

# **Labour Law**

# An Overview of Labour Laws in India

1. At present there are 35 Central and more than 150 State Labour Legislation
2. Multiple definitions –Wages, Appropriate Government, Worker/Workman/Employee
3. Most of labour legislation covers only 7%of labour force in organised sector
4. Salary Limit obsolete-Supervisor, pilot :PWA Rs.24000/
5. Minimum Wages-Scheduled Employment
6. Number of persons employed

# Labour Law Reforms

## Salient features of all 4 Codes

### 1. Consolidation of the then Act

- (i) Industrial Relations Code- (3 Acts)
- (ii) Code on Wages- (4 Acts)
- (iii) Code on Social Security - (9 Acts)
- (iv) Code on Occupational Safety, Health and Working Conditions- (13 Acts)

### 2 Uniformity in definition-

- (i) Appropriate Government.
- (ii) Wages
- (iii) Employee/worker
- (iv) Establishment

### 3. Use of technology

- (i) Returns
- (ii) Registration
- (iii) License

# **Labour Law Reforms**

## **Salient features of all 4 Codes**

### **4. Dilution of Inspection-**

- (i) Inspector-cum –Facilitator
- (ii) Prior Opportunity must be given to employer
- (iii) Web based randomized selection of inspection
- (iv) No liability if employer complies with order or direction of inspector –cum- facilitator
- (v) Both Centre and State lay down inspection scheme to be followed. to comply with the shortcomings found by Inspector before filing prosecution
- (vi) Compounding of offence.

### **5. Enhances the fine for violation**

# Key changes

## Industrial Relations Code, 2020

- 1. Code subsumed:** The Trade Unions Act, 1926 Industrial Employment (Standing Orders) Act, 1946; and the Industrial Disputes Act, 1947.
- 2. Provisions with respect to application of Standing Orders** raised Industrial Establishments employing 100 or more workers to 300 or more employees only.
- 3. Establishment with less 300 workmen** can be laid-off, retrenched, closed without government approval.
- 4. New Definitions-** Industry, Employer, Employee, Worker, Wage, Appropriate Government.

# Key changes

## Industrial Relations Code, 2020

- 5. The definition of “Worker”** has been revised to include persons in supervisory capacity getting wages up to eighteen thousand rupees per month.
- 6. Concept of “Re-skilling fund”** has been introduced.-
- (i) Contribution of the employer, equivalent to 15 days wages as last drawn by the worker immediately before being retrenched.
  - (ii) Contributions from other sources as maybe prescribed.
  - (iii) The fund must be utilized for paying 15 days wages last drawn by the worker, to his account, within 45 days of the worker being retrenched.

# Key changes brought out by the Industrial Relations Code, 2020

## 7. Dispute Resolution Mechanism

- (i) Abolishes Board of Conciliation, Court of Inquiry & Labour Court
- (ii) Works Committee- establishment 100 or more
- (iii) Grievance Redressal Committee-20 or more
- (iv) Conciliation officer
- (v) Industrial Tribunal-Judicial & Adm. Member
- (vi) National Industrial Tribunal

# Key changes brought out by the Industrial Relations Code, 2020

## 8. Recognition of Negotiating Union or Negotiating Council

- (i) In case of a single trade union in an industrial establishment, the employer shall recognize the said union as the sole negotiating union of the workers.
- (ii) In case of multiple trade unions, the trade union with 51% membership of workers on the muster roll of the industrial establishment shall be recognized as the negotiating union by the employer.
- (iii) In case of multiple trade unions, with none meeting the above 51% membership criteria, the employer shall constitute a negotiating council, consisting of representatives of such registered trade unions, which have support of not less than 20% of total workers of the industrial establishment (1 representative for each 20%).



