

LAW & POLICY UPDATE

LABOR & EMPLOYMENT

Key takeaways from the new labor codes

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Labor reforms in India have been a long-pending demand of foreign investors, a majority of which consider the country's labor and employment laws responsible for limiting investment interest by forcing private employers to be sub-scale and simultaneously creating a plethora of compliances and regulatory barriers. In this context, the consolidation of major central labor laws relating to wages, social security, industrial relations, and occupational safety and health, is indeed a welcome step that underscores the Government's attempt to boost ease of doing business and update domestic laws in order to bring them in line with modern best practices.

In order to simplify and consolidate the labor laws of India, the Government has introduced 4 labor codes (**Codes**) which subsume 29 labor laws. A similar consolidation of central labor laws in 4 broad categories was earlier recommended by the Second National Commission on Labor in 2002, which led to the Ministry of Labor and Employment introducing 4 codes in 2019 which regulate Wages (**Wages**), Industrial Relations (**IR**), Social Security (**SS**) and Occupational Safety, Health and Working Conditions (**OSH**). While the Code on Wages, 2019 was passed by the Parliament, in 2019, the three other Bills were referred to a Standing Committee on Labor. These three Bills were replaced by the government with updated versions on September 19, 2020 based on the committee's recommendations and were passed by the Union Legislature on September 23, 2020.

It is expected that these Codes will be brought into force from the next financial year, and a thorough understanding of the extant provisions is recommended for employers and employees alike.

Common aspects across the four codes

Definition of 'appropriate government'

- All 4 Codes specify that Central Government will act as appropriate government for any central Public Sector Undertaking (**PSU**), even if holding of Central Government in PSU becomes less than 50%.
- Establishments of railways, mines, oil fields, major ports, air transport services, telecommunication, banking, insurance companies, and any other 'controlled industries' as may be specified by Central Government, will be regulated by Central Government as appropriate government.
- All other establishments, including private establishments belonging to none of the above industries, will have the State Government as their appropriate government.

Delegated legislation

- The Codes delegate various essential aspects of lawmaking to the appropriate government through rulemaking, such as specifying safety standards under the OSH Code, or setting thresholds for the applicability of social security schemes under the Code on SS. Although the executive has been given wide-ranging rule making powers conventionally in labor law, the government may consider creating a balance so that it does not lead to excessive delegation.

Power to exempt establishments

- The Code on IR provides the appropriate government with the power to exempt any new industrial establishment or class of establishments from any or all of its provisions in 'public interest'.
- The OSH Code also provides the appropriate government with the power to exempt any establishment for a time period by notification. The OSH Code also empowers the State Government to exempt any new factory (or class of factories) from the Code in the interest of creating more economic activity and employment.

Inspectors-cum-Facilitators

- 'Inspectors-cum-Facilitators', a new authority established under the OSH, IR and SS Codes, have witnessed a transformation in terms of powers and responsibilities, as compared to their current equivalents, i.e. Labor Inspectors. The Inspectors-cum-Facilitators will be carrying out inspections as well as providing information to employers and employees pertaining to compliance. Inspections will be done based on a scheme decided by the appropriate government.

Dispute Resolution

- IR and SS Codes provide that offences punishable with imprisonment up to one year or with fine are compoundable. Hence, in case of offences with fine, compounding is allowed for a sum of 50% of the maximum fine provided for the offence.
- IR and OSH Codes, and partly SS Code bar Civil Courts from hearing any matters arising out of respective Codes.

