

Labour Codes – Key Impact Areas of Employer



New Labour Codes – Key Impact on Employers

OBJECTIVE AS ANNOUNCED

- The new labour codes are aimed at facilitating **ease of doing business** in the country and seek to replace 29 cumbersome laws. The objective is to encompass over 500 million organized and unorganized sector workers—90% of the workforce which has been outside labour laws.

New Labour Codes – Key Impact on Employers

ESTABLISHMENT

- **Code on Wages & Social Security Code**

"establishment" means any place where any industry, trade, business, manufacture or occupation is carried on

- **O H S and WORKING CONDITIONS Code**

"establishment" means– (i) a place where any industry, trade, business, manufacturing or occupation is carried on in which ten or more workers are employed.....

- **Industrial Relations Code**

"industry" means any systematic activity carried on by co-operation between an employer and worker (whether such worker is employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services

New Labour Codes – Key Impact on Employers

THE RESULT

- **All types of organisations are covered under all the 4 new labour codes.**
- **OHS code will become applicable in place of Shops and Establishments Act**
- **Shops and Establishments Act will cover only establishments employing below 10 employees.**

New Labour Codes – Key Impact on Employers

EMPLOYEE

Code on Wages & Industrial Relations Code & OHS Code

"employee" means, any person (other than an apprentice engaged under the Apprentices Act, 1961), employed on wages by an establishment to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward

Social Security Code

"employee" means any person (other than an apprentice engaged under the Apprentices Act, 1961) employed on wages by an establishment, **either directly or through a contractor**, to do any skilled, semi-skilled,.....

OHS and Working Conditions Code

- **"worker"** means any person employed in any establishment to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, [**Managerial, Supervisory with 18K wages excluded**]
- [**Designation is not relevant. Nature of duties will determine whether supervisor or not**]

[ALL EMPLOYEES ARE COVERED UNDER THE CODES [unless specifically excluded in the code itself]

New Labour Codes – Key Impact on Employers

WORKER

Supreme Court [2006 6 SCC 548]

Anand Regional Coop Oil Seed Growers Union Vs. Shaileshkumar H

- **Nature of duties, terms of appointment are relevant considerations to determine whether the employee worked in a supervisory capacity and was not a workman.**
- **Supervision contemplates direction and control and existence of subordinates whose work is required to be supervised.**
- **Employee in charge of a small section without any authority to initiate departmental proceedings against subordinates is a workman.**

New Labour Codes – Key Impact on Employers

EMPLOYER

The definition is same in all the 4 codes

"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 includes,—

- (i) in relation to an establishment which is a factory, the occupier of the factory;
- (ii) in relation to mine, the owner of the mine, agent or manager referred to in section 67;
- (iii) in relation to any other establishment, the person who, or the authority which has ultimate control over the affairs of the establishment and where said affairs are entrusted to a manager or managing director, such manager or managing director;
- (iv) **contractor**; and
- (v) legal representative of a deceased employer;

NOW LET US LOOK AT THE IMPLICATON OF THIS DEFINITION w.r.t. I R CODE [least discussed by all]

New Labour Codes – Key Impact on Employers

“Any person who employs whether directly or through any person” Vs. existing law

Case Law:

ONGC Vs. N Satyanarayana [AP High Court(2003) III LLJ 289]

The proceedings instituted by contract worker before the Labour Court against the Principal Employer are not maintainable.

SAIL Vs. NUWF Workers Supreme Court Constitution Bench 2001 SCC (L&S) 1121

Held that by virtue of engagement of contract labour by the contractor in any work or in connection with the work of an establishment, the relationship of master and servant is NOT created between the Principal Employer and the contract labour.

