

# New Labour Codes – A Glance for “HR Professionals”

# Category I

Existing Legislation	New Legislation
Minimum Wage Act, 1948	
Payment of Wages Act, 1936	<b>Code on Wages 2019</b>
Payment of Bonus Act, 1965	

## Category II

Existing Legislation	New Legislation
Industrial Employment Standing Order Act, 1946	
Industrial Disputes Act, 1947	<b>Industrial Relations code 2020</b>
Trade Unions Act, 1926	

# Category III

Existing Legislations	New Legislation
<ul style="list-style-type: none"><li>▪ Factories Act, 1948</li><li>▪ Mines Act, 1951</li><li>▪ Dock Workers ( safety, Health and Welfare Act, 1986</li><li>▪ The Building and other Workers (Regulation of Employment and Conditions of Service) Act, 1996</li><li>▪ The Plantations Labour Act, 1951;</li><li>▪ The Contract Labour (Regulation and Abolition) Act, 1970</li><li>▪ The Inter-State Migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979;</li><li>▪ The Working Journalist and other News Paper Employees (Conditions of Service and Misc. Provision) Act, 1955;</li><li>▪ The Working Journalist (Fixation of rates of wages) Act, 1958;</li><li>▪ The Motor Transport Workers Act, 1961;</li><li>▪ Sales Promotion Employees (Condition of Service) Act, 1976;</li><li>▪ The Beedi and Cigar Workers (Conditions of Employment) Act, 1966</li><li>▪ The Cine Workers and Cinema Theatre Workers Act, 1981</li></ul>	<b>Occupational Safety, Health &amp; Working Condition Code 2020</b>

## Category IV

Existing Legislations	New Legislation
<ul style="list-style-type: none"><li><input type="checkbox"/> The EPF and M.P. Act, 1952</li><li><input type="checkbox"/> The ESIC Act, 1948</li><li><input type="checkbox"/> The Maternity Benefit Act, 1961</li><li><input type="checkbox"/> The Building and other Construction Workers Cess Act</li><li><input type="checkbox"/> The Payment of Gratuity Act, 1972</li><li><input type="checkbox"/> The Employees Exchange (Compulsory Notification of Vacancies) Act, 1959</li><li><input type="checkbox"/> The Cine Workers Welfare Fund Act, 1981</li><li><input type="checkbox"/> The Unorganized Workers' Social Security Act, 2008</li><li><input type="checkbox"/> Employees Compensation Act, 1923</li></ul>	<b>Social Security Code, 2020</b>

# Code on Wages 2019

## KEY CHANGES

Provision	Act	Existing	Code on Wages
Applicability	Minimum Wage Act	Applicable only to scheduled employments	Applicable to all, including organised and unorganised sector employees
	Payment of Wages Act	Applies to those employees drawing less than 24,000 for filing claims	All employee are protected without any wage limit including supervisor and managers
	Payment of Bonus Act	Applicable on 20 or more employees	Applicable to establishments employing 20 or more persons with few exemptions
Definition of Contract Labour	Minimum Wage Act		Excludes regular employees of the contractor from their establishment and getting annual increases and social benefits.
	Payment of Wages Act	No such definition	
	Payment of Bonus Act		

## KEY CHANGES

Provision	Act	Existing	Code on Wages
Employer	Payment of Bonus Act	No such provision in payment of bonus and wages act.	In case of factory occupier or manager and in case of other establishment, person having ultimate control has been deemed as employer in respect of direct and contract labour. For the purpose of bonus now employer will be responsible in respect of bonus for contract labour.
Same work or work of similar nature	Equal Remuneration Act	Restricted to gender only in Equal Remuneration Act	Expanded to all employees instead of man vs woman
Wages		Different definition of wages under MW, PW & PoB Acts	Excludes many allowances. But if allowance are more than 50% of remuneration, amount in excess of 50% of allowances will be deemed as wages.