Code on Wages, 2019

- **Applicability**
 - The Code seeks to regulate wage and bonus payments in all public and private enterprises belonging to the organized or unorganized sector.
 - The term ‘Wages’ includes salary, allowance, or any other component capable of being expressed in monetary terms.
 - The Central Government will make wage-related decisions for establishments operating under its authority, and for establishments in industries such as aviation, telecom, banking and insurance among others (State governments will make decisions for all other classes of establishments). The Code will have an overriding effect, notwithstanding any other law in force, award, agreement, settlement, or contract of service to the contrary.
- **Floor wage**
 - The Central Government will fix a floor wage, taking into account living standards of workers.
 - Floor wages can vary with geographical areas.
 - Minimum wages fixed by the Central or State governments for establishments falling under their jurisdiction must not be lower than such floor wage.
- **Fixing the minimum wage**
 - In line with the Minimum Wages Act, 1948, this Code prohibits employers from paying wages less than the fixed minimum wage to its employees.
 - The appropriate government, while fixing minimum wages, may take into account factors such as skill of workers and difficulty of work.
- **Overtime**
 - Employees would be entitled to ‘overtime wages’ which will be at least twice the normal rate of wages.
- **Payment of wages**
 - Wages can be paid in multiple modes such as coins, currency notes, cheque, bank account credit or electronic modes.
 - The employer must set a wage period as either daily, weekly, fortnightly or monthly.
- **Deductions**
 - Deductions (not exceeding 50% of total wage) from an employee’s wages may be made on grounds including fines, absence from duty, accommodation provided by employer or recovery of advances given to employee, among others.
- **Determination of bonus**
 - Employees will be entitled to an annual bonus in case their wages do not exceed a specified monthly amount. Currently, under the Payment of Bonus Act, 1965, this amount is INR 21,000.
 - The annual minimum bonus will be at least 8.33% of the wages, or INR 100, whichever is higher.
 - If the allocable surplus exceeds the total minimum bonus payable to employees, a part of the gross profit must be distributed between the employees in proportion to their annual wages. An employee can receive a maximum bonus of 20% of their annual wages.
- **Gender discrimination**
 - In matters pertaining to wages and recruitment of employees for same or similar work, the Code on Wages prohibits gender discrimination.

Offences

- The Code lays down penalties for offences committed by an employer in contravention of any provisions of the Code.
- Such penalties depend on the nature and gravity of such offence. The highest penalty prescribed is imprisonment for 3 months and/or a fine up to INR 1 lakh.
- The Inspector-cum-Facilitator is required to give employers who are first-time offenders an opportunity to comply with provisions of Code before initiating prosecution.

Social Security Code, 2020

- **Employee Provident Fund (EPF)**
 - Provident fund and pension scheme will apply to all establishments employing 10 or 20 employees, and to any other establishments as may be notified by government.
- **Employees State Insurance (ESI)**
 - ESI Scheme will apply to establishments employing 10 or more employees.
 - In case of a pandemic, epidemic or a national disaster, the Central Government can make changes to the employer’s or the employee’s contribution under Employees State Insurance for up to three months.
 - If the employer fails to pay ESI contributions, the ESIC may pay the benefits to the employee and recover it from the employer the capitalized value of the benefit, including the contribution amount, interest and damages, as an arrear of land revenue or otherwise.
- **Registration**
 - Every new establishment to which the Code applies is required to register.
 - Establishments already registered under any other Central Law would not be required to register again.
 - Aadhaar-based registration is mandated for all categories of workers.
- **Gratuity**
 - Fixed-term employees (i.e. employed for a fixed duration) will be entitled to pro-rated gratuity based on the term of their contract.
 - The threshold period of such an employment will also be a continuous working period of 5 years, as is the case for other categories of employees.
- **Maternity benefit**
 - In addition to maternity benefit in terms of paid leaves, every woman is entitled to medical bonus of up to INR 3,500 (if pre-natal confinement and post-natal care is not provided by employer).
- **Unorganized workers**
 - The Code makes an attempt at bringing within its fold the unorganized sector of the economy. For instance, the Code allows schemes for unorganized workers to be funded by a company’s CSR fund.
 - The Code empowers the Central Government to frame social security schemes for unorganized workers, gig workers (workers outside the traditional employer-employee relationship) and online platform workers (those who access organizations or individuals through an online platform and provide services or solve specific problems.)
- **Offences and penalties**
 - The Code prescribes a five-year limitation period for initiating inquiries for payment of dues under EPF and ESI schemes.

