EASE OF DOING BUSINESS IN INDIA LABOUR LAWS & NEW LABOUR CODES 2019-2020

FACTS & MYTHS



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Manhadantantantanta

INDIA IN GLOBAL CORRUPTION RANKINGS

India is the 80 least corrupt nation out of 180 countries, according to the 2019 Corruption Perceptions Index reported by Transparency International.



GREAT INTENTIONS SINCE 2014, LABOUR LAW REFORMS HAVE COME FAST & FURIOUS AND THE REFORMS REST ON THREE PLANKS

AMENDMENTS TO EXISTING LABOUR LAWS



DIGITIZATION OF LABOUR RECORDS

 $\bullet \bullet \bullet \bullet$

OVERVIEW OF SOME IMPORTANT LAWS FOR ESTABLISHMENT COMPLIANCE 2014-2019



- Maternity Benefit Amendment 2017
- Bonus Amendment 2015
- Leave & Overtime under Shops & Establishment Act
- Gratuity benefit amended to INR 20 lakhs 2018
- Fixed Term Employment 2018
- Model Standing Orders now Mandatory
- POSH during Lockdown

Ministry of Labour & Employment has amended the Industrial **Employment (Standing Orders)** Central Rules, via Central (Amendment) Rules, 2018. The amendments are effective from 16th March, 2018: The concept of fixed term employment which was industry specific (apparel manufacturing) has now been extended to all other industries & sectors.

However, it has been clarified, that the employment status of the existing workforce as on 16th March, 2018 shall not change from being permanent to that of fixed term with the introduction of the amendment. fixed term employment workman' and define the same in the following manner:

'fixed term employment workman" is a workman who has been engaged on the basis of a written contract of employment for a fixed period: Provided that-

- less than that of a permanent workman; and



✓ his hours of work, wages, allowances and other benefits shall not be he shall be eligible for all statutory benefits available to a permanent workman 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



LABOUR CODES NOTIFICATION DATES

- 1. Code on Wages notified wef 8 August 2019
- 2. Social Security Code notified wef Sep 29 2020
- 3. Occupational Safety & Health Code notified wef 29 Sep 2020
- 4. IR Code notified wef 29 Sep 2020







Name of the Code	Number & name of amalgamated laws
Wage Code	 4 laws – i. The Payment of Wages Act, 1936 ii. The Minimum Wages Act, 1948 iii. The Payment of Bonus Act, 1965 iv. The Equal Remuneration Act, 1970
IR Code	 3 laws - i. The Trade Unions Act, 1926 ii. The Industrial Employment (Stand iii. The Industrial Disputes Act, 1947

LABOUR CODES SUBSUMED LAWS



ding orders) Act, 1946





OSH Code

13 laws -

- The Factories Act, 1948
- ii. The Plantations Labour Act, 1951
- iii. The Mines Act, 1952
- iv.
- The Working Journalists (Fixation of Rates of Wages) Act, 1958 ٧.
- vi. The Motor Transport Workers Act, 1961
- vii. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966
- viii. The Contract Labour (Regulation and Abolition) Act, 1970
- ix. The Sales Promotion Employees (Conditions of Service) Act, 1976
- х.
- xi. The Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981
- xii. The Dock Workers (Safety, Health and Welfare) Act, 1986
- xiii.

LABOUR CODES SUBSUMED LAWS

The Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provi

The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979

The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act,





Total

29

LABOUR CODES SUBSUMED LAWS

i. The Employees' Compensation Act, 1923
ii. The Employees' State Insurance Act, 1948
iii. The Employees Provident Fund and Miscellaneous Provisions Act, 1952
iv. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959
v. The Maternity Benefit Act, 1961
vi. The Payment of Gratuity Act, 1972
vii. The Cine Workers Welfare Fund Act, 1981
viii. The Building and Other Construction Workers Welfare Cess Act, 1996

ix. The Unorganised Workers' Social Security Act, 2008





Though the said 29 legislations stand repealed, the Labour Codes themselves are yet to notified and implemented.

