

Labour Laws in India

May 30, 2020

The Code on Wages, 2019

It seeks to regulate wage and bonus payments in all employments where any industry, trade, Business or Manufacture is carried out. The Code Replaces the following four laws:

- The Payment of Wages Act, 1936,
- The Minimum Wages Act, 1948,
- the Payment of Bonus Act, 1965, and

The Equal Remuneration Act, 1976.

Key provisions

- **Coverage:** The Code will apply to **all employees**. The central government will make wage-related decisions for employment such as railways, mines, and oil fields, among others. State governments will make decisions for all other employment.
- **Wages** include salary, allowance, or any other component expressed in monetary terms. This **does not include bonus payable** to employees or any travelling allowance, among others.
- **Floor wage:** According to the Code, the **central government will fix a floor wage**, taking into account living standards of workers. Further, it may set different floor wages for different geographical areas. Before fixing the floor wage, the central government may obtain the **advice of the Central Advisory Board and may consult with state governments**.
- The minimum wages decided by the central or state governments must be higher than the floor wage. In case the existing minimum wages fixed by the central or state governments are higher than the floor wage, they cannot reduce the minimum wages.

- **Fixing the minimum wage:** The Code prohibits employers from paying wages less than the minimum wages. Minimum wages will be notified by the central or state governments. This will be based on time, or number of pieces produced.
- **The minimum wages will be revised** and reviewed by the central or state governments at an interval of not more than **five years**. While fixing minimum wages, the central or state governments may take into account factors such as: (i) skill of workers, and (ii) difficulty of work.
- **Overtime:** The central or state government may fix the number of hours that constitute a normal working day. In case employees work in excess of a normal working day, they will be entitled to overtime wage, which must be at least twice the normal rate of wages.
- **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.
- **Deductions:** Under the Code, an employee's wages may be deducted on certain grounds including: (i) fines, (ii) absence from duty, (iii) accommodation given by the employer, or (iv) recovery of advances given to the employee, among others. These deductions should not exceed 50% of the employee's total wage.
- **Determination of bonus:** All employees whose wages do not exceed a specific monthly amount, notified by the central or state government, will be entitled to an annual bonus. The bonus will be at least: (i) 8.33% of his wages, or (ii) Rs 100, whichever is higher. In addition, the employer will distribute a part of the gross profits amongst the employees. This will be distributed in proportion to the annual wages of an employee. An employee can receive a maximum bonus of 20% of his annual wages.
- **Gender discrimination:** The Code prohibits gender

discrimination in matters related to wages and recruitment of employees for the same work or work of similar nature. Work of similar nature is defined as work for which the skill, effort, experience, and responsibility required are the same.

- **Advisory boards:** The central and state governments will constitute advisory boards. The Central Advisory Board will consist of: (i) employers, (ii) employees (in equal number as employers), (iii) independent persons, and (iv) five representatives of state governments. State Advisory Boards will consist of employers, employees, and independent persons. Further, one-third of the total members on both the central and state Boards will be women. The Boards will advise the respective governments on various issues including: (i) fixation of minimum wages, and (ii) increasing employment opportunities for women.
- **Offences:** The Code specifies penalties for offences committed by an employer, such as (i) paying less than the due wages, or (ii) for contravening any provision of the Code. Penalties vary depending on the nature of offence, with the maximum penalty being imprisonment for three months along with a fine of up to one lakh rupees.

Code on occupational safety

Highlights of the Bill

- The Code seeks to regulate health and safety conditions of workers in establishments with 10 or more workers, and in all mines and docks.
- It subsumes and replaces 13 labour laws relating to safety, health and working conditions. These laws include: Factories Act, 1948; Mines Act, 1952; Dock Workers Act, 1986; Contract Labour Act, 1970; and Inter-State Migrant Workers Act, 1979.
- Establishments covered by the Code are required to register with registering officers, appointed by the

- central or state governments.
- Welfare facilities, working conditions and work hours for different types of establishments and workers will be prescribed by the central or state governments through rules.
 - The Code sets up occupational safety boards at the national and state level to advise the central and state governments on the standards, rules, and regulations to be framed under the Code.
 - The Code creates special provisions for certain classes of establishments such as factories, mines, dock workers, and constructions workers. These include separate provisions on licenses, safety regulations, and duties of employers.

