

India's New Labour Codes

Introduction

One of the last bastions to fall in the regulatory reform landscapes in India is the labour legislations. Some of them date back to 1926, and the law has certainly not kept up with the realities faced by Indian enterprise today.

Through 4 acts (hereinafter referred to as the '**Labour Codes**'), notified on August 2019 and September 2020, the Government of India has set the stage for a landmark reform in the Indian labour law landscape. 29 separate labour laws will make way for 4 new acts comprising a modern labour code which is designed to improve the working conditions and wages of labour and enhance the ease of doing business in the country.

As is the case in all such structural reforms, enterprises need to be informed, prepared and comply with the new Labour Codes (the implementation date of all four new codes is yet to be notified).

In this note, we set out an overview of the code and what it means for businesses.

New Labour Codes: A Snapshot

- The 4 new Labour Codes mentioned below will replace the current multiple central labour laws:
 - The Code on Wages, 2019
 - The Code on Social Security, 2020
 - The Occupational Safety, Health and Working Conditions Code, 2020 (**OSHWC Code**)
 - The Industrial Relations Code, 2020 (**IR Code**)
- The Objective of these Codes is to:
 - Simplify, Consolidate and amend the labour laws
 - Give more flexibility to employers in terms of hiring/mix of employees
 - Streamline and bring more clarity on matters related to contract labour
 - Rationalize wages and address inappropriate practices
 - Systematize matters related to union recognition and negotiating agents
- A standard definition of '**Wages**' in all codes
- Fixation of **National Floor Wage** by the Central Government
- New Definition for '**Fixed Term Employment**' and the eligibility of fixed term employees for all benefits
- New definition of '**gig-worker**', '**Home-based worker**', '**Platform worker**' and '**Unorganized worker**' under the Code on Social Security, 2020
- The Central Government's authority to frame **social security schemes** for **unorganized workers, gig workers and platform workers** and the members of their families under the **Code on Social Security, 2020**
- Recognition of **negotiating union** or **negotiating council** under the Industrial Relations Code, 2020
- Knowledge drawn from some of **State Acts** while drafting the Codes
- Wisdom drawn from some **SC landmark judgments**

- Substantial increase in **penalty** for contraventions
- The implementation date of all 4 new codes is yet to be notified by the Government.
- Employers' Associations filed a few representations seeking clarity/relief on some changes.
- Inspector under the Code is now renamed as **inspector-cum-facilitator**. They are required to **inform and sensitize** employer and worker regarding provisions of the code and compliance.
- The **needs/concerns** of industry broadly fall under the following 3 areas:
 - Clarity
 - Cost
 - Compliance

The Code on Wages, 2019

An Act to amend and consolidate the laws relating to wages and bonus and matters connected therewith or incidental thereto.

Acts Repealed:

- The Payment of Wages Act, 1936
- The Minimum Wages Act, 1948
- The Payment of Bonus Act, 1965
- The Equal Remuneration Act, 1976

Key Highlights

- Definition of '**employee**' excludes an apprentice under the Act of 1961 and includes any person employed to do:
 - Any skilled, semi-skilled or unskilled,
 - Manual, operational, supervisory, managerial, administrative, technical or clerical work
 for hire or reward, whether the terms of employment be express or implied (The Chapter dealing with Payment of Wages is applicable to all 'employees').
- Definition of '**worker**' includes skilled, semi-skilled, unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical and excludes an apprentice under the Act of 1961 and also those
 - Who are employed mainly in a managerial or administrative capacity or
 - Employed in a supervisory capacity drawing wage of exceeding fifteen thousand rupees per month
- **Wages:** Sec 2(y) defines '**Wages**' which was replicated in other codes:

'Wages' means all remuneration whether by way of salaries, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes -

 - Basic pay;
 - Dearness allowance and
 - Retaining allowance, if any

Wages do 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
- 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 on the termination of employment
- k) Any retrenchment compensation or other retirement benefit payable to the employee or any ex gratia payment made to him on the termination of employment