The Govt. of India is yet to announce the dates of commencement for each Codes, since separate Rules need to be framed under the.

Hence, this discussion is primarily for informative purposes and not an advisory on the Labour Codes.



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MAJOR HIGHLIGHTS ACROSS ALL 4 CODES

- Aadhaar based registration for organised and unorganised sector workers huge impact on contractor labour compliance (CLRA and non-CLRA vendor)
- Social Security net of ESIC and EPFO to widen opening up for all workers and self-employed – Two-tier system of reporting to the Central & State Govt.
 - Focus on inter-state migrant worker with major impact on contractor compliance • State level PF proposed for unorganised sector workers thus increasing employer's
 - responsibility for contractor compliance
 - Contractor to include sub-contractor as well
 - Compounding of offence
 - One registration, one license and one return for all codes

MAJOR HIGHLIGHTS ACROSS ALL 4 CODES

- - Pay parity to women workers as compared to their male counterparts
 - Appointment letters compulsory a mandate for statutory compliance

 - Fixed Term Employee to get same service condition, gratuity, leave and Social Security as that of Regular Employee
 - "National Occupational Safety and Health Board" to be set up for providing
 - international level safety environment
 - 50 % of the penalty in case of accident to go to the workers along with other dues • Separate definition of worker and employee
 - Contract labour not to include permanent workers of contractors who enjoy social
 - security benefits
 - Changes in EPF Contribution
 - Impact on Contractor Compliance 26Q check Exponential!



Notified categories under Sales Promotion Employees Act (MOLE notification dated 31.01.2011): Cosmetics, soaps, household cleaners and disinfectants Ready-made garments Soft drinks manufacturing industries **Biscuit & confectionaries** Ayurvedic, Unani and Homeopathic medicines Automobiles including accessories & spare parts Surgical equipment, artificial prosthesis & diagnostics Electronics, computers including accessories & spares **Electrical appliances** Paints & varnishes

SO WHAT'S NEW IN THE LABOUR CODES?



- Set to change HR policies & Payroll processing structures in a major way
- Employee benefits manual will have to be re-written
- Instead of 13% PF Contribution on Basic & DA we are looking at 10% PF contribution and unified PF-ESI payments
- Contractors' social security responsibility becomes an additional obligation for the employer



Code on Wages: imprisonment up to 3 months & fine up to Rs. 1 lakh

Code on Industrial Relations: Imprisonment up to 6 months & fine up to Rs. 20 lakhs

Code on Occupational Safety: Imprisonment up to 3 yrs & fine up to Rs. 20 lakhs

Code on Social Security: Imprisonment up to 2 years & fine up to Rs. 2 lakhs

While compounding of offences has been made a part of the Codes, operationally speaking we have found that the abovementioned amounts need to be paid separately for each Director, which heavily affects and increases the total cost of non-compliance

TOUGH PENALTIES



'Establishment' to mean any place where any industry, trade, business, manufacture or 1. occupation is carried on, thus including commercial establishments

2. Separate definition of 'worker' & 'employee'

3. Nomination for unpaid salary/dues to be available

3. Code to be applicable to all workers, unlike the Payment of Wages Act which covered employees earning below Rs. 24,000 per month

4. Transgenders to be protected from discrimination in remuneration for similar work.

5. 'Contract Labour' not to include a worker who is regularly employed by the Contractor for any activity of his establishment, where such employment is governed by mutually agreed terms, and who gets periodical increments, social security & other benefits



HIGHLIGHTS CODE ON WAGES 2019



6. Employer to pay minimum bonus @8.33% irrespective of allocable surplus. The employer will distribute a part of the gross profits amongst the employees. This will be distributed in proportion to the annual wages of an employee. An employee can receive a maximum bonus of 20% of his annual wages.