# Key changes brought out by the Industrial Relations Code, 2020

## 9. Strikes & Lockouts:

- The IRC defines “Strike” to include the concerted casual leaves on a given day by fifty per cent or more workers employed in an industry.
- No person employed can go on a strike without giving a 14 days’ notice to an employer before a strike. This notice shall be valid for a maximum of 60 days.
- Similarly, no employer can lock-out any of its workers without giving a 14 days’ notice of a lock-out. This notice shall be valid for a maximum of 60 days.
- Further, IRC prohibits strikes and lock-outs: (i) during and up to seven days after a conciliation proceeding, and (ii) during and up to sixty days after proceedings before a tribunal or an arbitrator (iii) during any period in which a settlement or an award is in operation.
- Employers are required to report to the appropriate government and conciliation officer, within five days from receiving/giving notice of a strike/lock-out.

# Key Changes in Code on Wages, 2019

**1.** The Code amalgamates replaces the following four laws: (i) the Payment of Wages Act, 1936, (ii) the Minimum Wages Act, 1948, (iii) the Payment of Bonus Act, 1965, and (iv) the Equal Remuneration Act, 1976.

**2.** Unlike (i) the Payment of Wages Act which is applicable to employees drawing salary below a statutory limit, (ii) the Minimum Wages Act which is applicable to employees engaged in scheduled establishments, the Code on Wages envisages uniform applicability of the provisions of payment of wages and minimum wages to all employees irrespective of the wage ceiling and sector.

# Code on Wages, 2019-Definition of Wage

**3. (i) basic pay, (ii) dearness allowance and (iii) retaining allowance have been included as components of 'wages'. + amount exceeding 50% of (a) to (e)**

**Excludes** 11 items: *(a)* bonus payments; *(b)* value of the house-accommodation, supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by an order of the appropriate Government; *(c)* employer contributions to any pension or provident fund; *(d)* conveyance allowances; *(e)* sums paid to the employee to defray special expenses on him by the nature of his *(f)* house rent allowance; *(g)* remuneration payable under award or settlement between the parties or order of court or tribunal; *(h)* overtime allowance; *(i)* commission payable to employee; ***(j)* gratuity payments; and, *(k)* retrenchment compensation or other retirement benefit payable to the employee or any ex-gratia payment made to the employee on the termination of his employment.**

- **If the sum-total of excluded components (a) to (i) (9) exceeds 50% or other notified percentage of the total remuneration, then that portion of the amount exceeding 50% (or such other percentage is also to be calculated as 'wages' under the Code.**

# Code on Wages, 2019

## 4. Separate definitions of 'worker' and 'employee'

The Code provides for separate definitions of 'worker' and 'employee'.

The definition of '**employee**' is broader than that of 'worker' as it includes persons doing managerial and administrative work.

The definition of '**worker**,' however, expressly includes working journalists and sales promotion employees.

# Code on Wages, 2019

**5. Floor wage:** (i) The central government will fix a floor wage, taking into account living standards of workers.

(ii) May provide different floor wages for different geographical areas.

(iii) Before fixing the floor wage, the central government may obtain the advice of the Central Advisory Board and may consult with state governments

**6 Fixation of Minimum Wage-**While fixing minimum wages, the central or state governments may **also** take into account factors such as: (i) skill of workers, and (ii) difficulty of work.

**7 Payment of wages:** Wages will be paid in (i) coins, (ii) currency notes, (iii) by cheque, (iv) by crediting to the bank account, or (v) through electronic mode. The wage period will be fixed by the employer as either: (i) daily, (ii) weekly, (iii) fortnightly, or (iv) monthly.

# Code on Wages, 2019

**8. Changes with respect to payment of bonus-disqualifications-** dismissal from service due to **conviction for sexual harassment** would also be considered as a ground for disqualification for receipt of bonus.

**9. Increase in period of limitation for filing** claims from 6 month to 3 from 6 months to 2 years.

**10. The Code now allows the trade union of which the employee is a member to file claims.**

**11. Burden of Proof-**The Code places the burden of proof on an employer to prove that the amounts claimed by the employee have been paid

# Key Highlights

## The Code on Social Security

**1. The Code amalgamates 9 Act** - ECAct, ESIAct, EPFAct, PG Act, MBAct ,BOCW Act, UWSS Act, Cine Workers Welfare Fund Act, 1981&Employment Exchanges (Compulsory Notification of Vacancies) Act

