

LAW & POLICY UPDATE

LABOR & EMPLOYMENT



The Occupational Safety, Health and Working Conditions Code, 2019

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The Occupational Safety, Health and Working Conditions Code, 2019 (**Code**) was introduced in the Lok Sabha on July 23, 2019 and referred to the Standing Committee on Labor and Employment on October 9, 2019, which submitted its observations on the Code on February 11, 2020. The Code aims at regulating health and safety conditions of workers in various establishments, and repeals and subsumes 13 labor laws related to safety, health and working conditions of workers, prominently including the Factories Act, 1948 and the Contract Labor (Regulation and Abolition) Act, 1970.

Key aspects of the Code

- **Applicability:**
 - The Code applies to establishments that have employed at least ten workers, and in all mines and docks irrespective of the number of employees. It does not apply to apprentices.
 - It provides special provisions for certain types of establishments and classes of employees, including factories, mines, docks, and building or construction workers inter alia.
- **Licenses and registration:**
 - Establishments covered by the Code must mandatorily register themselves (within 60 days of the commencement of the Code) with registering officers, appointed by the Central or State government.
- **Safety and welfare provisions:**
 - The employer is mandated to provide a hygienic work environment along with absolute care for conditions such as adequate ventilation, sufficient space to avoid overcrowding, potable drinking water, arrangements for separate washrooms for male, female, and transgender workers, etc.
 - The Code also provides for a uniform threshold of welfare provisions for all establishments such as a canteen, crèche, first aid, welfare officer, etc.
- **Duties of employers:** Certain duties of employers have been prescribed under the Code, such as:
 - Ensuring a workplace that is free from hazards that may cause injury or disease
 - Providing periodical health examination to employees in notified establishments
 - Issuing appointment letters to employees
 - Informing the relevant authorities in case an accident at the workplace leads to either death or serious bodily injury of an employee
 - There are other particular duties prescribed for employers in respect of mines, docks, factories, plantations and construction work which include instructing employees about safety protocols and provisioning for a risk-free work environment
- **Duties and rights of employees:** The Code also provides for rights and duties of employees, such as:
 - Right to obtain information from the employer related to employee's health and safety at work
 - Taking reasonable care of their own health and safety, as well as of other persons who may be affected by their acts or omissions at the workplace
 - Compliance with the safety and health requirements specified in the standards

- Not willfully interfere with, or misuse, or neglect any appliance, convenience or other facility provided at the workplace to secure the health, safety, and welfare of other workers
- Not act in such a way that is likely to endanger themselves or others
- Bring any likelihood of imminent serious bodily injury, death or impending danger to health, to the notice of their employer
- **Duties of consultants:** Suppliers, designers, importers, and manufacturers must ensure that articles created or provided by them for usage in an establishment are safe. Information on their proper handling must also be provided to the establishments.
- **Working hours:**
 - The appropriate government is empowered to notify working hours for various class of establishments and employees. For overtime, the prior consent of workers is required along with overtime wage, which should be twice the ordinary rate of wages.
 - Female workers may work past 7 pm and before 6 am only with their consent, as prescribed by the appropriate government.
 - Journalists can work a maximum of one hundred and forty-four hours during any period of four consecutive weeks.
- **Leaves:** No worker in an establishment will be allowed to work for more than six days a week, except as provided in the Code. Further, every worker shall be entitled to one day of leave for every 20 days of work per calendar year.
- **Relevant authorities:**
 - An Inspector-cum-Facilitator appointed by the Central or State government can inquire into accidents and conduct inspections. They have been given special powers in respect of factories, mines, dock works and building or other construction works, prohibiting work in hazardous environment, and are empowered to reduce the number of employees working in any particular section of the establishment.
 - The Central and State governments are required to set up Occupational Safety and Health Advisory Boards at the national and state level, respectively. These Boards will be advising the Central and State governments on the standards, rules, and regulations to be framed under the Code.
 - Safety committees may also be formed in certain establishments, and for certain classes of workers, by the appropriate government. These committees will aim to function as a liaison between employers and employees.
- **Offences and penalties:**
 - Any offence, either by the employer or the employee, that leads to serious bodily injuries or death of any person within the establishment, shall be punishable with imprisonment for a term which may extend to two years, or with a fine up to INR 5 lakh, or both.
 - The courts may also direct that at least 50% of such fine be given as compensation to the heirs of the victim.
 - For any other violation where the penalty is not specified, the employer will be punished with a fine between INR 2-3 lakh.
 - Employees violating any provision of the Code will be liable to a fine of up to INR 10,000.
 - First-time offences which are not punishable with imprisonment can be settled with up to 50% of the maximum fine.



Our viewpoint

The Code is a key part of the much awaited and publicized move towards demystifying, simplifying, and consolidating the labor law regime in India. It aimed at not only updating labor laws to match modern-day employee welfare practices, but also easing compliance burden on businesses and boosting ease of doing business in the country.

Nevertheless, for an efficient and timely execution, the State and Central Governments (as applicable) would need to frame and notify standards, rules and regulations, post notification of the Code, to prevent further delay and uncertainty for businesses. Intriguingly, the Code explicitly bars the jurisdiction of Civil Courts, although providing for the appointment of certain quasi-judicial authorities by the appropriate government for the resolution of disputes under the Code. This would expedite the dispute resolution mechanism. Alternatively, jurisdiction of High Courts may also be invoked.

Employers will also need to keep in mind mandatory registration requirements and stronger obligations on employers of contract labor. With the Draft Bill having been forwarded by the Parliamentary Standing Committee along with its report and expected to be passed in the near future, it would be advisable for businesses to take appropriate steps well in advance to align with the Code.