## KEY CHANGES

Provision	Act	Existing	Code on Wages
Worker	Payment of Wages Act	In payment of wages act, restricted to employees drawing up to 24,000.	Excludes workers in supervisory capacity drawing exceeding 15,000 per month.
	Minimum Wage Act	In Minimum Wages Act it is limited to employees of scheduled employment.	Defines employee, also covering all categories, including supervisory and managerial.
	Payment of Bonus Act	In payment of bonus act definition of employee limited to the directly employed.	
Gender discrimination	Equal Remuneration Act	Applies not only to wages related matters but also in the recruitment	Restriction in respect of recruitment matters removed
Time limit for MW Revision	Minimum Wage Act	To be revised at least once in 5 years	Minimum wages to be revised after every 5 years
National minimum wages	Minimum Wage Act	No such provision for central government in Minimum Wages Act	Central government to declare national minimum wage universally or different for different regions. State governments cannot fix their minimum wages less than national minimum wage.

# THE INDUSTRIAL RELATIONS CODE, 2020

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## KEY CHANGES

- ❑ The definition of worker will be based on the basis of wages being drawn by him / her and Worker / Employees with salary up to Rs 18,000 will fall under the category of worker.
- ❑ Fixed Term Employment, now employer can keep Fixed Term Employees (FTE) for specific duration and retrenchment compensation not to be paid. These FTE will be entitled same salary or social security as regular Employee.
- ❑ Employee can an Industrial raise dispute with the employer within the time limit of only 2 years instead of 3 years.
- ❑ Trade union have to give notice of 14 days before going on strike.
- ❑ Establishment with less 300 workmen can lay-off, retrenched, closed without government approval, earlier this limit was 100 employees.
- ❑ The number of members in the Grievance Redressal Committee has been increased from 6 to 10.
- ❑ Definition of “Appropriate Government” has been modified by including the establishments of the contractors, thus contractor appropriate government shall be of the establishment where the contract Labour has been deployed.

## KEY CHANGES

- The appropriate government shall set up an re-skilling fund and the fund shall consist of contribution by an employer equal to fifteen days wages last drawn by the worker immediately before the Retrenchment. The fund shall be utilized by crediting fifteen days wages last drawn by the worker to his account who is retrenched, within forty-five days of such retrenchment, in such manner as may be prescribed.
- Definition of “Employee” has been added in the code and the term 'employee' has been used invariably with the term worker. viz. 'employee/worker' or 'employee and worker' with a view to ensure that there is no discrimination in the applicability of Labour laws to the employee/worker.
- Definition of “ Employer” has been completely modified under section 2 (m) and as per the new definition employer means :-
  - Head of the department
  - Occupier of the factory
  - Manager of the factory under clause (f) of sub-section (1) of sec 7 of the Factories Act.
  - The person who, or the authority which has ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager or managing director, such manager or managing director;
  - Contractor; and
  - legal representative of a deceased employer;

# KEY CHANGES

- Fixed Term Employment has been incorporated, which is major change introduced in the code:-
  - The code provides that the fixed term employee will get all statutory benefits like ESI, EPF, bonus, wages, etc., at par with regular employees who are doing work of same or similar nature.
  - The termination of the service of a worker as a result of completion of tenure of fixed term employment would not be a retrenchment.
  - The employee would be eligible for gratuity if he renders service under the contract for a period of one year.
- The definition of “industry” has been modified and provides that any systematic activity carried on by cooperation between employer and his workers, whether such workers are employed by such employer directly or by or through any agency including a contractor. The definition has specifically excluded institutions owned or managed by organizations wholly or substantially engaged in any charitable, social or philanthropic services; sovereign functions; domestic services.
- Definition of Industrial Dispute has been modified to include the dispute arising out of discharge, dismissal, retrenchment or termination of such worker.
- Metro railway has been included in the definition of railways.