### **2. Applicability of the Chapter**

**III- Employee's Provident Fund-** Estt employing 20 or more workers.

**IV- Employee's State Insurance Corporation-** estt employing 10 or more persons

**V-Gratuity and VI- Maternity Benefit-** factory, mine, oilfield, plantation, port and railway company(ii) every shop or establishment in which ten or more employees are or were employed,

**VII-Employees' Compensation** -It applies to the employers and employees to whom Chapter IV does not apply. This is subject to the provisions of the Second Schedule

# Key Highlights

## The Code on Social Security

**Chapter VIII -Social Security and Cess in respect of Building and other construction work.** It applies to every establishment which falls under the building and Other Construction Workers.

**Chapter IX Social Security for Unorganised Sector – New categories-**unorganised workers, gig worker, platform worker.

**3. Social security benefit has been provided to migrant workers** at par with other workers subject to ceiling of INR 18000/

**4. Voluntary coverage of EPF /ESI to employees in smaller establishments** where both employer and majority of workers agree.



# Key Highlights

## The Code on Social Security

**5. Gratuity**-The threshold limit for working journalists reduces from 5 to 3 years. Gratuity be paid to fixed term employment and there is no condition for minimum service period to avail benefit.

**6.** Every women is entitled to medical bonus upto INR. 3500/ where pre-natal and post-natal confinement is not provided by employer whose upper limit can be amended by the Central Government .

**7. Employee includes**-employed on wages by an establishment, either directly or through a contractor, to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical, clerical or any other work are dependent on wage ceiling

# Key Highlights

## The Code on Social Security

- 8. Employer includes-** contractor; and legal representative of a deceased employer.
- 9. Limitation on Recovery of Dues from Provident Fund**  
Under the EPF Act no limit was prescribed for assessment and inquiries . The Code places a limitation of 5 years for recovery of assessment and inquiries for EPF .
- 10. Period for concluding enquiries for EPF dues-2 years.**
- 11. Payment of Social Security contribution may also be made out of CSR Fund where employer contribute to the fund.**

# Key Highlights

## The Code on Social Security

**12. Social Security Fund for unorganized worker/gig and platform worker-**Funded by(i) Central Govt.(ii) State Government (iii) CSR (iv) Fine collected through compounding of offences .

**13. Crèches-**The Code provides that every establishment where 50 or more persons are employed the employer shall provide for crèches for children of 6 years and less. But Code provides for common crèches.

**14. Career Center** -It has been made mandatory to all establishments employing 20 or more persons to report the vacancy position in their establishments to the Career Center . This information be given online.

**15. Adahar Card-** Requirement of Adahar Card by foreign employer and expatriate.

# Code on Occupational Safety, Health & Working Conditions

**1. The Code** subsume 633 provisions of 13 major labour laws into one single Code with 143 provisions.

**2. The Code applies:**

(i) a place where any industry, trade, business, manufacturing or occupation is carried on in which ten or more workers are employed; in which 10 persons are employed

(ii) motor transport undertaking, newspaper establishment, audio-video production, building and other construction work or plantation, in which ten or more workers are employed;

(iii) factory, for the purpose of Chapter II, (registration )- 10 employees

(iv) a mine or port or vicinity of port where dock work is carried out- no threshold limit

# Code on Occupational Safety, Health & Working Conditions

(v) Establishment in which hazardous or life threatening activity is carried on as notified - no threshold limit

(vi) Factory- using power-raised from 10 to 20 persons; other factory-raised from 20 to 40 persons

(vii) Contract labour –Chapter XI Part I- establishment employing 50 or more contract labour or man power supply contractor employing 50 or more contract labour

(viii) Inter-State Migrant workers-1 establishment employing 10 or more interstate migrant worker

## 3. Registration –Key changes

(i) Online process for the registration of establishments on the *Shram Suvidha* Portal of the Ministry of Labour and Employment ("**SS Portal**").

# **Code on Occupational Safety, Health & Working Conditions: Key Highlights**

(ii) Deemed registration of establishments with auto generation of their registration certificates on failure of the Registering Officer to issue the same within 7 days from the date of receipt of their completed application.