THE NEW LABOUR CODE REVERSED THIS POSITION WITH THE EMPLOYER DEFINITION

New Labour Codes – Key Impact on Employers

TRADE UNION

For the purpose of Trade Union Chapter

Worker means **all persons employed** in trade or industry and Includes unorganized worker

(that is home based worker, self employed worker or a wage worker in the unorganized sector and includes a worker in organized sector who is not covered by any of the Act)

New Labour Codes – Key Impact on Employers

TRADE UNION

Industrial Relations Code Vs. Trade Union Act

The Trade Union Act deals only with the Registration of Trade Union

The code mandates Recognition of Registered Trade Union

- Where there is only one Registered Trade Union with 30 percent membership, the employer **shall recognize** such union as sole negotiating union. 3 years period.
- An employee who retired or retrenched shall not be considered as outsider for the purpose of holding office of a Trade Union.
- In multi union situation employer to constitute a negotiating council [verification of membership to be done by the employer]

New Labour Codes – Key Impact on Employers

CONTRACT LABOUR

"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;

[To get covered under the exclusion it may be difficult to continue unorganized / proprietary type manpower suppliers]

New Labour Codes – Key Impact on Employers

CONTRACT LABOUR

[The existing legal position came into the code as a law]

Permanent employees placed at different establishments by contractor cannot be called as Contract Labour since they were not hired in or in connection with the work of any particular establishment , hence contractor is not liable to obtain license under section 12 of the CLRA Act.

Basanth Kumar Mohanty v. State of Orissa, [1992 II LLJ 190 Orissa HC]

New Labour Codes – Key Impact on Employers

FIXED TERM EMPLOYMENT

"fixed term employment" means 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) 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;**

New Labour Codes – Key Impact on Employers

FIXED TERM EMPLOYMENT Vs. EXISTING LAW

Industrial Disputes Act 1947

Retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, **but does not include-**

(bb) termination of the service of the workman as a result of the on-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein;

Judgements of various High Courts and Supreme Court

Termination of contractual services after fixed period is not illegal [Patna HC]

Termination of a contractual employee is not illegal on expiry of this contract [P&H HC]

Termination is not retrenchment, when appointment is renewed from time to time [Gujarat HC]

Termination of contractual employee is not retrenchment [Kerala HC]

Termination of contractual appointment would not be retrenchment [Delhi HC] ... & many more

Then what is new in the code?

Definitions

DEFINITION OF WAGE IS SAME IN ALL LABOUR CODES

Wage means all remuneration whether by way of salaries, allowances or otherwise expressed in terms of money be payable to a person employed in respect of his employment and include

(i) basic pay

(ii) dearness allowance and

(iii) retaining allowance if any

Definitions

Wages

But does not include

- (a) any bonus payable under any law for the time being in force, which does not form part of the remuneration payable under the terms of employment;**
- (b) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government;**
- (c) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;**
- (d) any conveyance allowance or the value of any travelling concession;**
- (e) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment;**

Definitions

Wages

But does not include

(f) House Rent Allowance

(g) Remuneration payable under any award or settlement between the parties or order of a court or Tribunal

(h) any overtime allowance

(i) any commission payable to the employee

(j) any gratuity payable to the employee on the termination of the employee

(k) any retrenchment compensation or other retirement benefit payable.....

Impact

Code on Wages

The minimum wages declared by the Government **should not be bifurcated** as wage and allowances

Wages – Example

Wages – Example

Existing Minimum Wage - Shops Act - Unskilled Helper

Rs. 12174

Components

Existing Practice

To be revised as per the code

Basic + DA	9000	12174
H R A	3174	0
Conveyance Allowance		0
Total	12174	12174
Employer PF (12+0.5+0.5)	1170	1583
Employer ESI (3.25)	396	396
8.33% Bonus	750	1015
C T C	14490	15168
Aditonal Cost	678	
Gratuity additional cost		135
Total Additional Cost P.M.		813

Definitions

Wages

For calculating wages, if payments made by the employer to the employee under heads

(a) Bonus (b) value of house accommodation (c) employer contribution to pension or Provident Fund (d) conveyance allowance (e) sum paid to defray special expenses (f) house rent allowance (g) remuneration payable under an award or settlement (h) overtime allowance (i) any commission

Provided that, for calculating the wage under this clause, if payments made by the employer to the employee *exceeds one-half,(50%) of all remuneration calculated under this clause, the amount which exceeds such one-half, shall* be deemed as wage and shall be accordingly added in wages under this clause.

