

Key provisions of Code on Wages, 2019

INTRODUCTION

The President recently gave assent to four codes related to Labour Law namely, the Code on Wages, 2019, the Occupational Safety, Health and Working Conditions Code, 2020, the Industrial Relations Code, 2020 and the Code on Social Security, 2020. The aim of the codes are as follows:

1. Unification of concepts and construct of the law on each of the subjects mostly based on judgments from the courts.
2. To secure the rights of the employees and employers.
3. Simplification of compliance, monitoring and implementation.

The new codes have the following aim and have subsumed the following legislations:

S.No.	New Code	Aim	Acts Subsumed
1.	The Code on Wages, 2019	to amend and consolidate the laws relating to wages and bonus	The Payment of Wages Act, 1936, The Minimum Wages Act, 1948, The Payment of Bonus Act, 1965, The Equal Remuneration Act, 1976
2.	The Occupational Safety, Health and Working Conditions Code, 2020	to amend and consolidate the laws regulating the occupational safety, health and working conditions of the persons employed in an establishment	The Factories Act, 1948, The Mines Act, 1952, The Dock Workers (Safety, Health and Welfare) Act, 1986, The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, The Plantations Labour Act, 1951, The Contract Labour (Regulation and Abolition) Act, 1970, The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, The Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provision Act, 1955, The Working Journalists (Fixation of Rates of Wages) Act, 1958, The Motor Transport Workers Act, 1961, The Sales Promotion Employees (Conditions of Service) Act, 1976, The Beedi and Cigar Workers (Conditions of Employment) Act, 1966, The CineWorkers and Cinema Theatre Workers (Regulation of Employment) Act, 1981
3.	The Industrial Relations Code, 2020	to consolidate and amend the laws relating to Trade Unions, conditions of employment in industrial establishment or undertaking, investigation and settlement of industrial disputes	The Industrial Disputes Act, 1947, The Trade Unions Act, 1926, The Industrial Employment (Standing Orders) Act, 1946
4.	The Code on Social	to amend and consolidate the laws relating to social	The Employees' Compensation Act, 1923, The Employees' State Insurance Act, 1948, The

	Security, 2020	security with the goal to extend social security to all employees and workers either in the organised or unorganised or any other sectors	Employees' Provident Funds and Miscellaneous Provisions Act, 1952, The Employment Exchanges (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 Workers Social Security Act, 2008.
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DEFINITIONS

The Code on Wages, 2019("Code") received the assent of the President on August 8, 2019. The Code has included several new definitions which has increased its ambit.

The new definitions are as follows:

- A. "Employee"- Employee includes all employees engaged on wages to do skilled, semi-skilled, unskilled, operational or manual work including managers, supervisors and administrative staff. The term includes a person declared to be an employee by the appropriate government. However, it *does not* include apprentice engaged under the Apprentices Act, 1961 and members of the Armed Forces of the Union.

- B. "Worker": Worker includes any person employed in any Industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. It also includes 'working journalist' and 'sales promotion employees' and 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.

It does not include any such person: a. who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957; or b. who is employed in the police service or as an officer or other employee of a prison; or c. who is employed mainly in a managerial or administrative capacity; or d. who is employed in a supervisory capacity drawing wage of exceeding Rs.15,000 per month or an amount as may be notified by the Central Government from time to time; or e. who is apprentice engaged under the Apprentices Act, 1961.

Analysis: There is a distinction made between 'employee' and 'worker'. The employee definition includes all employees including managers, supervisors and administrative staff whereas the worker definition does not include administrative and managerial staff. The supervisors are also excluded from the definition of the worker if their monthly wage is more than Rs.15,000 or the sum notified by the Central Government.

- C. "Employer": Employer means a person who employs direct or indirect employees (through contractor) 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,—

- (i) in relation to an establishment which is a factory, the occupier of the factory as defined in section 2(n) of the Factories Act, 1948 and, where a person has been named as a manager of the factory under clause of section 7 (1) (f) of the said Act, the person so named;
- (ii) 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;
- (iii) Contractor; and
- (iv) legal representative of a deceased employer;

D. “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,—

- (i) basic pay;
- (ii) dearness allowance; and
- (iii) retaining allowance, if any,

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;
- 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;
- h. any commission payable to the employee;
- i. any gratuity payable on the termination of employment;
- j. any retrenchment compensation or other retirement benefit payable to the employee or any ex gratia payment made to him on the termination of employment.

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 per cent as may be notified by the Central Government, of 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.

Analysis: Earlier, different labour laws had different definition of wages. This definition has been used uniformly across all the new labour codes. In addition, the definition has been drafted in accordance with various judgments of Courts in this regard.