(iii) Relaxation to certain establishments from obtaining electronic registration for a specific period in exceptional circumstances and permitting them to submit registration application in physical form.

(iv) Employers of establishments that are already registered under any other central labour law need to update particulars of their establishments on the SS Portal within 6 months from the date of commencement of the OSH Code.

# Code on Occupational Safety, Health & Working Conditions

## 4. Duties of the Employer

(i) **Ensure workplace Free from Hazard**- Employer must ensure that the workplace is free from hazards which cause or are likely to cause injury or occupational disease to the employees and comply with the OSH Code and the Government's directions on the same;

(ii) **Annual Health Examination**-Employers of establishments such as factories, docks, mines and those undertaking BOCW to conduct, free of cost, an annual medical examination by a qualified medical practitioner within 120 days from the commencement of each calendar year for every worker/employee who has completed 45 years of age.;

(iii) **Provide Safe Working Environment**- provide and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of the employees;

(iv) **issue letters of appointments** to employees; and

(v) **No charge from Employees**--ensure that no charge is levied on any employee for maintenance of safety and health at workplace including conduct of medical examination and investigation for the purpose of detecting occupational disease

# Code on Occupational Safety, Health & Working Conditions

## (vi) **Appointment Safety Officer-**

Factory employing 500 or more workers,

Factory carrying on hazardous process employing 250 or more workers;

Building and other construction work employing 250 or more workers;

Mine employing 100 or more workers;

(vii) **Disposal of hazardous and toxic waste** -Employers are required to ensure the disposal of hazardous and toxic waste including e-waste.

(vii) **Take Remedial action** **Employers need to take immediate remedial action on receipt of information from employees** about any imminent danger on receipt of information from employees about any imminent danger to their safety and health and to send a report of action taken to the Inspector-cum-Facilitator electronically or by registered post or speed post.

((viii) **To display notices** –Employer is required to display notice with prescribed particulars at a conspicuous place in their establishments in English, Hindi and the local language understood by a majority of their workers.



# Code on Occupational Safety, Health & Working Conditions

## (ix) **Duty to intimate commencement and cessation**

- Factories, mines and establishments hiring contract labour or building or other construction workers being required to electronically intimate commencement and/or cessation of operations to the concerned Registering Officer within 30 days of commencement/ cessation, and certify payment of dues to workers employed and the premises being free of hazardous chemicals and substances.
- Employers need to electronically intimate the commencement and completion of any work in their establishments to the concerned Inspector-cum-Facilitator within 30 days of such commencement/ completion, which would be auto-shared with the Employees' Provident Fund Organisation and Employees' State Insurance Corporation.

## (x) **Duty to send notices** of accident and certain dangerous occurrences

## (xi) **Notice of contracts of any diseases** in third schedule to workers

# Occupational Safety, Health Code; Key Highlights

## **5. Duty of the architect, project engineer or designer**

it shall be the duty of the architect, project engineer or designer responsible for any building or construction work or the design of any project relating to such building, to ensure that, at the planning stage, due consideration is given to the safety and health aspects of the building workers and employees who are employed in the erection, operation and execution of such project.

## **6. Third Party Audit and Certification**

This is a new aspect introduced under Section-37 of the OSHWC Code which allows the appropriate Government to formulate a scheme to allow experts possessing such qualifications and experience as may be prescribed to conduct third party audit and certification in a randomized manner. They may also perform any duties specified as a part of such a scheme and submit reports to the concerned employer and Inspector-cum-Facilitator.

## **7. Constitution of National Occupational Safety and Health Advisory Board**

(i) to constitute the National Occupational Safety and Health Advisory Board to give recommendations to the Central Government on policy matters, relating to occupational safety, health and working conditions of workers;

(ii) to constitute the State Occupational Safety and Health Advisory Board at the State level to advise the State Government on such matters arising out of the administration of the proposed Code;

(iii) to make a provision for the constitution of Safety Committee by the appropriate Government in any establishment or class of establishments;

# Occupational Safety, Health Code; Key Highlights

## 8. Rights of Employee

Every employee has the following rights under the OSH Code:

