million individuals), to be covered under the Ehsaas Program²⁴

²⁴ <https://dailytimes.com.pk/587305/sms-service-launched-to-provide-emergency-cash-grant-to-needy/>;
<http://www.radio.gov.pk/09-04-2020/disbursement-of-cash-assistance-under-ehsaas-emergency-cash-program-begins-today>

7.4 Long-term Measures

1) Give legal cover to the teleworking and flexible work

There is a dire need to give legal cover to teleworking and flexible work time arrangements, not only for the duration of the coronavirus pandemic but for the later times to reconcile work and family. Social distancing, a major tactic to curb the spread of coronavirus, can be done through telework. While some jobs, by their very nature, are difficult or impossible to do without the physical presence of worker at the worksite (like food and beverage workers, construction workers, law enforcement agencies), knowledge workers especially financial analysts, accountants, lawyers, software designers, scientists and engineers may effectively use remote work arrangements. Countries are using different flex-time and flex-location options to encourage teleworking.

2) Enact new legislation for microenterprises

Possible employing ten or fewer workers. LFS 2018 already shows that 26.89 million are working in the micro-enterprises in the non-agricultural sector. Shops and Establishments legislation is already there; however, it is not solely for micro-enterprises. A simplified single labour code for micro-enterprises, with fewer requirements and ease of compliance, must be enacted at the earliest.

3) Regulating the Gig-economy

Deregulation of the gig economy is hurting the economy and society as a whole by producing a whole generation of unprotected workers. Gig economy workers are part of a larger informal economy without access to any social protection benefits. COVID induced lockdowns have had the worst impact on gig workers, especially those engaged with transportation, food delivery and domestic & personal services. There is a dire need to make the gig economy fairer. Requiring digital labour platforms to register their workers aka independent contractors with social security institutions and EOBI could be the first step in that direction. Of all the informal economy workers, the gig economy workers are the easier ones to regulate as their work is already documented, more visible and structured than domestic or home-based work.

8. Will it be enough?

That's too early to tell. And it might even get worse. Quite unlike other calamities like war, floods, hurricanes or earthquakes, this pandemic is still happening and spreading wildly. The policy responses must ensure that support reaches the workers and enterprises which

deserve it the most, including low wage workers (especially those earning less than 20,000 per month), the self-employed and micro-enterprises.

Basic labour protections, including access to fundamental rights at work, adequate living wages, decent working hours, social protection and safe workplaces should be available to everyone irrespective of contract/employment status. Social protection should not be a luxury; it should be available to everyone!

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