Definitions

Wages – Example in view of above provision of law

Example Un-Skilled Shops Act - Minimum Wage Rs.12174

Present Wage per month Rs. 50,000/-

Components	Existing Practice	To be revised as per the code
Basic + DA	21000	26600
HRA	8800	10000
Conveyance	1600	1600
Other Allowances	18600	11800
Total	50000	50000
Employer PF on Rs. 15000/- only (13%)	1950	1950
Employer ESI	0	0
8.33% Bonus (on minimum wage)	1015	(employee coverage limit not fixed in the code)1015
C T C	52965	52965
Gratuity additional cost		Rs. 235
Additional Cost		Rs.235

Labour Codes – Key Impact Areas

Wage Definition

Minimum Wage should not be bifurcated

Higher Salary employees (above double the minimum wage) allowances should not be more than 50% of the gross monthly remuneration.

COST GOES UP (INCREASE IN THE COST)	COST COMES DOWN (REDUCED COST)
P F Contribution	ESI contribution [But more employees will be covered under ESI
Gratuity Payment	Maternity
Over Time Payment [as present practice is on Basic + DA]	Retrenchment Compensation
Leave Encashment [as the present practice is on Basic +DA]	
Lay-off compensation	
Bonus Payment (employee above 21000/- covered)	

Other Direct Cost implications



Labour Codes – Key Impact Areas

- Contractor's workmen should be paid minimum bonus of 8.33%
- Contractor workers who are regularly employed should be given annual increment of minimum 2% on their gross wages every year.
- Inter-State migrant worker lump sum amount towards to and fro fare to native place once a year.
- In case of death due to accident in addition to the compensation Rs. 25,000/- should be paid towards funeral expenses. [non ESI employees & Inter State Migrant workers]
- Also transport charges from place of death to the native place.
- Employees 45 years and above annual medical examination every year before 30th April

Indirect Cost implications



Labour Codes – Key Impact Areas

- 250 or more workers welfare officer [Factory] [existing 500 or more]
- 100 or more worker [including contract labour] canteen facility [Factory and Establishment]
- 50 or more workers separate rest rooms for male, female and transgender and lunch room [Factory]
- [for the above purpose, the contractor's workers are also counted] [old factories space constraint]
- When the incidence of sickness among IPs is excessive ESI corporation can claim payment of extra expenditure incurred as Sickness Benefit.
- If the employer fails to Register or fails to pay contribution within the time and the corporation pays any benefit to the employee, it can **recover capitalised value** from the employer.

Labour Codes – Key Impact Areas

- **Annual leave eligibility – 180 days working or more in a calendar year [existing 240 days]**
- **Unavailed annual leave to be encashed by the employee at the end of the calendar year**
- **Holidays / weekly off falling between the annual leave should be excluded.**
- **If the minimum rate of wages fixed for the day – if he is employed for a period less than the normal working hours of the day, he will be entitled for a full normal working day wage.**
- **The period of work shall be inclusive of intervals of rest, shall not spread over for more than 12 hours. [existing - rest interval is excluded for computation of working hours]**

High Impact Issues



Labour Codes – Key Impact Areas

Industrial Dispute includes Individual dispute

Process of leading the individual disputes to the Industrial Tribunal

- Employer employing 20 or more to Constitute Grievance Redressal Committee (GRC).
- GRC will have equal number of members of employer and employees.
- Chairperson of GRC will be from employer and workmen on **rotation basis every year**.
- GRC shall decide the individual dispute within 30 days
- More than half of the worker member of GRC shall support the decision
- Worker aggrieved by GRC decision may approach Conciliation Officer within 60 days.
- Failure in conciliation leads to Industrial Tribunal

