

Legal Update - Code on Wages Bill, 2019

Introduction

The Code on Wages Bill, 2019 (hereinafter referred as the “Code”) was passed by the Rajya Sabha on 02 August 2019 and received the assent of the President on 08 August 2019. The Code has amended and transformed the labour laws of the country with the objective to secure the interest of the workers with sustained economic development. The Code intends to make the existing labour legislations in sync with the economic scenario. The said Code aims at reducing complexity by providing uniform definitions and bringing transparency and accountability in the enforcement of labour laws. The Code has extended legislative protection to all workforces irrespective of the sector, in the form of ‘minimum wages’. Such legislative reformation will result in the sharing of the benefit of economic growth with the entire workforce, thus, promoting productivity as well as reduction in inequalities.

The Code has been drafted after amalgamation, simplification and rationalization of the relevant provisions of the following important labour laws. The following labour laws have been repealed with the enactment of the Code.

- a. The Payment of Wages Act, 1936;
- b. The Minimum Wages Act, 1948;
- c. The Payment of Bonus Act, 1965; and
- d. The Equal Remuneration Act, 1976.

COMPARISON OF THE REPEALED LABOUR LAWS WITH THE CODE

S. No	Title	Repealed Provision	Code
Equal Remuneration Act, 1976			
1.	Inclusion of transgender	Section 4 of the Equal Remuneration Act imposed an obligation on the employer to pay equal remuneration to both men and women for same work or work of similar nature.	<p>Section 3 of the Code has included the word ‘gender’ so as to widen the duty of an employer to pay equal wages to its employees, thereby promoting gender equality.</p> <p>The amendment will ensure that no discrimination is projected in payment of wages amongst males, females and individuals falling within the definition of ‘transgender’.</p>

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Minimum Wages Act, 1948			
2.	Scope of minimum wages	<p>Conjoint reading of Section 3(1) and 3(1A) of the Minimum Wages Act extended discretionary power to the Central or State Government (as may be applicable) (Appropriate Government) to fix minimum rate of wages for employees engaged in the sectors specified as in Schedule I of the Minimum Wages Act (Scheduled Employment), where the number of employees were below 1,000 (One Thousand) in number.</p>	<p>Section 6 of the Code prescribes a mandatory obligation on the Appropriate Government to fix minimum rate of wages.</p> <p>Further, the Code universalizes the provisions of minimum wages to all employees irrespective of their sector of employment and has proposed a wage ceiling of an individual worker thereby abolishing the concept of Scheduled Employment.</p> <p>Pursuant to enactment of the Code, minimum wages will become a right of every worker thereby providing legislative protection to workers in the unorganized sector as well.</p>
3.	Procedure to fix minimum wages	No provision.	<p>Section 8(2) of the Code stipulates a procedure to fix minimum wages. The Appropriate Government shall appoint a committee that gives recommendations in respect of such fixation or revision of wages.</p> <p>Each such committee shall consist of the following persons:</p> <ul style="list-style-type: none"> (a) representing employers; (b) representing employees which shall be equal in number of the members specified in clause (a); and (c) independent persons, not exceeding one-third of the total members of the

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			<p>committee.</p> <p>Inclusion of the workers in the committee will ensure appropriate representation of the workers in the procedure for determination of wages.</p>
4.	Considerations for fixing and revising minimum wages	No provision	<p>Section 6 of the Code seeks to provide a methodology to be followed by the Appropriate Government while fixing the minimum wages which is primarily based on the skills of the workers.</p> <p>Additionally, working conditions of workers such as temperature, humidity normally difficult to bear, hazardous occupations or processes or underground work are factors introduced in the Code that are required to be considered while determining and/or revising the wages.</p>
5.	Revision of minimum wages	<p>Section 3(1)(b) of the Minimum Wages Act was a directory provision that allowed flexibility to the State Government to review and revise the minimum rate of wages in a period not exceeding 5 (Five) years.</p> <p>It did not impose any mandatory requirement to revise wages every 5 (Five) years.</p>	<p>Section 8(4) of the Code imposes mandatory obligation on the Appropriate Government to revise the minimum wages every 5 (Five) years.</p> <p>The flexibility provided to the appropriate authority to review wages periodically, under the Minimum Wages Act is removed.</p>