## KEY CHANGES

- Maximum number of members in the Grievance Redressal Committee has been increased from 6 to 10 in an industrial establishment employing 20 or more workers.
- "Negotiating union or negotiating council" been inserted in the definition.
- The "Trade Union dispute" has been added, which provides dispute relating to Trade Union arising between two or more Trade Unions or between the members of a Trade Union.
- Definition of wages has been revised:-
  - the First part includes all salary components express in terms of money are capable of being so expressed like basic salary, all reimbursements, all allowances, all benefits.
  - Second part of the definition provide specific exclusion like:- Bonus payable under any law, Conveyance allowance, House rent allowance, Overtime Allowance, House Accommodation, Supply of light water medical attendance, other amenities/ service excluded by a General or special order of the appropriate government, Commission, contribution to provident fund/pension, Any sum paid to defray special expenses, Gratuity, Retrenchment Compensation, Remuneration payable under any award or settlement between the parties.
  - The Third part of the definition provides that the total excluded components should not exceed 50% of the total remuneration. The third part of the definition provide limit as the definition very clearly specifies the list of exclusions so anything which is paid to the employees other than the exclusion would be covered and within this specific exclusion the limit cannot be more than 50%.

## KEY CHANGES

- ❑ A new feature of “Recognition of Negotiating Union” has been introduced. The Code provides for a negotiation union in an industrial establishment, having registered trade unions, for negotiating with the employer.
  - If there is only one trade union in an industrial establishment, the employer is required to recognize such trade union as the sole negotiating union of the workers.
  - In case of multiple trade unions, the trade union with support of at least 51% of workers on the muster roll of that establishment will be recognized as the sole negotiating union by the employer.
- ❑ The provisions of Standing Orders on Industrial establishments will be applicable having 300 or more than 300 workers as notified by the appropriate Government.
- ❑ The Code prohibits strikes or lock-outs in any establishment unless a prior notice of 14 days is provided. Similar provisions existed in the Industrial Disputes Act, 1947 for public utility services (such as, railways and airlines). The Code expands these provisions to apply to all industrial establishments. This will impact the ability of workers to strike and employers to lock-out.
- ❑ An industrial disputes can be voluntarily referred to arbitration by the employer as well as the workers. The parties to the dispute are required to execute a written agreement referring the dispute to an arbitrator.

## KEY CHANGES

- The worker may approach the Industrial Tribunal for adjudication of the dispute related to dismissal, retrenchment or termination within 45 days after the application for the conciliation of the dispute was made.
- Employers of industrial establishments such as mines, factories and plantations with at least 300 workers are mandatorily required to take prior permission of the central or state government before lay-off, retrenchment or closure. A fine of INR 1,00,000, which may extend up to INR 10,00,000, is leviable on any person who contravenes this provision.
- In case any worker is suspended by the employer pending investigation or inquiry. The amount of subsistence allowance payable at 50% of the wages for the first 90 days of suspension; and at the rate of 75% of such wages for the remaining period of suspension.

# THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020

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## KEY CHANGES

- Code provides single registration for an establishment instead of multiple registrations. This will design a centralized database and develop an ease of doing business.
- Appointment letter made Statutory.
- Working Hours For Women: Working Hours for Women as per this new proviso female workers/women can work during night shifts with their consent. Also, the time slot for such night shift shall be from 7 p.m. and before 6 a.m., which shall also be approved by the central or state govt.
- Rights and duties of employees and employers: Rights and duties laid down in the Code for employees too, employees shall take care of their own health, shall comply with specified safety and health measures, shall report unsafe situations to the inspector.
- **Offences and Penalties:** Under the Code, an offence which leads to the death of an employee will be punishable with imprisonment of up to two years, or a fine up to five lakh rupee or, both. Further, the court (Chief Inspector-cum-Facilitator or Inspector-cum-Facilitator or an officer of the appropriate Government or a person authorized to discharge any duty or to exercise any powers under this Code) has been granted a discretionary power wherein, it may direct that at least 50% of such fine be given as compensation to the heirs of the victim. The Code further states that where no penalty has been laid down for violation of the provision of the Code by the employer, the employer will be penalized with a fine between two to three lakh rupees. And where the employee violates any provisions of the Code, he will be subject to a fine of up to Rs. 10,000.