Industrial Relations Code, 2020

Definitions

- The definition of 'worker' under the code is similar to (but not same as) the definition of 'workman' under Industrial Disputes Act, 1947, with minor changes such as exclusion of apprentices from scope of definition. A worker means 'any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether terms of employment be express or implied, and includes working journalists'.
- The term 'Industry' has been given a broader definition, including within its scope all systematic activities carried on by co-operation between employers and workers. Notable exclusions are charitable organizations, sovereign functions of the government, domestic service and other activities that may be notified by the Central Government.
- A situation where 50% of more workers are on casual leave simultaneously, is said to fall within the scope of term 'strike'.
- IR Code retains the definition of 'retrenchment', however, termination due to continued ill-health is no longer considered retrenchment.
- A new concept of 'fixed term employment' has been introduced. It refers to workers that are hired for a fixed period but will enjoy the same benefits and entitlements as are available to permanent workers.

Negotiating Union/Council

- A Trade Union with at least 51% of the workers as members will be the sole negotiating union.
- In case no Trade Union has at least 51% of workers as members, a negotiating council will be formed consisting of representatives of Trade Unions that contain at least 20% of workers as members.
- For every 20% of total workers as members, one representative will be included.

Prior permission of appropriate government

- Prior permission of government before closure, lay-off, or retrenchment now needs to be sought only by establishments with at least 300 workers, instead of 100 workers.

Worker re-skilling fund

- This is a new concept introduced under IR Code, where a fund shall be created for contribution by employer of an amount equal to fifteen days wages last drawn by worker immediately before retrenchment, and contributions from other sources prescribed by appropriate government.
- The fund shall be utilized within 45 days of retrenchment, or as may be prescribed.

Model Standing Orders

- This provision will apply to establishments employing 300 or more workers. Central Government will be drafting Model Standing Orders basis which employers must prepare their own draft standing orders from date of commencement of IR Code.
- Employers must consult trade unions or negotiating union before submitting standing orders to certifying officer.

Dispute resolution mechanism

- The Code provides for Industrial Tribunals consisting of an administrative member and a judicial member.
- Either party to a dispute can approach Industrial Tribunal. However, only Central Government can make a reference to National Industrial Tribunal.

Occupational Safety, Health and Working Conditions Code, 2020

Definitions

- The definition 'Factory' has been expanded to 20 workers for premises where the process uses power and 40 workers where the process uses no power.
- Provisions of Code pertaining to contract labour would only apply to establishments involving 50 or more contract laborers.

Licenses and registration

- New Establishments covered by Code must register themselves (within 60 days of commencement of Code) with registering officers, appointed by appropriate government.
- Establishments already registered under any other Central Law would not be required to register again.

Duties of Employers

- Issuing appointment letters to employees
- Ensuring a workplace that is free from hazards that may cause injury or disease
- Providing periodical health examination to employees in notified establishments
- Informing relevant authorities in case an accident at workplace leads to either death or serious bodily injury to an employee
- There are other 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.

Safety and welfare provisions

- The employer is mandated to provide a hygienic work environment along with 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.

Working hours

- Appropriate government is empowered to notify working hours for various classes of establishments and employees. For overtime, prior consent of workers is required along with overtime wage.
- Female workers may work past 7 pm and before 6 am only with their consent, as prescribed by appropriate government.

Relevant authorities

- Inspectors-cum-Facilitators appointed by the appropriate government can inquire into accidents and conduct inspections. They have been given special powers in respect of factories, mines, dock-works and buildings or other construction works, prohibiting work in hazardous environment.
- 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.

Leaves

- No worker in an establishment will be allowed to work for more than six days a week, except as provided for by Code.
- Every worker shall be entitled to one day of leave for every 20 days of work per calendar year.