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6.	Floor wages / National minimum wages	No provision	<p>Section 9 of the Code introduces the concept of 'floor wage' which is to be fixed by the Central Government for different geographical areas taking into account the minimum living standards.</p> <p>Section 9(2) of the Code prohibits the State Government from lowering their minimum wages below such floor wage as may be fixed by the Central Government with the help of the central advisory board.</p>
7.	Overtime Wages	<p>Section 14 of the Minimum Wages Act vested powers on the State Government and the employer to prescribe overtime wages for employees of the Schedule Employments.</p> <p>However, minimum overtime wages were not fixed.</p>	<p>Section 14 of the Code prescribes a criteria that has to be compulsorily followed by the employer to estimate overtime wages.</p> <p>The overtime rate of wages paid by the employer should not be less than equal to twice the normal rate of wages.</p>
Payment of Wages Act, 1936			
8.	Applicability	Section 1(6) of the Payment of Wages Act restricted its applicability to a person employed in an industrial or other establishment, whose total wages did not exceed INR 24000/- (Twenty-Four Thousand Rupees) per month).	<p>The Code is applicable to every industry and establishment without any pecuniary restriction.</p> <p>However, Section 25 of the Code prescribes a threshold in relation to the applicability of the provisions of Payment of Wages (Chapter III) that it shall not apply to Government establishments, unless notified by the Appropriate Government.</p>
9.	Introduction of a new mode of payment	Section 6 of the Payment of Wages Act prescribed modes of payment of wages wherein payment may be made by current coin or currency	Section 15 of the Code introduces an additional mode of payment enabling the employer to pay wages by 'electronic mode' in addition to

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		notes or by cheque or by crediting the wages in the bank account of the employee.	<p>the existing modes of payment.</p> <p>The Appropriate Government may, by notification, specify the industrial or other establishments, where an employer will be required to pay wages only through electronic mode or by crediting the said wages to bank accounts of the employee.</p>
10.	Time limit for payment of wages	<p>Section 5 of the Payment of Wages Act prescribed time limit for the payment of wages when wages were paid on monthly intervals only.</p> <p>It did not specify any time limit for payment of wages when it was paid on daily basis, weekly basis and fortnightly basis.</p>	<p>Section 17 of the Code introduces separate timelines to be abided by the employer as mentioned below:</p> <p>When payment made on –</p> <p>(i) daily basis, payment is required to be made at the end of the shift;</p> <p>(ii) weekly basis, payment is required to be made on the last working day of the week and/or before the weekly holiday;</p> <p>(iii) fortnightly basis, payment is required to be made before the end of the second day after the end of the fortnight; and</p> <p>(iv) monthly basis, payment is required to be made before the expiry of the seventh day of the succeeding month.</p>
11.	Deduction for payments of wages	Section 7 of the Payment of Wages Act provided the list of deductions which may be made from wages by the employer.	<p>Section 18 of the Code has made additions to the illustrated list of deductions that may be made from the wages, by the employer.</p> <p>The Code has allowed the employer to deduct any statutory levy laid by an Appropriate Government, payable by employee within section 18(h);</p>

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			<p>and any premium of a pension fund and health insurance scheme as may be applicable within section 18(i).</p> <p>Further, the Code has included limitation to the total amount of deductions that may be made by an employer. The employer is barred from deducting wages in case the deductions are more than 50% (Fifty percent) of the wages payable.</p>
Payments of Bonus Act, 1965			
12.	Applicability	Conjoint reading of the Section 1(3)(b) and Section 2(13) stated that the Payment of Bonus Act applies to factories and establishments where 20 (Twenty) or more persons are employed on any day during an accounting year and do not draw salary more than INR 21,000/- (Rupees Twenty One Thousand only) per month.	Section 26 of the Code held that Chapter IV (Payment of Bonus) shall be applicable to an employee who draws salary not exceeding the amount as notified by the Appropriate Government.
13.	Disqualification for Bonus	Section 9 of the Payment of Bonus Act specified three situations in clause (a), (b) and (c) that disqualified an employee to receive bonus.	Section 29 of the Code has introduced an additional disqualifier to receive bonus in clause (d) i.e. conviction for sexual harassment.
Miscellaneous			
14.	Extension of the limitation period	The period of limitation to file claims under each of the enactments amalgamated in this Code varied from a period of 6 (Six) months to 2 (Two) years.	As per section 45 of the Code, claims with respect to wages may be filed within a period of 3 (Three) years from the date any of the claims illustrated in section 45(1) arises.
15.	Compoundable offence	No provision for compounding of the offence.	Section 56 of the Code provides for compounding of offences which are not punishable by a penalty of imprisonment under this Code.