Principal Employer shall be the chairman of GRC of Contract Labour

Labour Codes – Key Impact Areas

- In the matters for negotiation by Trade Union these issues are also included
 - i. Orders passed by the employer under standing orders
 - ii. Promotion and transfer policy and disciplinary procedure
 - iii. Classification of grades and categories of workers
 - iv. Hours of work, number of working days in a week,
 - v. Leave with wages and holidays.
- The Industrial Tribunal may **grant interim relief** in cases relating to an industrial dispute involving **discharge or dismissal or otherwise termination**, to the worker during the pendency of the industrial dispute.
- **Existing 17B – only in case worker gets reinstatement order and employer challenges inHC**

Labour Codes – Key Impact Areas

- **Bonus Calculation - Trade Union or the employees, requiring any clarification relating to any item in the balance sheet or the profit and loss account, then the authority by order, direct the corporation or the company, to furnish to the Trade Union or the employees such clarification and the the company, shall comply with such direction.**
- **Employees from other states **working directly on the rolls of the company** with less than Rs.18000/- monthly wage are also Inter-State Migrant workers.**
- **Women employee has to give **her consent** to work after 7 PM and before 6 AM**
- **In the existing non-core activity list of Contract Labour (R&A) Act **Any other activity which is incidental to the core activity** is there and the code has dropped the same.**

Other Impact Issues



Labour Codes – Key Impact Areas

- Accident Report to be sent to Labour Department in addition to Factories Department
- Details of accident and dangerous occurrences in the establishment for the **last 5 years** to be displayed on the notice board.
- Sitting arrangements for all employees obliged to work in a standing position.
- Maintain register – **work performed** along with other details
- No worker shall be required to work overtime ... without **prior consent of the worker** for such work.
- Appointment Order to contain LIN number, Date of Birth, Aadhar Number, Bank Account Details, UAN, ESI Number, Nature of duties etc.,

Labour Codes – Key Impact Areas

- **Government to declare additional minimum wage for certain category of workers taking into account nature and conditions of work.**
- **Undisbursed wage and bonus to be deposited with the Labour commissioner**
In case of death : on expiry of 3 months
In other cases : 6 months.
- **Where the employee has been removed or dismissed or retrenched or resigned Wages payable to him shall be paid **within two working days**. [not full and final settlement it is wages only]**
- **Deductions for absence of the employee from place or places of work shall not be for **larger proportion** than the period for which he was absent.**

Labour Codes – Key Impact Areas

- **When there is a dispute on the Bonus Percentage, minimum bonus should be paid pending the dispute for higher bonus.**
- **No employer shall make any discrimination on the ground of sex **while recruiting** any employee for the same work or work of similar nature, except where employment of women in such work is prohibited or restricted**

Other Impact Issues – WIN-WIN



Labour Codes – Key Impact Areas

Fixed Term Employment

- Hours of work, wages, allowances and other benefits shall not be less than that of a permanent worker doing same work or work of similar nature.

Same work or work of similar nature

- Means in respect of which the **skill, effort, experience and responsibility** required are the same, when performed under similar working conditions

For the purpose of equal wages 'wage' shall mean

Basic Pay - Dearness Allowance - Retaining allowance if any

Conveyance allowance - House rent allowance

Remuneration payable under settlement or award - Over time allowance

Labour Codes – Key Impact Areas

- **Superannuation age can be fixed in the contract or conditions of service**
- **Compulsory insurance to cover liability for payment towards gratuity**
- **Employment injury includes accident occurring outside territorial limits of India**
- **Accident is presumed to have arisen in the course of employment in the absence of evidence to the contrary**
- **PF and ESI proceedings for determination of due amounts from employer limitation is Five years.**
- **Appeal in the Tribunal is allowed against the PF dues determined by EPFO on deposit of 25% of the amount determined.**
- **Construction cost determination under BOCW Cess will be calculated at uniform rate of construction cost specified by public works department.**

Labour Codes – Key Impact Areas

- **The concept of Public Utility Service has been dropped and 14 days notice is mandatory for Strike or Lockout in all industrial establishments.**
- **Conciliation officer should not hold preceding relating to a dispute after 2 years from the date on which such dispute arose.**
- **On failure of conciliation proceedings either party can go directly to Industrial Tribunal (no government intervention)**
- **An employee shall be disqualified from receiving bonus , if he is dismissed for**
 - **Fraud or Riotous or violent behavior or**
 - **Theft, misappropriation or sabotage of property of the establishment or**
 - **Conviction for sexual harassment.**

Labour Codes – Key Impact Areas

- Lay-off, Retrenchment and Closure

Industrial establishments employing less than 300 workers are not required to take permission from the Government.