- (i) to obtain from the employer, information relating to employee's health and safety at work and represent to the employer regarding inadequate provision for protection of the employees safety or health in connection with the work activity in the workplace, and if not satisfied, to the inspector-cum-facilitator;
- (ii) if he has reasonable apprehension that there is a likelihood of imminent serious personal injury or death or imminent danger to health, he may bring the same to the notice of his employer directly and simultaneously bring the same to the notice of the inspector-cum-facilitator

# **Code on Occupational Safety, Health & Working Conditions**

## **9. Employment of Women**

to employ women in all establishments for all types of work. They can also work at night, that is, beyond 7 PM and before 6 AM subject to the conditions relating to safety, holiday, working hours and their consent;

## **10. Common License**

to make provision of “common license” for factory, contract labour and beedi and cigar establishments and to introduce the concept of a single all India license for a period of five years to engage the contract labour;

# Inter-State Migrant Worker- Occupational Safety, Health & Working Conditions Code

1. **Definition:** Contract labour includes inter-state migrant workers.
2. **Applicability-**Establishment employing 10 or more workers
3. **Duties of contractor/employer**
  - (i) Pay a lump sum fare for to and fro journey to his native place from the place of his employment.

# Inter-State Migrant Worker- Occupational Safety, Health & Working Conditions Code

4. **Benefits of public distribution system**, etc., to the inter-State migrant workers through Schemes as specified for the class.
5. **Facility of toll free** helpline to the inter-State migrant workers as specified in the class.
6. Extend all such **benefits** which is available to other workers including ESI & EPF
7. **Medical** checkup
8. **Past Liability**- No recovery after completion of service.

# Contract Labour

**1. Applicability** -The OSH Code has modified the number of minimum contract labour to fifty (50) from twenty (20) for the OSH Code to apply.

**2. Definition of contract labour-** definition of “contract labour” has been now enlarged to specifically cover inter-State migrant workers.

**3. Concept of “core activity of an establishment** The OSH Code introduces the concept of “core activity of an establishment” as opposed to non-core activities such as sanitation, security, running of canteens, hospitals, clubs, guest houses, maintenance, housekeeping, laundry, gardening, transport, loading/unloading and courier services in all establishments where such is not the essential/primary activity.

# Contract Labour

**4. Licensing of contractor-** no contractor can supply, engage, or undertake work through contract labour except under a license issued to him under Section-119.

**5. Duty of Contractor to intimate about contract work -** Contractors need to intimate the Chief Labour Commissioner (Central) /his representative through the SS Portal or via email about any contract work order received by them within 15 days from receipt of such order.

**6. Experience certificate –** Must be issued by contractors to contract workers needs to specify their period of work, details of work performed, and experience gained by them in various fields.



## **Contract Labour: No Liability of Principal Employer if Contractor has separate EPF or ESI Code Number**

- With respect to the contractors, who are registered with the Provident Fund Department, having the independent code number, they are to be treated as independent employer. The petitioner , therefore, cannot be treated to be 'principal employer for the purposes of those contractors [Madurai District Central Co-operative Bank Ltd. rep. by its Special Officer vs. Employees Provident Fund Organisation, 2012 LLR 702,
- [Pardeep Kumar vs. Presiding Officer and another, 2015 LLR 726, the Punjab and Haryana High Court ; Securitas Guarding Ltd. & Another vs. Employees Provident Fund Appellate Tribunal & Ors., 2012 LLR 22 the Delhi High Court ; Madurai District Central Co-operative Bank Ltd. rep. by its Special Officer vs. Employees Provident Fund Organisation, 2012 LLR 702, ; Calcutta Constructions Company vs. Regional Provident Fund Commissioner and ors., 2015 LLR 1023 the Punjab & Haryana High Court

# Fixed Term Contract under Industrial Relations IR Code

1. **Definition** -Section 2(o) of IR Code defines "fixed term employment" to mean the engagement of a worker on the basis of a written contract of employment for a fixed period: Provided that— (a) his hours of work, wages, allowances and other benefits shall not be less than that of a permanent worker doing the same work or work of similar nature;