*Provided that, for calculating the wages under this clause, if payments made by the employer to the employee under clauses (a) to (i) exceeds one half, or such other percent, as may be notified by the Central Government, of the all remuneration calculated under this clause, **the amount which exceeds such one half, or the per cent, so notified, shall be deemed as remuneration and shall be accordingly added in wages under this clause.***

Provided further that for the purpose of equal wages to **all genders** and for the purpose of payment of wages, the emoluments specified in cluses (d), (f), (g), and (h) shall be taken for computation of wage.

Explanation – Where an employee is given in lieu of the whole or part of the wages payable to him, any remuneration in kind by his employer, the value of such remuneration in kind **which does not exceed 15% percent**, of the total wages payable to him, shall be deemed to form part of the wages of such employee.

- **National Floor Wage:** A floor wage will be fixed by **Central Government** for different regions which will be the basis for the **State Governments** to fix the minimum wage. No State Government shall fix the minimum wage below the national floor wage
- While fixing the floor wage the Central Government will consult the **Central Advisory Board** and State Governments
- If any State Government is already paying more minimum wages, it cannot reduce it so as to bring it on par with national floor wage

The Code on Social Security, 2020

An Act to amend and consolidate the laws relating to social security with the goal to extend social security to all employees and workers either in the organized or unorganized or any other sectors and for matters connected therewith or incidental thereto.

Acts Repealed:

- The Workmen's Compensation Act, 1923
- The Employees' State Insurance Act, 1948
- The Employees' Provident Funds & Miscellaneous Provisions Act, 1952
- The Employment Exchange (Compulsory Notification of Vacancies) Act, 1959
- The Maternity Benefit Act, 1961
- The Payment of Gratuity Act, 1972
- The Cine Workers Welfare Fund Act, 1981
- The Building and Other Construction Workers Welfare Cess Act, 1996
- The Unorganised Worker's Social Security Act, 2008

Key Highlights

- **'Fixed term employment'** – Fixed term employment was not defined under any earlier labour legislations. The Code defines it as engagement of an employee on the basis of a written contract of employment for a fixed period. This is provided:
 - 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
 - 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 even if the period of employment does not extend to the required qualifying period of employment
- **'Gig-worker'** means a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship
- **'Home-based worker'** means a person engaged in, the production of goods or services for an employer in his home or other premises of his choice other than the workplace of the employer, for remuneration, irrespective of whether or not the employer provides the equipment, materials or other inputs
- **'Platform worker'** means a person engaged in a work arrangement outside of a traditional employer-employee relationship in which organizations or individuals use an online platform to access other organizations or individuals to solve specific problems or to provide specific services or any such other activities which may be notified by the Central Government, in exchange for payment
- **Social Security for Unorganized workers etc.**
 - The Central Government may frame scheme for unorganized workers, gig workers and platform workers and the members of their families for providing benefits under Employees State Insurance
 - The Central Government shall frame and notify, from time to time, suitable welfare schemes for unorganized workers on life and disability cover; health and maternity benefits; old age protection; education; provident fund; employment injury benefit; housing; educational schemes for children; skill upgradation of workers; old age homes; funeral assistance etc.
- Similar provisions for gig workers and platform workers
- **Registration of gig workers etc.:** Every unorganized worker, gig worker or platform worker shall be required to be registered to get covered under above welfare schemes
- **Provident Fund**
 - The contributions paid by the employer to the fund shall be 10% of the wages payable towards each of the employees (whether employed by him directly or by or through a contractor)
 - The employee's contribution shall be equal to the contribution payable by the employer in respect of him/her and may, if any employee so desires, be an amount exceeding 10% of the wages, subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under the Code
 - ***The Code reduces employers' contribution from 12% to 10% but there is a possibility to bring it back to 12%***
- **Employee State Insurance (ESIC)**
 - ESIC benefits will now also extend to all enterprises in hazardous industries, even if it employs only one worker
 - The Government reserves the power to defer or reduce employer's contribution, or employee's contribution, or both with respect to EPF and ESI for a period up to 3 months at a time as the case may be in the event of pandemic, endemic or national disaster.
- **Gratuity**
 - The completion of **continuous service of 5 years shall not be necessary** where the termination of the employment of any employee is due to- ***"expiration of fixed term employment or happening of any such event as may be notified by the Central Government"***
 - **Pro-rata Gratuity:** In the case of an employee employed on **fixed term employment** or a **deceased employee**, the employer shall pay gratuity on **pro rata** basis

