

## **Key Definitions & Variations under Code on Wages**

Government of India and various State Governments have been taking various measures to promote ease of doing business in India. Proposed Labour Law Codes by Central Government, if implemented in an appropriate manner can have far reaching impact towards reducing the compliance burden on corporates without comprising the welfare of the work force. Government of India has proposed to implement the following Four Labour Codes on Pan India basis to consolidate numerous Central and State Labour Law legislations:

1. Industrial Relations Code
2. Social Security Code
3. Occupational Safety, Health and Working Conditions Code ; and
4. Code of Wages

### **Background**

The Code of Wages was passed in the year 2019. This Code has been enacted to regulate the terms of payment of wages to the employees. This Code consolidates the following Laws:

1. Payment of Wages Act, 1936,
2. Minimum Wages Act, 1948,
3. Payment of Bonus Act, 1965 and
4. Equal Remuneration Act, 1976

### **Applicability**

The Code of Wages will be extend to Whole of India covering all type of work force i.e. skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work in a private sector or public sector or government employee however will not include the following :

- a. Apprentice covered under Apprenticeship Act and
- b. Member of the Armed Forces of the Union

The Code of Wages will be applicable on all type of establishments where in any industry, trade, business, manufacturing or occupation is being carried on and it also includes establishments of the Government, whereas, The Code of Wages also provide for exemptions in different chapters for different category of establishments. Some of the key differentiators on the applicability are as under:

- 1) In the Code of Wages , Government have introduced the term “ Occupation” by virtue of it can be interpreted that the applicability of this Code will also be on non-profit motive establishments except in the cases where specific exemptions are provided in the Code.
- 2) The Payment of Wages Act, 1936, was applicable on the employees of the Factories or Railway administration having wages of less than Rs. 24,000 per month except in the few states like Haryana and Karnataka wherein the said act is applicable also on Shop, and Commercial Establishments. Whereas The Code of Wages will extend to all type of establishments.
- 3) Payment of Bonus Act, 1965 is applicable on Factories and in case of any other establishment having 20 or more employees on any day during the previous accounting year, where in the case of the Code of Wages , the provisions pertaining to payment of bonus will be applicable on all type of establishments ,other than Factories, irrespective of number of employees except:

- Public sector undertakings provided if in any accounting year an establishment in public sector sells any goods produced or manufactured by it or renders any services, in competition with an establishment in private sector, and the income from such sale or services or both, is not less than twenty per cent. of the gross income of the establishment in public sector for that year; and
- Establishments provided in Section 41 of the Code.

Whereas in case of case of Factories we need to consider the limits of employees provided under the definition of Factories as provided in section clause (m) of section 2 of the Factories Act, 1948 and Rules made thereunder by State Governments.

## **Key Definitions**

### **1. Employee:**

As per Section 2(k) of The Code of Wages an Employee means any person employed in an establishment for wages , for any type of work including skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work in a private sector or public sector or government employee however will not include the following :

- Apprentice covered under Apprenticeship Act ; and
- Member of the Armed Forces of the Union

Whereas currently as per the Payment of Bonus Act, 1965, there is an additional condition that Salary of the Employee should not exceed Rs. 21,000 per month. This means that once The Code of Wages becomes effective the provisions pertaining to Bonus will be applicable on every employee irrespective of the salary/wages.

### **2. Employer:**

As per Section 2 (l) “employer” means a person who employs, whether directly or through any person, or on his behalf or on behalf of any person, one or more employees in his establishment and where the establishment is carried on by any department of the Central Government or the State Government, the authority specified, by the head of such department, in this behalf or where no authority, is so specified the head of the department and in relation to an establishment carried on by a local authority, the chief executive of that authority, and includes,—

- in relation to an establishment which is a factory, the occupier of the factory as defined in clause (n) of section 2 of the Factories Act, 1948 and, where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the said Act, the person so named;
- in relation to any other establishment, the person who, or the authority which, has ultimate control over the affairs of the establishment and where the said affairs is entrusted to a manager or managing director, such manager or managing director;
- contractor; and
- legal representative of a deceased employer;

In the above stated definition, word “managing agent” as mentioned in the definition of Employer under The Payment of Bonus Rules, has been deleted and instead word “Contractor” has been added. This will add to more accountability on Contractors in case of Contract Labour.