- Standing Orders will be applicable to Industrial Establishments employing 300 or more workers. **[now not applicable to establishments]**

Judgement

As Head Office is covered under Shops and Establishment Act Industrial Employment (SO) Act not applicable [Kerala HC]

- Common Creche facility is permitted
- 125 hours Over Time work is allowed in a quarter.

Labour Codes – Key Impact Areas

- **Seasonal Factory – factory which is engaged for a period not exceeding seven months in a year in a manufacturing process.**
- **The employer within 15 days from the date of receipt of the recommendations of the Safety Committee shall take action to implement the recommendations.**
- **Factory under construction is excluded from the Building and Other construction works (BOCW Cess Act) and hence no cess is payable.**

CONFLIT RESOLUTION – LEGAL SYSTEM



Labour Codes – Key Impact Areas

- The codes have removed Labour Courts
- Industrial Tribunal will continue in changed format – Two Member Bench
- One Judicial Member and One Administrative Member

CODE ON WAGES

[Minimum Wages, Payment of Wages, Bonus and Equal Remuneration]

- All decisions will be made by the concerned Government Officer
- Appeal can be made to the officer one rank higher than the officer who decided the matter

Legal forums jurisdiction removed

Labour Codes – Key Impact Areas

INDUSTRIAL RELATIONS CODE

- **The matters like workmen discharge, dismissal, retrenchment, strike, lockout, closure etc., will be heard by two-member bench of the Industrial Tribunal**
- **The decision should be consensus decision of the both the members**
- **If the members differ in the opinion the Government shall refer to Judicial Member of another Tribunal**

NEW WELCOME ISSUES

Labour Codes – Key Impact Areas

- **GIG worker means a person who performs a work arrangement and earns from such activity outside the traditional employer- employee relationship.**
- **Plat form worker means a person engaged in work arrangement outside the traditional employee-employer relationship by using online plat form.**
- **Unorganised worker means a home-based worker, self-employed worker or a wage worker in unorganised sector and includes a worker who is not covered und PF and ESI.**
- **Will constitute social security fund and frame a scheme for unorganised workers, gig workers and platform workers**
- **The scheme is funded by central and state governments, from aggregators, from corporate responsibility fund.**

Labour Codes – Key Impact Issues

SOCIAL SECURITY FUND

CONTRIBUTION BY THE AGGREGATOR TO THE FUND

- **Aggregator shall contribute one or maximum two percent of the annual turnover as notified by the Central Government.**
- **Every aggregator shall self-assess and pay provisional contribution for the preceding year not later than 30 June.**
- **Aggregator after finalization of the audit statement shall make final payment, if any, required to be paid by 31st October.**

Other Impact Issues – Contract Labour



Labour Codes – Key Impact Areas

- **The Occupier or the Factory Manager of a Factory shall only be called as Principal Employer.**
- **The Principal Employer is responsible to provide facilities and amenities such as Toilet, Washroom, Drinking Water, bathing facilities if required, changing room, first aid box, Canteen and Creche**
- **Contract Labour Chapter is applicable to the Principal Employer only if 50 or more contract labour are employed**

Labour Codes – Key Impact Areas

- **Manpower supply contractor employing 50 or more contract labour is covered under this chapter.**
- **Manpower contractor employing below 50 shall submit half-yearly return.**
- **Contractor supplying manpower more than one state may obtain license on Shram Suvidha Portal – valid for 5 years.**
- **Contractor to provide Bank Guarantee or Deposit @ Rs. 1000/- per person.**