

## Deciphering the Labour Codes

The Parliament has passed the most anticipated three Codes i.e.

Code on Social Security, 2020,

Code on Industrial Relations, 2020 and

Code on Occupational Safety, Health and Working Conditions, 2020.

Along with the Code on Wages, 2019, these Codes enfold majority of the labour laws. The Ministry has published these four Codes ("Codes") the effective date of which is yet to be notified in the Official Gazette.

Here is an attempt to summarize the key features of these most anticipated Labour Codes.

### Code on Social Security, 2020 ("SS Code")

- ✓ Has amalgamated nine (9) Central Acts, namely,
  - (i) the Employees' Compensation Act, 1923,
  - (ii) the Employees' State Insurance Act, 1948,
  - (iii) the Employees' Provident Fund and Miscellaneous Provisions Act, 1952,
  - (iv) the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959,
  - (v) the Maternity Benefit Act, 1961,
  - (vi) the Payment of Gratuity Act, 1972,
  - (vii) the Cine Workers Welfare Fund Act, 1981,
  - (viii) the Building and Other Construction Workers Cess Act, 1996, and
  - (ix) the Unorganized Workers' Social Security Act, 2008.
- ✓ Removed multiplicity of definitions and authorities under the various Acts.
- ✓ Enabled the establishments to register for ESI voluntarily even if the number of employees count is less than the prescribed threshold.
- ✓ Defines the term 'employee' to cover maximum number of employees and workers and removes the term 'workers'.
- ✓ Includes the 'gig workers, platform workers and the other unorganized workers' within its ambit of 'workers' and simplify the registration process through Aadhar-based registration for all these organized and unorganized worker segment.
- ✓ Reduces the multiple compliances under the aforesaid Acts to minimal level enabling 'ease of compliance' to the employers.
- ✓ Provides for the establishment and maintenance of separate 'social security funds for the welfare of the gig workers, platform workers and unorganized workers sector'.

## Code on Industrial Relations, 2020 (“IR Code”)

- ✓ Amalgamates the three Central labour legislations namely,
  - (i) the Trade Unions Act, 1926,
  - (ii) the Industrial Employment (Standing Orders) Act, 1946, and
  - (iii) the Industrial Disputes Act, 1947.
- ✓ Introduces the term ‘Industrial Relations’ with the intent to provide broader framework for protecting the rights of workers, minimize frictions between the employers and workers, redress and settle the differences.
- ✓ Provides for ‘fixed term employment’ enabling such employees to receive the benefits like that of a permanent worker other than the notice period after conclusion of a fixed period, and retrenchment compensation.
- ✓ Re-defines the term ‘Industry’ as any systematic activity carried on by co-operation between the employer and worker (includes direct employment, through agency and contractor), for production, supply or distribution of goods or services with a view to satisfy human wants or wishes (except wishes / wants of mere religious / spiritual nature) whether or not – any capital has been invested for the purpose of carrying out such activity; or such an activity is carried on with a motive to make profit or gain. However, institutions owned or managed by organizations wholly or substantially engaged in charitable, social or philanthropic services, activity of appropriate government constituting sovereign functions, domestic services do not fall under this definition.
- ✓ Included the term ‘strike’ the concerted casual leave by 51% or more workers employed in an industry and the mandatory notice of 14 days is applicable not only to public utility services but to all establishments.
- ✓ Expands the definition of ‘worker’ which includes persons getting wages up to Rupees Eighteen Thousand.
- ✓ Provides for ‘constitution of a negotiating union’ in an industrial establishment having registered trade unions for negotiating with the employer.
- ✓ Has increased the threshold of the industrial establishments from one hundred workers to three hundred workers and mandates all such establishments to prepare ‘standing orders’ on
  - (i) classification of worker,
  - (ii) manner of informing workers about working hours, holidays, paydays and wage rates,
  - (iii) suspension for misconduct,
  - (iv) termination of employment, and
  - (v) grievance redressal mechanisms for workers.
- ✓ Has introduced the concept of ‘reskilling fund’ to provide training to the retrenched workers.
- ✓ Mandates, employer to take prior approval from the appropriate government in the event of lay-offs, retrenchment or closure, any mines, factories, plantations that are (i) non-seasonal in nature, (ii) having three hundred or more workmen.
- ✓ Introduced stringent penalty provisions such as contravention of provisions under lay-off, retrenchment, closure by the establishment attracts a fine of Rs. 1 Lakh to 10 Lakhs for first offence and in the case of subsequent repeated offence the fine shall be of Rs. 5 Lakhs to 20 Lakhs and / or an imprisonment up to 6 months.