### 3. Workers:

As per Section 2 (z) 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 the terms of employment be express or implied, and includes—

1. working journalists as defined in clause (f) of section 2 of the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955; and
2. sales promotion employees as defined in clause (d) of section 2 of the Sales Promotion Employees (Conditions of Service) Act, 1976, and
3. for the purposes of any proceeding under this Code in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched or otherwise terminated in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, But does not include any such person—
  - who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957; or
  - who is employed in the police service or as an officer or other employee of a prison; or
  - who is employed mainly in a managerial or administrative capacity; or
  - who is employed in a supervisory capacity drawing wage of exceeding fifteen thousand rupees per month or an amount as may be notified by the Central Government from time to time; or
  - an apprentice as defined under clause (aa) of section 2 of the Apprentices Act, 1961

Out of the Four Acts which are consolidated in The Code of Wages, the “ worker” has been used only in the Equal Remuneration Act, 1976. Therein the term worker means the workers employed in the establishments on which The Equal Remuneration Act, 1976 is applicable.

4. As per Section 2 (g) of The Code of Wages , “contract labour” means a worker who shall be deemed to be employed in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer and includes inter-State migrant worker but does not include a worker (other than part-time employee) who —
  - is regularly employed by the contractor for any activity of his establishment and his employment is governed by mutually accepted standards of the conditions of employment (including engagement on permanent basis), and
  - gets periodical increment in the pay, social security coverage and other welfare benefits in accordance with the law for the time being in force in such employment.

In comparison with the meaning of Contract Labour in The Contract labour “(Regulation and Abolition) Act, 1970, the proposed definition provide for exclusion of permanent/regular employees of contractor from the definition of Contract Labour subject to certain conditions.

5. As per Section 2 (q) of The Code of Wages, “industrial dispute” means,—
  - any dispute or difference between employers and employers, or between employers and workers or between workers and workers which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person; and
  - any dispute or difference between an individual worker and an employer connected with, or arising out of, discharge, dismissal, retrenchment or termination of such worker;

Whereas as per Section 2(k) of The Industrial Disputes Act, 1947 “industrial dispute” means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons.

## Key Variations are as under:

- The term "workers" has been used instead of the term "workmen". The term 'workman' has been defined in the Contract Labour "(Regulation & Abolition) Act, 1970. The term worker is more exhaustive and also includes any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward and does not excludes persons employed in managerial , administrative or supervisory capacity.
  - In the new definition the dispute between and individual worker and the employer has also been incorporated as part of Industrial Dispute .
6. As per Section 2 (v) of the Code of Wages "same work or work of a similar nature" means work in respect of which the skill, effort, experience and responsibility required are the same, when performed under similar working conditions by employees and the difference if any, between the skill, effort, experience and responsibility required for employees of any gender, are not of practical importance in relation to the terms and conditions of employment;

New Definition is almost same as that under the Equal Remuneration Act, 1976 except that instead of men or women , the new definition covers all genders. This has been introduced to also cover Transgender with the ambit of Labour Laws.

7. Section 2 (y) of the Code of Wages provides for the definition of " Wages" . Term Wages and Remuneration have been defined in the Minimum Wages Act, 1948, The Payment of Wages Act, 1936 and The Equal Remuneration Act.Key Difference is as under :

New Definitions excludes the following additional heads from the ambit of wages:

- Amount of bonus payable to an employee as per the Payment of Bonus Act, 1965 or any law other law in force and any amount in addition to such bonus payable as Bonus will be considered as part of wages;
- House Rent Allowance
- Remuneration payable under any award or settlement between the parties or order of a court or Tribunal;
- any overtime allowance;
- any commission payable to the employee;
- any retrenchment compensation or other retirement benefit payable to the employee or any ex gratia payment made to him on the termination of employment

New definition does not exclude the following from the definition:

- any conveyance allowance
- any contribution paid by the employer to any scheme of social insurance

The New definition also provide for the limit upto which the amount paid under clause (a) to (i) of the definition of "Wages" will not be considered as part of the wages. It states that if the payments made under clauses (a) to (i) exceeds 50% or such other percentage as notified by Central Government of the total payments made to an employee then such access will be considered as part of the Wages. It also clarifies that this term of Wages will be used for the purpose of provisions pertaining to Equal Remunerations and payment of wages, the payments made under clauses (d), (f), (g) and (h) shall be considered as part of the wages. Whereas the Central Government have taken step forward to consolidate the labour laws in the proposed Codes but the key is that the definitions and provisions in the codes should be consistent with each other unlike in the previous laws. In the new article we will share our insights on the various other key provisions of the Code of Wages provided under different Chapters.