## KEY CHANGES

- ❑ The appropriate government for the factory governed by the central government will be central government, including establishment of contractors for the purposes of such establishment. In other cases the concerned State Government where it is situated.
- ❑ The code has also covered Audio visual production' include feature films, non-feature films, television, web-base serials, talk shows, reality shows etc., and under the new definition of Audio Visual- Worker" singer, news reader, dancer, stunt person, technical, artist and work like supervisory etc., has been covered subject to some wages ceiling to be notified by the central government.
- ❑ The definition of Contract Labour has been modified and includes inter-State migrant worker but excludes part time employee, regularly employed & mutually accepted standards of the conditions of employment and entitled to Social Security benefits.
- ❑ The new definition of Core Activity provides that activity for which establishment is set-up and other activity like housekeeping, Security, canteen etc., not to be treated as core activity.
- ❑ Principal employer to provide welfare facilities, where the contract Labour is deployed.
- ❑ Principal employer shall be liable to make payment of wages to the contract Labour deployed by him.

## KEY CHANGES

- The work hours for different classes of establishment and employees shall be as per the rules prescribed by central or state government. Further, in relation to overtime work, an employee shall be paid twice the rate of daily wages. The code in regard to leaves states that no employee shall work for more than 6 days a week, however, an exception has been provided for motor transport workers.
- Definition of “ Employee” has been incorporated and includes person doing any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward.
- As per new definition of “Employer” 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 would be
  - Head of the department
  - Occupier of the factory
  - Manager of the factory under clause (f) of sub-section (1) of sec 7 of the Factories Act.
  - Owner of the mine, agent or manager.
  - The person who, or the authority which has ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager or managing director, such manager or managing director;
  - Contractor; and legal representative of a deceased employer.

## KEY CHANGES

- The definition of the “Factory” has been revised under section 2 (w) and threshold limit of employees is now 20 in case of use of power and 40 in case without power and has specifically excludes, hotels, restaurant, eating place, Electronic Data Processing Unit or a Computer Unit etc.
- The definition of "hazardous substance" provides any substance, has potential to cause physical or health hazards to human being, other living creatures etc.,
- A new definition “Industrial premises” provides a premises in which any industry, trade, business etc., is being carried on with or without the aid of power includes a go-down.
- Definition of “Inter State Migrant worker” has been modified and ceiling limit of Rs 18000/- has been introduced.
- Definition of "machinery" has been inserted includes any article or combination of articles assembled, used or intended to be used for converting any form of energy to perform work.
- Definition of "manufacturing process" has been taken from Factory Act and provides such other processes as the central Government may notified.

## KEY CHANGES

- Definition of “metro railways” has been added and Metro railways has been treated as railways.
- Definition of “newspaper establishment” has been drastically changed and has covered all type of establishment carried on by individual, partners, created firm, body corporate subsidiaries of a common holding company etc.
- Definition of the “Occupier” has been amended and instead of clause a, b and c in second proviso, a consolidated definition has been given.
- Definition of the “principal employer” has been modified to the extent that the manager has been excluded from the definition of the principal employer.
- Definition of the “producer” has been added means a person who is making arrangement for necessary of production is also included.
- Definition of “Sales Promotion Employees” has been revised including a persons in supervisory capacity, managerial, administrative capacity getting salary up to Rs 18000/- per month or as may be notified by the Central Government from time to time.
- Definition of “worker” has been revised and includes persons in supervisory capacity and working journalists, sales promotion employees getting salary up to Rs. 18000/- per month or as may be notified by the Central Government from time to time.

# THE SOCIAL SECURITY CODE, 2020

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## KEY CHANGES

### New Category of worker has been included in this code:-

- "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.

Gig workers are in independent arrangement, freelancers, workers who are employed on project based work and short term work. Most commonly, platform based work where workers earn money by providing specific services, including food delivery services.

- "Platform worker" means a person engaged in or undertaking platform work

"Platform work" means a form of employment in which organizations or individuals use an online platform to access other organizations or individuals to solve specific problems or to provide specific services in exchange for payment.

There is no major difference in gig workers and platform workers. This is first time in India that application based assignments performed by many workers being recognized as employee-employer relationship.