## Code on Occupational Safety, Health & Working Conditions, 2020 (“OSHW Code”)

- ✓ Amalgamates thirteen (13) Central Acts namely,
  - (i) the Factories Act, 1948,
  - (ii) the Mines Act, 1952,
  - (iii) the Dock Workers (Safety, Health and Welfare) Act, 1986,
  - (iv) the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996,
  - (v) the Plantations Labour Act, 1951,
  - (vi) the Contract Labour (Regulation and Abolition) Act, 1970,
  - (vii) the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979,
  - (viii) the Working Journalist and other Newspaper Employees (Conditions of Service and Miscellaneous Provision) Act, 1955,
  - (ix) the Working Journalist (Fixation of Rates of Wages) Act, 1958,
  - (x) the Motor Transport Workers Act, 1961,
  - (xi) the Sales Promotion Employees (Condition of Service) Act, 1976,
  - (xii) the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, and
  - (xiii) the Cine Workers and Cinema Theatre Workers Act, 1981.
- ✓ Simplifies the registration process prescribing that the establishment having ten or more employees are required to be registered with the registering officer appointed by the appropriate Government thereby minimizing the statutory compliances.
- ✓ Defines ‘factory’ with increase in the threshold on number of workers from ten and twenty workers to twenty and forty workers respectively and fixed the maximum limit of daily working hours for the factory workers as eight hours per day.
- ✓ Defines “core activity of establishment” as any activity which is the purpose of constituting an establishment and activities that are incidentally essential thereto and thereby prohibits employment of contract labour in such core activities, however, exempts a few situations such as, (i) the normal functioning of the establishment is such that the activity is ordinarily done through contractor, (ii) the activities are such that they do not require full time workers for the major portion of the day, or (iii) there is a sudden increase in the volume work in the core activity which needs to be completed in a specified time.
- ✓ Defines ‘inter-state migrant workman’ and provides the benefits of the insurance and provident fund benefits available to other workers, public distribution system either in the native state or the state of employment, portability of benefits of the inter-state migrant worker working for building or other construction work out of the building and other construction cess fund in the destination State where such inter-state migrant worker is employed.
- ✓ Introduces the concept of limiting the carryover of annual leaves (paid leaves) to a maximum of 30 days but provision made for encashment of leave in excess of 30 days. Therefore, the concept of leave lapse will cease to exist by virtue of encashment.
- ✓ Introduced the penalty provisions more strictly such as contravention of any provision of the Code shall attract a fine up to Rs. 2 Lakhs to 3 Lakhs.

## Code on Wages, 2019 (“Wages Code”)

- ✓ Amalgamates the four Central Acts, namely
  - (i) the Payment of Wages Act, 1936,
  - (ii) the Equal Remuneration Act, 1976,
  - (iii) the Minimum Wages Act, 1948, and
  - (iv) the Payment of Bonus Act, 1965.
- ✓ Consolidates the definition of ‘wages’, introduced the concept of ‘floor wages’ to bring uniformity across all workers.
- ✓ Prescribes that the minimum wages rates will be reviewed/revised by the appropriate government at an interval not exceeding five years.
- ✓ Replaces the term ‘men’ and ‘women’ to ‘gender’ prohibiting the gender discrimination to emphasize equal remuneration.
- ✓ Prescribes that there shall be, an annual minimum bonus applicable to the establishments employing atleast 20 employees on any day of the accounting year whose wages do not exceed the specific monthly amount as notified by the Central or State Government and the minimum bonus shall be at the rate of 8.33 percent and the maximum bonus payable shall not exceed 20 percent of such wages.