- As per the code, the gratuity is now to be calculated on 50% of the gross wages and not only on basic and DA as done earlier
- The maximum gratuity payable currently remains at **INR 20 lakhs**

Note: Since the wages are defined at 50%, any calculations (leave encashment, gratuity, PF etc.) under this Code may have to be at 50% instead of earlier calculations of only on basic and DA.

The Industrial Relations Code, 2020

An Act to consolidate and amend the laws relating to Trade Unions, conditions of employment in industrial establishments or undertaking, investigation and settlement of industrial disputes and for matters connected therewith or incidental thereto

Acts Repealed:

- The Trade Unions Act, 1926
- The Industrial Employment (Standing Orders) Act, 1946
- Industrial Disputes Act, 1947

Key Highlights

- **Fixed Term Employment:** Engagement of a worker on the basis of a **written contract of employment** for a fixed period
- **The hours of work, wages, allowances and other benefits** provided to a fixed term employee shall not be less than that of a permanent worker doing the same work or work of similar nature. **He/she shall be eligible for gratuity if services are rendered under the contract for a period of 1 year.**
- **Standing Orders** are made applicable to industrial establishments employing 300 workers as against 50/100 at present. The employers are permitted to adopt Model Standing Orders of the Central Government as relevant to his establishment. No other certification under the Act is required.
- **Permission for lay-off, retrenchment, closure:** The applicability under the earlier Chapter V-B has been increased to **300**. In effect, the Code allows industrial establishments with up to **300 workers** to lay off etc. without having to seek government's prior approval.
- **When over 50% of workers take concerted leave ('Mass Casual Leave'), it shall be considered as a strike**
- **Workers cannot go on strike without giving a notice of at least 60 days. Similar provisions for lock out.**
- **The Government proposes to set up a reskilling fund with the contributions of the employer equal to 15 days wages last drawn by the worker**
- **Negotiating Union/Council:** The Code provides for negotiating union or negotiating council in every establishment wherever there is a registered trade union
 - Wherever there is **1 trade union** of workers registered, the employer shall recognize such a trade union as a sole negotiating union of the workers. Previously it was only applicable in Maharashtra under **MRTU & PULP Act**
 - In cases of **more than 1 union registered**, the employer will recognise the union having **membership of 51% or more** workers on the muster roll
 - In-case no union has 51% or more membership, then the employer shall constitute a **negotiating council** for negotiations, consisting of representatives of registered unions which have support of **not less than 20%** of the workforce at the rate of one representative for each 20%.
 - The recognition of union/council is valid for a period of 3 years or such further period not exceeding 5 years as mutually decided by the employer and the trade union.
- **If majority of the negotiating council** reaches an agreement it will be construed as a binding settlement

The Occupational Safety, Health & Working Conditions Code, 2020

An Act to consolidate and amend the laws regulating the occupational safety, health and working conditions of the persons employed in an establishment and for matters connected therewith or incidental thereto

Acts Repealed:

- The Factories Act, 1948
- The Plantations Labour Act, 1951
- The Mines Act, 1952
- The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955
- The Working Journalists (Fixation of Rates and Wages) Act, 1958
- The Motor Transport Workers' Act, 1961
- The Beedi and Cigar Workers (Conditions of Employment) Act, 1966
- The Contract Labour (Regulation and Abolition) Act, 1970
- The Sales Promotion Employees' (Conditions of Services) Act, 1976
- The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
- The Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981
- The Dock Workers (Safety, Health and Welfare) Act, 1986
- The Building and Other Construction Workers (Regulation of Employment and Conditions of Services) Act, 1996

Key Highlights

- Applicable to **establishments** – any industry, trade, business, manufacturing or occupation with 10 or more workers
- Applicable to **contractor's establishment** employing 50 or more contract labourers. The definition of contractor includes **sub-contractor**
- Applicable to any establishment engaging 10 or more **inter-state migrant workers**. Employers shall cover them under social security and pay a lumpsum amount of fare for travel to his/her hometown every year
- Definition of '**Factory**': Increase in number of employees for coverage from 20 to 40 without power and, 10 to 20 with power
- Definition of '**Industry**': Same as those laid down in the case of **Bangalore Water Supply – Triple test**
- Definition of '**Principal Employer**': In case of a factory, it is the **Occupier**. In case of other establishments, it is 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**.
- The Code defines '**Core-Activity of an establishment**': 'Any activity for which the establishment is set up and includes any activity which is essential or necessary to such activity'. The following are **not to be considered as core activities**, if the establishment is not set up for such activity. These include:
 - Sanitation works, including sweeping, cleaning, dusting and collection and disposal of all kinds of waste
 - Watch and ward services including security services
 - Canteen and catering services
 - Loading and unloading operations
 - Running of hospitals, educational and training institutions, guest houses, clubs and the like where they are in the nature of support services of an establishment
 - Courier services which are in nature of support services of an establishment
 - Civil and other constructional works, including maintenance

- Gardening and maintenance of lawns and other like activities
- Housekeeping and laundry services, and other like activities, where these are in nature of support services of an establishment
- Transport services including ambulance services
- Any activity of intermittent nature even if that constitutes a core activity of an establishment;
- Employers are required to create safe working environment for female workforce. **Women** are permitted to work in all types of work, during the night shift with their **Consent**.
- Certain procedures are being **digitized**. These include:
 - Electronic registration
 - Electronic notice of commencement/cessation of operation
 - Option to electronically maintain register, issue wage slip and file returns
 - Web-based inspection scheme etc.
- Concept of “single” registration for establishments having 10+ employees

Key Issues

- The new definition of ‘**wages**’ will be likely to increase the **wage bill** significantly for some employers:
 - The employers need to re- look at some of the traditional salary components (allowances/benefits) under the new definition to ascertain whether each component is included / excluded from the definition of ‘wages’.
 - The above may have an impact on the cost to be incurred by companies on components such as **provident fund, gratuity, leave encashment, overtime, statutory bonus etc**. Further with these changes, the net take home of the employee may also get **reduced**. **The cost to the company** may also increase to some extent.
 - If the exclusions allowed under the Code on Wages are less than 50% in a salary structure, the ‘wage’ under the definition could be higher.
- Employers need to have **clarity** on what amounts to ‘**sum paid to the employed person to defray special expenses**’ under the definition of wages.
 - For instance, there is a possibility to exclude **uniform maintenance allowance** from the definition of ‘wages’ for entities having a company **policy** to wear uniform at workplace as per the demands of the business requirement.
- The review of Compensation/salary structures remain a highly **component specific exercise** and no hard and fast rules be applied unless the stipulated factors for respective components suggest the need for exclusion or are specifically excluded.
- **Under the Code on Social Security, 2020, gratuity** will have to be paid on the basis of the definition of wages for the entire tenure of employment of the employees (including the past period). This may result in a substantial increase in the cost to the company on account of the incremental base on which gratuity will be calculated
- The **provisioning for gratuity**, including contributions to be made by the company, will have to be done accordingly, based on the actuarial valuation as per the terms of gratuity policy of the respective entity
- Under the **OSHC Code, 2020** an employee qualifying as a ‘**worker**’, is entitled to encash unutilized leave at the end of a calendar year:
 - This will be an additional cost to the employer as under the current laws, workers are eligible to **encash** their unutilized leaves only upon **termination** of employment
 - Hence, employers, depending on role and profile of employees in various entities, need to **analyze** who qualifies as a ‘**worker**’, before determining applicability of this provision
- There is no definition of Managerial/Supervisory personnel in the Codes. The employers may have to analyze and understand who would fall under the definition of ‘**worker**’, ‘**supervisor**’ and ‘**managerial**’ basis earlier judicial pronouncements
- The employers need to gear up for 100% compliance of the new Labour Codes without exception