## KEY CHANGES

□ Definition of wages has been revised:-

- the First part includes all salary components express in terms of money are capable of being so expressed like basic salary, all reimbursements, all allowances, all benefits.
- Second part of the definition provide specific exclusion like:- Bonus payable under any law, Conveyance allowance, House rent allowance, Overtime Allowance, House Accommodation, Supply of light water medical attendance, other amenities/ service excluded by a General or special order of the appropriate government, Commission, contribution to provident fund/pension, Any sum paid to defray special expenses, Gratuity, Retrenchment Compensation, Remuneration payable under any award or settlement between the parties.
- The Third part of the definition provides that the total excluded components should not exceed 50% of the total remuneration. The third part of the definition provide limit as the definition very clearly specifies the list of exclusions so anything which is paid to the employees other than the exclusion would be covered and within this specific exclusion the limit cannot be more than 50%.

**Impact:** As of now HRA is a part of minimum wages and with the implementation of code HRA will not be part of minimum wages will have an implication of the EPF contribution.

# KEY CHANGES

## The Employees Provident Fund Scheme:-

- ❑ Major reforms in the Employees Provident Fund Scheme is incorporation of limitation period of five years for initiation and two years for concluding enquiries.
- ❑ Aadhaar based registration is mandated.
- ❑ All establishments having 20 or more workers come under the purview of EPF, earlier it was applicable only on those establishments included in the schedule.
- ❑ Systems has been designed for covering the category self-employed or any other category under the purview of EPF scheme.
- ❑ Increase penalty amount from 10,000 to 1,00,000 and imprisonment of one to three years on deduction of employee contribution from salary and non-depositing.
- ❑ Subsequent failure to pay contributions attracts imprisonment of two to five years and fine of three lakh rupees.

# KEY CHANGES

## Employees State Insurance Scheme:-

- ❑ If employer and majority employees agree then voluntary registration has been allowed under the code and ESI scheme will be applicable. Further, government can extend ESI scheme to any hazardous occupation also even if a single employee is employed.
- ❑ The Facility of ESI would be available to all 740 districts.
- ❑ Gig workers and unorganized sectors will also able to link with ESIC.
- ❑ Plantation workers will also fall under the purview of ESI.
- ❑ If any employer fails to pay ESI contributions, even then ESI has to pass on the benefits to the employee which ESIC can recover it from the employer to the extent of the capitalized value of the benefit net of any payment of contribution amount, interest and damages payable by the employer.

## KEY CHANGES

### Gratuity:-

- ❑ Permanent employees would be eligible for gratuity after completion of five years as presently exist under the Act, while fixed-term employees will have no such criteria, such employees will be paid on the basis of their tenure of employment with one organization. Code has fixed different threshold with respect to eligibility for gratuity of permanent and fixed term employees.
- ❑ The threshold Gratuity period for working journalists reduces from five years to three years.

# KEY CHANGES

## Employment Information and Monitoring:-

- Employers, job seekers looking for vocational guidance, career counseling, self employment requires to register with career centres.
- All establishment except some exclusion like agriculture, domestic service, employment less than ninety days etc., required to notify the vacancies to career centres electronically or otherwise.
- Filing the return by the employer to the concerned career center.

## Maternity Benefit:-

- Every woman is entitled to medical bonus of up to Rs 3,500 where pre-natal confinement and post-natal care is not provided by employer whose upper limit can be amend by the Central government upto Rs 20000/- , this upper limit of Rs 20000 has been removed under the code.

# KEY CHANGES

## Employee's compensation Act, 1923, Building and other construction workers, The Unorganized Workers' Social Security Act (2008), etc.:-

- Creation of social security boards for unorganized workers.
- Coverage of gig, platform workers and unorganized workers under the ambit of social security Scheme.
- Code to expand the sources of the fund for schemes to include funds from corporate social responsibility or any other source as may be specified in the scheme and also contains enabling provision for constituting the special purpose vehicle for the purpose of implementation of schemes for unorganized workers.
- Bill also makes the provisions for registration of all three categories of workers - gig workers platform workers and unorganized workers.
- Contribution from an aggregator will be at a rate notified by the government which can fall between 1-2% of the annual turnover of the aggregators. However, the maximum limit of such contribution fixed @ 5% of the amount paid or payable by an aggregator to gig workers and platform workers.

### General Change

- Renaming the designation of Inspector as Inspector cum Facilitator who is expected to supply information and give advice to employers and workers concerning the most effective means of complying with the provisions of the proposed Code.



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