(b) **Entitlement for fixed Term Employee-he** shall be eligible for all statutory benefits available to a permanent worker proportionately according to the period of service rendered by him even if his period of employment does not extend to the qualifying period of employment required in the statute; and (c) he shall be eligible for gratuity if he renders service under the contract for a period of one year;

# Fixed Term Employment under Code on Social Security, 2020

- Section 2(34) "fixed term employment" means the engagement of an employee on the basis of a written contract of employment for a fixed period: Provided that— (a) his hours of work, wages, allowances and other benefits shall not be less than that of a permanent employee doing the same work or work of a similar nature; and (b) he shall be eligible for all benefits, under any law for the time being in force, available to a permanent employee proportionately according to the period of service rendered by him even if his period of employment does not extend to the required qualifying period of employment;

# Daily wagers-Retrenchment in violation of the condition precedent

- When the termination of a daily wage worker is found illegal because of a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, the Supreme Court has consistently held that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

# Daily wagers-Retrenchment in violation of the condition precedent

- But added that where termination of a daily-wage worker is found to be illegal on the ground that it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied. [[Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177 and District Development Officer and Anr. vs. Satish Kantilal Amerelia (2018) 12 SCC 298]

**Case Law-1 -Application of EPF Act to women workers fabricating garments for the company from their home[*The Officer-In-Charge, Sub Regional Provident Fund Office v. M/s Godavari Garments Limited, 2019 ) 8 SCC 149;***

- Provident fund office issued a show cause notice to the company calling upon it to pay the provident fund contributions for the women workers. The balance sheet of the respondent company for the year 1988-89 disclosed large debits towards salary and wages for direct and indirect workers, but the company according to sub regional provident fund office had falsely stated that they employ only 41 employees. On November 30, 1992, provident fund officer issued summons to the company to appear for a personal hearing under section 7-A of the EPF Act. The representative of the company appeared and argued that the women workers who were fabricating garments for the respondent company were not their employees and ,therefore, they are not covered under section 2(f) of the EPF Act. Therefore, even though wage were paid to the women workers the respondent company was not liable for paying the provident fund contribution to them. But the Provident Fund Officer held that the women workers engaged for stitching garments were covered by the definition of the "employee" under section 2(f) of the EPF Act and was liable to pay INR. 15,97,087/- towards the provident fund dues for the period from November, 1979 to February, 1991 and was directed to pay the same within 7 days.
- What is the remedy open to the Company? Do you think that Provident fund Officer decision is according to law.

**Case -2: Employees' State Insurance Act, 1948**  
***Employees' State Insurance Corporation v. Apex***  
***Engineering Pvt. Ltd.; AIR 2019SC 807.***

- Venus Alloy Pvt. Co Ltd. was covered under the ESI Act . However, during an inspection carried out by the Employees State Insurance Corporation it was found out that the company had not been depositing the contribution in relation to the remuneration paid to the directors of the Company who were entrusted with the work of managing director and were receiving remuneration. In view of this deputy director of the ESI Corporation directed the respondent company to make payment of contribution with regards to the remuneration paid to the directors of the Company.  
Decide

## **Case Law-3 Payment of Gratuity *Netram Sahu v. State of Chhattisgarh* 2018 Lab. IC 1732.**

- the appellant was appointed as daily wager on 01.04.1986 by the Water Resources Department of the State of Chhattisgarh. Subsequently, by order dated 06.05.2008 his services were regularized on work charge establishment to the post of Pump Operator. After attaining the age of superannuation, the appellant retired on 30.07.2011. However, he was not paid the gratuity amount by the State which, according to him, was payable to him after his retirement. the appellant actually rendered the total service for a period of 25 years 3 months, i.e., from 01.04.1986 to 30.07.2011 to the State. Out of which 22 years as daily wagers. His services were regularized by the State by order dated 06.05.2008, i.e. prior to the appellant attained the age of superannuation. On these facts the question arose as to whether the appellant can be held to have rendered qualified service, i.e., continuous service as specified in Section 2(e) read with Section 2A of the Act so as to make him eligible to claim gratuity, as provided under the Act, from the State