

LABOR CODES 2020

With 29 complex regulations on labor management integrated into 4 labor codes the complexity of labor management has certainly reduced. However, in order to remain compliant with new codes it is imperative that establishments undertake a 360-degree assessment to:

- re-align operations in line with the new codes (pertaining to safety, health and welfare measures, digital compliances, registers, standing orders, controls on overtime, fixed & contractual workers etc.)
- study the impact on increased employment budget, revised financial budgets, working capital (time bound payments to workers and contractors), profitability (increased gratuity, social security contributions) and overall impact on business continuity and profitability
- make employee motivation, risk management & modification of HR reporting essential
- set up fair dispute resolution mechanism, for employees and employer

Central government draft has been presented to state governments for consultation and make due changes, as labor is a concurrent list subject. Changes are applicable not just to factories, but also to all corporates and sales & marketing offices.

KEY HIGHLIGHTS

1. Code on Industrial Relations 2020 protects the rights of workers to form unions, minimises friction between employers and workers and offers provisions for investigation and settlement of industrial disputes. Its key highlights are:

- a) Grievance Redressal Committee (GRC) whereby every establishment with 20+ employed workers is required to set up one or more GRC to resolve disputes, with fair representation of workforce including women workers & complete proceedings within 30 days. It enlists a two-fold escalation mechanism as well, in form of
- a) Conciliation officer and
 - b) Tribunal whereby

a worker can approach the former in case of dissatisfaction or delay in proceedings and directly approach the latter, after 45 from the date of application to the Conciliation Officer.

- b) Trade Unions - in case there are multiple registered trade unions, the one with 51% workers as members shall be recognized as Sole Negotiating Union. In case no trade union is eligible, the rule requires setting up of Negotiating Council. Multiple scenarios can emerge given the new codes & careful assessment by management is recommended in this context.
- c) Strikes & Lockouts – no employee can go on strike without a 60 days' notice and similarly employer is required to give a 60 days' notice before lockout.
- d) Retrenchment & Closure – applicable to industrial establishments with less than 300 employed workers no worker, who has been in employment for 1 year, can be retrenched, unless
 - (i) The worker is paid 1 month's notice or wages for 1 month
 - (ii) The worker is paid, compensation equal to 15 days average pay for each year
 - (iii) A notice is served to government or other specified authority

2. Wage Code 2019

- a) the term 'wage' has been clearly defined as basic pay + dearness allowance + retaining allowance. Other components such as bonus, contribution by employer to PF, pension etc. have been excluded. The Code prohibits employers from paying wages less than the minimum wages. Minimum wages will be notified by the central or state governments. Earlier, minimum wages were only applicable to certain defined employment (~29 categories), however now the minimum wages shall be applicable to all employments.


- b) Appointment of Inspectors-cum-Facilitators who has powers to inspect the establishment, examine worker demands, search, seize wage related documents and inform the Government of any offence or abuse. Government has also proposed Digital inspection scheme facilitating collection of information through emails.
 - c) Payment of Dues, Claims and Audit - Management is responsible for dues to employees. The claims if any can be filed, within 3 years by: the employees; Trade Union; Inspector-cum-Facilitator
 - (i) The authorities have power to order payment of claims, compensation (10 times)
 - (ii) Failure to pay the amount can lead to recovery by the Government
 - (iii) No fines can be imposed, without prior approval of authority/ICF
 - (iv) Register of fines to be maintained and proceeds applied for approved purposes
 - d) Employers employing not more than 5 persons (for agriculture, domestic help) must produce the salary slips and proof of payments on demand.
 - e) Notice/s of non-compliances would be issued in name of Directors, In-charge of conducting business operations as well as the Company shall be deemed to be guilty of offences
- f) Basic Work Rules under the code stipulate a maximum of 8 Hours/ day & 6 Days/ week with overtime twice the rate of wage & limiting maximum overtime to 125 hours per quarter
 - i. Annual Leaves with Wages – 1day Leave for every 20 Days of work in a year
 - ii. Maternity leaves, Lay-off and annual leaves counted as work. Any Holidays falling between the leaves shall be excluded
 - iii. Rules pertaining to Leave Encashment & Carry Forward of Leaves
 - iv. Compulsory Disclosure of Hazardous process - one such provisions being prohibition on employment of pregnant women for such operations
 - v. Every Occupier of Factory maintain accurate health records of workers handling chemical, toxic, hazardous substances and various other provisions
 - g) Confidentiality – Chief Inspector-cum-Facilitator can consider to disclose all documentation of an establishment relating to manufacturing, commercial business & working process to ensure health, safety & welfare provisions of an employed worker. ICF can also consider to keep details of the complainant confidential. At other times these documentations shall remain confidential. Further, ICF can choose not to disclose to the employer that inspection is being made.

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

- a) Any new establishment is required to register within 60 days of electronic application, mention the registration number on all labor related documentation and update any changes in ownership, management etc. within 30 days.
- b) Mandatory to have Contractor license.
- c) The code defines core & non-core activities and prohibits employment of contract labor for 'core activities'.
- d) Code offers a list of health, safety and welfare conditions. One of the demands is to set up crèche facility for children under age of 6, where more than 50 workers are employed but allows usage of public or private facility, pooling of resources for setting up of a common crèche.
- e) Code enlists many health, safety, working & welfare conditions to maintain dignity of labor such as availability of portable drinking water, adequate washing & bathing facilities, first aid boxes etc.

4. CODE ON SOCIAL SECURITY, 2020 – consolidates laws relating to social security, extending coverage to organized & unorganized sectors.

- a) Defines types of workers.
- b) Gratuity regulations will now match the changing aspects of workforce as job durations have reduced and engagement of contractual workers is on rise. Cases of employee retrenchment with the sole intention of avoiding gratuity will also reduce.
- c) Maternity benefits along with other provisions prohibits employment of women for 6 weeks following the day of delivery, miscarriage, medical termination or pregnancy.

 Disclaimer: We recommend appropriate advice be taken prior to initiating action on specific issues.

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