PROVISIONS RELATED TO PROHIBITION OF DISCRIMINATION

- The Code prohibits discrimination in an establishment or any unit thereof among employees on the ground of gender in matters relating to wages by the same employer, in respect of the same work or work of a similar nature done.
- Reduction of wages for the above.

PROVISIONS RELATED TO PAYMENT OF WAGES

- The relevant provisions of the Code, in relation to the payment of wages, now apply to all employees, across industries. The Code has now provided for an additional method of payment through electronic modes
- The Code also provides that the employer must fix the wage period and the same should not exceed 1 month. A wage period is the period of work for which wages are paid on a regular basis.

Wage Period	Date for payment of wage
Daily	End of the shift
Weekly	On last working day before weekly holiday
Fortnightly	before the end of the second day after the end of the fortnight
Monthly	expiry of the seventh day of the succeeding month

- Full and final settlement of an employee to be done within two working days of removal, dismissal, retrenchment or resignation.
- Deductions and fines are the same as in the earlier statutes. The value of deductions should not exceed 50 percent of wages.
- Fines should not exceed three percent of wages payable in a wage period.
- Certain States by including specific provision in the Shops and Establishment Act made Payment of Wages Act, 1936 applicable to certain shops and establishments. With the enactment of the Code on Wages, 2019, this anomaly will get rectified and provisions of payment of wages will be uniformly applicable to all States.

PROVISIONS RELATED TO MINIMUM WAGES

- The Code on Wages, 2019 has increased applicability of Minimum wage provisions beyond scheduled employment. Therefore, Minimum Wage can be fixed for all employees.
- The Code on Wages, 2019 provides for the following:
 - Central Government shall provide for a floor wage and all appropriate government shall fix minimum wage applicable in their state which shall be higher than the floor wage.

- Stipulates components of minimum wages.
- Procedure for fixing and revising minimum wages.
- Appropriate government to fix hours of work for normal working day.
- The Code provides that an employee shall be paid full wages even if he was employed for less than the requisite number of hours constituting a full day, except in the following cases:
 - his failure to work is caused by his unwillingness to work and not by the omission of the employer to provide him with work;
 - if he is not entitled to receive such wage under any other law for the time being in force.
- Overtime wages- it is provided that wages for overtime will be paid for every hour or part of an hour worked in excess, at the overtime rate which shall be not less than twice the normal rate of wages. In addition, provide for payment for work on a day of rest at a rate not less than overtime rate.

PROVISIONS RELATED TO PAYMENT OF BONUS

- The bonus provisions under the Code apply to an establishment (including factories) that employs or employed, on any day during an accounting year, 20 or more employees.
- The bonus is to be paid to employees within a period of 8 months from the close of the accounting year.
- Grounds for disqualification from receiving Bonus- An employee shall be disqualified from receiving bonus, if he/she is dismissed from service on the following grounds:
 - fraud; or
 - riotous or violent behaviour while on the premises of the establishment; or
 - theft, misappropriation or sabotage of any property of the establishment; or
 - conviction for sexual harassment. (this ground has recently been added)

OTHER IMPORTANT PROVISIONS

- The Code provides for the appointment of an Inspector-cum-Facilitator, whose role is enlarged to also advise the employers and workers with regard to the various compliances prescribed under the Code.
- Limitation period of three years for filing of claims by an employee as against the timelines prescribed under the existing enactments.
- The dispute of fixation of bonus or eligibility for payment of bonus shall be deemed to be considered as an 'industrial disputes'.
- An employee or any registered trade union registered of which the employee is a member or the Inspector-cum-Facilitator can file an application for claims under the Wage Code before the notified authority.
- The authority shall decide the claim within a period of three months. Any appeal if preferred against the decision of such authority should be filed within a period of ninety days from the date of such order. It is stated in the Code that the appellate authority will endeavour to dispose of appeals within three months.
- If an employer fails to pay the claim determined and compensation ordered to be paid under an order of the authority, the authority shall issue a certificate of recovery to the Collector or District Magistrate of the district where the establishment is located, who shall recover the same as

arrears of land revenue and remit the same to the authority for payment to the concerned employee.

- the quantum of fines for contraventions under the Code have been increased as compared to legislations subsumed by it. Further, the offences punishable under the Code, not being the offences punishable with imprisonment only or with imprisonment and also with fine, may, on an application of the accused person, either before or after the institution of any prosecution, be compounded by a gazetted officer, as appointed by the appropriate government.

The Code has codified all the judgments in relation to the legislations subsumed by it. The new definitions and provisions introduced in the Code are likely to cause organisations to re-examine and amend their internal policies and structures. In addition, the provisions of the Code are also likely to promote ease of doing business in India.