Key Issues and Analysis

- The Second National Commission on Labor (2002) had recommended consolidation and simplification of existing health and safety laws. However, the Code continues to retain special provisions for various categories of workers such as working journalists and sales promotion employees. The rationale for retaining such provisions is unclear.
- The Code covers workers employed in establishments with at least 10 workers or more. It has been argued that size-based thresholds for applicability of labor laws help in reducing compliance burden for small establishments. On the other hand, it has been argued that occupational health and safety laws should cover all workers, to protect their basic rights.
- The Code bars civil courts from hearing matters under the Code. Therefore, the only judicial recourse for a person aggrieved under the Code is to file a writ petition before the relevant High Court. It can be argued that a bar on civil courts from hearing any matters under the Code may result in the denial of an

opportunity to challenge issues before a lower court.

The Industrial Relations Code, 2019

The Industrial Relations Code, 2019 seeks to replace three labor laws: (i) the Industrial Disputes Act, 1947, (ii) the Trade Unions Act, 1926, and (iii) the Industrial Employment (Standing Orders) Act, 1946.

Key provisions:

- **Trade unions:** Under the Code, seven or more members of a trade union can apply to register it. Trade unions that have a membership of at least 10% of the workers or 100 workers, whichever is less, will be registered.
- **Negotiating unions:** If there is only one trade union in an industrial establishment, then the employer is required to recognize such trade union as the sole negotiating union of the workers. In case of multiple trade unions, the trade union with support of at least 75% of workers will be recognized as the negotiating union by the central or state government.
- **Unfair labor practices:** The Code prohibits unfair labour practices like
 - Restricting workers from forming trade unions,
 - establishing employer sponsored trade union of workers
 - Coercing workers to join trade unions.
 - **Notice of change:** Employers who propose changes in the conditions of service are required to give a notice to the workers.
- **Lay-off and retrenchment:** Employers can terminate the services of a worker, i.e., retrenchment. Employers of industrial establishments such as mines, factories and plantations with at least 100 workers are required to take prior permission of the central or state government before lay-off, retrenchment or closure. The central or

state government can modify this threshold number of workers by notification.

- Industrial establishments in which 50 to 100 workers are employed, are required to:

(I) pay 50% of basic wages and dearness allowance to a worker, who has been laid off,

(ii) Give one month's notice and wages for such a period to a worker who has been retrenched. Any person who contravenes this provision is punishable with a fine between Rs 50,000 and two lakh rupees. Further, if an employer proposes to re-employ retrenched workers, such workers will have preference over other Persons.

- **Voluntary arbitration:** The Code allows for industrial disputes to be voluntarily referred to arbitration by the employer and workers. The parties to the dispute must sign a written agreement referring the dispute to an arbitrator. After investigating the dispute, the arbitrator will submit the arbitration award to the government.
- **Resolution of industrial disputes:** The central or state governments may appoint conciliation officers to mediate and promote settlement of industrial disputes. These officers will investigate the dispute and hold conciliation proceedings to arrive at a fair and amicable settlement of the dispute. If no settlement is arrived at, then any party to the dispute can make an application to the Industrial Tribunal.
- **Industrial Tribunals:** The Code provides for the constitution of Industrial Tribunals for the settlement of industrial disputes. An Industrial Tribunal will consist of two members: (i) a Judicial Member, who is a High Court Judge or has served as a District Judge or an Additional District Judge for a minimum of three years; and (ii) an Administrative Member, who has over 20 years of experience in the fields of economics, business, law,

and labour relations.

- The central government may also constitute National Industrial Tribunals for settlement of industrial disputes which: (i) involve questions of national importance, or (ii) could impact industrial establishments situated in more than one state.

Code on social security

What is social security?