Immediate Action Points

- Set-up an **Internal Taskforce** (HR, Legal, Finance etc.) to review various aspects of the Labour Codes with Labour Law experts
- **Re structure the employment mix, if required to ensure compliance and efficiency**
- **Financial impact assessments** on various scenarios – The implications of the definition of ‘wages’/Social Security/ Salary components/Fixed Term Employees/Consultants etc.
- Reviewing included/excluded components in the salary structure to understand the cost implications
- Incorporating Labour Code impacts within **2021 salary budgets**
- Focus on **full compliance**

We hope you have found our update an interesting read. We welcome any comments/queries/clarifications you might have. Do reach out to us at:

pvmurthy@elp-in.com or at insights@elp-in.com

About ELP

Economic Laws Practice (ELP) is a leading Tier 1 full-service law firm in India assisting clients on advisory, litigation and regulatory matters. At ELP we have partnered with many of our clients in landmark changes in the law since for nearly two decades. We bring to the table legal knowledge, an understanding of what change entails and are able to work with your teams to prepare towards new compliance requirements.

ELP's employment and labour lawyers are known for their business oriented and negotiating skills complemented by a results-driven, highly successful litigation practice. Our dedicated team, consisting of experienced lawyers and sector specialists, has been engaged in representing national and multi-national clients in a diverse range of sectors including information technology, pharmaceuticals, infrastructure, power, automobiles, FMCG, retail and hospitality.

Dr P.V. Murthy

At the backbone of our initiative on sensitizing businesses to the new Labour Codes, we have the entire ELP service philosophy and a well experienced team led by Dr. P.V. Murthy, a lawyer with more than three decades of corporate experience in the field. He has been involved in the process since the conceptualization of the codes, providing inputs to drafting teams on behalf of industry associations and now is well poised to bring his expertise to help your enterprise take the lead on transitioning to the new regime.

A qualified lawyer and the University topper in Labour Laws, PV has specialized in employment laws, labor relations, global employee transitions and full scale strategic and operational HR responsibilities. He has rich experience in handling labor law matters of various companies he has served with across various courts in India including the Hon'ble Supreme Court of India. He also brings to the table a deep specialization in the areas of employee relations, business strategy, talent management, leadership development, advanced Organization Development (OD), change management, executive coaching, culture building and transformative leadership.

Most recently, PV served as Executive Vice President and Global Head – Human Resources (CHRO) of the Indian Hotels Company Limited (Taj Group of Hotels). Prior to that PV worked with Coca Cola in India for a period of 15 years, 10 years of which he served as its Executive Director – Human Resources, Hindustan Coca Cola Beverages (HCCB) – CHRO and a Board level position. Earlier, PV has also worked in the manufacturing sector for close to 13 years.

Disclaimer: The information contained in this document is intended for informational purposes only and does not constitute legal opinion or advice. This document is not intended to address the circumstances of any individual or corporate body. Readers should not act on the information provided herein without appropriate professional advice after a thorough examination of the facts and circumstances of a situation. There can be no assurance that the judicial/quasi-judicial authorities may not take a position contrary to the views mentioned herein.