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			An offence may be compounded by a Gazetted Officer, as notified by the Appropriate Government.
16.	Introduction of Inspector – cum- Facilitator	The enactments amalgamated in this code specified duties of the inspector wherein the inspector shall exercise their functions in their local limits only.	<p>Section 51 (Chapter VII) of the Code has been introduced with the objective of removing malpractices in the inspection. The Code has brought about significant changes in the inspection regime through appointment of ‘inspector cum-facilitator’ that can conduct jurisdiction-free inspections.</p> <p>Inspectors are given wide powers including web-based inspection and calling of information electronically for inspection to enforce the Code with transparency and accountability.</p> <p>The inspection scheme will be decided by the Appropriate Government.</p>
17.	Changes in the definition of the terms	<p>All the enactments amalgamated in this code illustrated different definition of “wages”.</p> <p>The term “wage” included house rent allowance paid by the employer.</p>	<p>Section 2(y) defines “wages” in a comprehensive manner that categorically excludes certain payments.</p> <p>House rent allowance and overtime allowance are categorically excluded from the scope of wages in clause (f) and (h) respectively.</p> <p>Further, proviso to the definition explicitly held that the payments made by the employer excluded under clause (a) to (i) shall not</p>

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			exceed 50 % (Fifty Percent) of the wages or such other percent as notified by the Central government.
18.	Reservation of women in the advisory board	The enactments amalgamated in this Code had no provision for reservation of women in the advisory board.	<p>Advisory board will be constituted at the State and Central level respectively, in the matter related to wages in Chapter V of the Code.</p> <p>Section 42(7) states that one-third of the members in the advisory board shall be reserved for the women.</p>
19.	Burden of Proof	No provision	Section 58 of the Code stipulates burden of proof for the payment of remuneration or bonus or any other claims due to an employee shall lie with the employer.
20.	Increase of Penalty	<p>The enactments amalgamated in the Code provided following penalties for contravention of the provisions.</p> <p>Minimum Wages Act: Offences include (i) paying employees less than minimum wages; and (ii) not providing for a day of rest in the week. Penalties include fine up to INR 500 (Rupees Five Hundred Only) and imprisonment up to 6 (Six) months.</p> <p>Payment of Wages Act: Offences include (i) non-payment of wages at specified time period; and (ii) unauthorized deductions from wages. Penalties include fine up to INR 7,500 (Rupees Seven Thousand Five Hundred Only).</p>	<p>Section 54 of the Code imposes a higher penalty on employers who are in contravention of the Code.</p> <p>No criminal liability is attached for the offence committed for the first time.</p> <p>Employer who makes payments less than what is prescribed in the Code shall be punishable with a fine which may extend up to INR 50,000 (Rupees Fifty Thousand Only).</p> <p>In case of conviction for the same offence for a second or third occasion, such employers may be fined up to INR 1,00,000 (Rupees One Lakh Only) and imprisonment up to 3 (Three) months, or both.</p>

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		<p>Payment of Bonus Act: In case a person or company does not comply with the provisions of the Act, they can be punished with imprisonment up to 6 (Six) months or fine up to INR 1,000 (Rupees One Thousand Only).</p> <p>Equal Remuneration Act: Offences include: (i) non-maintenance of documents in relation to employees; and (ii) discrimination against women in recruitment. Penalties include fine up to INR 20,000 (Rupees Twenty Thousand Only) or imprisonment up to 1 (One) year.</p>	<p>Violation of any other provisions will be fined up to INR 20,000 (Rupees Twenty Thousand Only) for the first instance. In case of conviction for the same offence for a second or third occasion, such employers may be fined up to INR 40,000 (Rupees Forty Thousand Only) and imprisonment up to 1 (One) month, or both.</p>

Conclusion

Consolidation and codification of labour laws has aided in eliminating multiplicity of definitions and authorities thereby easing the enforcement of labour laws by the authorities. With the enactment of the Code and inclusion of the unorganized sectors within the ambit of the Code, there is a ray of hope in every worker that employment avenues will be generated across the country ensuring their right to sustenance.

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