- Any of the measures established by legislation to maintain individual or family income or to provide income when some or all sources of income are disrupted or terminated or when exceptionally heavy expenditures have to be incurred (e.g., in bringing up children or paying for health care)
- social security may provide cash benefits to persons faced with sickness and disability, unemployment, crop failure, loss of the marital partner, maternity, responsibility for the care of young children, or retirement from work
- Social security benefits may be provided in cash or kind for medical need, rehabilitation, domestic help during illness at home, legal aid, or funeral expenses
- It acts as a facilitator – it helps people to plan their own future through insurance and assistance.

Constitution and social security

- Concurrent List Social Security and labour welfare falls under the Concurrent list, which means both the union and state Government can make laws regarding these topics.
- (List III in the Seventh Schedule of the Constitution of India)
- Item No. 23
 - Social Security and insurance,

- Employment and unemployment.
- Item No. 24
 - Welfare of Labour including conditions of work,
 - provident funds,
 - employers' liability,
 - workmen's compensation,
 - Invalidity and old age pension and maternity benefits.
- Part IV Directive Principles of State Policy
 - Article 41 Right to work, to education and to public assistance in certain cases State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.
 - Article 42 Provision for just and humane conditions of work and maternity Relief State shall make provision for securing just and humane conditions of work and for maternity relief.

Key provisions of the Draft Social Security Code

- **Social security schemes:** Under the Code, the central government may notify various social security schemes for the benefit of workers. These include an Employees' Provident Fund (EPF) Scheme, an Employees' Pension Scheme (EPS), and an Employees' Deposit Linked Insurance (EDLI) Scheme. These may provide for a provident fund, a pension fund, and an insurance scheme, respectively. The government may also notify:
 1. an Employees' State Insurance (ESI) Scheme to provide sickness, maternity, and other benefits,
 2. gratuity to workers on completing five years of employment (or lesser than five years in certain cases such as death),

3. maternity benefits to women employees,
4. cess for welfare of building and construction workers
5. Compensation to employees and their dependents in the case of occupational injury or disease. In addition, the central or state government may notify specific schemes for gig workers, platform workers, and unorganized workers to provide various benefits, such as life and disability cover.

- Gig workers refer to workers outside of the traditional employer-employee relationship (e.g., freelancers).
- Platform workers are workers who access other organizations or individuals using online platforms and earn money by providing them with specific services.
- Unorganized workers include home-based and self-employed workers.
- **Coverage and registration:**
 - The Code specifies different applicability thresholds for the schemes.
 - For example, the EPF Scheme will apply to establishments with 20 or more employees. The ESI Scheme will apply to certain establishments with 10 or more employees, and to all establishments which carry out hazardous or life-threatening work notified by the central government.
 - ***These thresholds may be amended by the central government.*** All eligible establishments are required to register under the Code
- **Contributions:** The ***EPF, EPS, EDLI, and ESI*** Schemes will be financed through a combination of contributions from the **employer and employee.**
- For example, in the case of the EPF Scheme, the employer and employee will each make matching contributions of 10% of wages, or such other rate as notified by the government. All contributions towards payment of

- gratuity, maternity benefit, cess for building workers, and employee compensation will be borne by the employer.
- Schemes for gig workers, platform workers, and unorganized workers may be financed through a combination of contributions from the employer, employee, and the appropriate government.
 - **Social security organizations:** The Code provides for the establishment of several bodies to administer the social security schemes.
 - **Inspections and appeals:** The appropriate government may appoint Inspector-cum-facilitators to inspect establishments covered by the Code, and advise employers and employees on compliance with the Code.
 - Administrative authorities may be appointed under the various schemes to hear appeals under the Code. For instance, the appropriate government may notify an appellate authority to hear appeals against the order of the Inspector-cum-facilitator for non-payment of maternity benefits.
 - The Code also specifies judicial bodies which may hear appeals from the orders of the administrative authorities. For example, industrial tribunals (constituted under the Industrial Disputes Act, 1947) will hear disputes under the EPF Scheme.
 - **Offences and penalties:** The Code specifies penalties for various offences, such as:
 1. Failed to contribute- one-three years, and fine of one lakh rupees
 2. Falsification of reports, punishable with imprisonment of up to six months.