7. Wages defined in three parts: INCLUSIONS, SPECIFIED EXCLUSIONS & CONDITIONS GOVERNING EXCLUSIONS -Amount of exclusions not to exceed 50% of total salary, else to be deemed as 'wage'

8. Time limit for payment of monthly wages is before the expiry of the 7th day ; for retrenched/ dismissed/ closure cases within 2 days of such event (The mandate to clear F& F extends to both, resignation and termination cases).

9. Overtime payable at twice the normal rate of wages

10. An employee's wages may be deducted on certain grounds including: (i) fines, (ii) absence from duty, (iii)

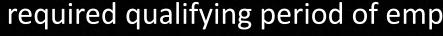
accommodation given by the employer, or (iv) recovery of advances given to the employee, among others. These deductions should not exceed 50% of the employee's total wage.



HIGHLIGHTS CODE ON WAGES 2019



Important **definitions** in the Code. These include: (a)"Fixed term employment" means the engagement of an employee on the basis of a written contract of employment for a fixed period: Provided that— (i) his 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; and (*ii*) he shall be 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 by him even if his period of employment does not extend to the required qualifying period of employment;







Important **definitions** in the Code. These include: (b) "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;

(c) "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;

(d)Inter – state migrant worker includes those recruited directly by the employer or indirectly

through contractor in one State for employment in such establishment situated in another State; or who has come on his own from another State

(e) "platform work" means a work arrangement in which organisations or individuals use an online platform to to provide specific services or any such other activities which may be notified by the Central Government, in exchange for payment;





(a) EPFO's coverage would be applicable on all establishments having 20 workers. Earlier, it was applicable only on establishments included in the Schedule.

(b) Option to join EPFO is also being given to establishments having less than 20 workers.

(c) Schemes would be formulated for bringing workers coming under the category of 'Self-employed' or falling under any other category under the aegis of EPFO.

(d) **Contributions**: In the EPF Scheme, the employer and employee will make matching contributions of 10% of the employee's wages (which may be increased to 12% by notification). Contributions towards gratuity, maternity benefit, cess for building workers, and injury compensation will be borne by the employer. Schemes for gig workers, platform workers, and unorganised workers may be funded through contributions from the employer, employee, or the appropriate government.

(e) For the purposes of Chapter III (EPF), the age of superannuation shall be fifty-eight years





Extending the reach of ESIC to maximum possible workers:-

- (a) The facility of ESIC would now be provided in all 740 districts. At present, this facility is being given in 566 districts only. (b) Establishments working in hazardous sectors would mandatorily be linked with ESIC, even if there is **only one worker** working in it. (c) Provision for making scheme for linking unorganised sector and Gig workers with ESIC. (e) **Option for becoming member of ESIC is also being given to establishments with less** than 10 workers
 - (f) Impact on Contractor Compliance : Exponential!





Other Highlights:-

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.

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.





- The definition of worker will be based on the basis of wages being drawn by him
- Worker / Employees with salary up to Rs 18,000 will fall under the category of worker ullet
- Employee can an Industrial raise dispute with the employer within the time limit of only 2 years instead of 3 \bullet years
 - Trade union have to give notice of 14 days before going on strike \bullet
 - Establishment with less 300 workmen can lay-off, retrench, close without government \bullet • approval, earlier this limit was 100 employees
- The provisions of Standing Orders will be applicable on Industrial establishments having at least 300 workers



HIGHLIGHTS CODE ON INDUSTRIAL **RELATIONS 2020**



- A new feature of "Recognition of Negotiating Union" has been introduced
- 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
- In case no trade union is eligible as sole negotiating union, a negotiating council will be formed consisting of \bullet representatives of unions that have at least 20% of the workers as members



HIGHLIGHTS CODE ON INDUSTRIAL **RELATIONS 2020**



HIGHLIGHTS Code on Occupational Safety, Health and Working Conditions, 2020

The 2020 Code increases the threshold for being considered a factory to: (i) 20 workers for premises where the manufacturing process is carried out using power, and (ii) 40 workers for premises where it is carried out without using power

- The Code includes all establishments where any hazardous activity is carried out regardless of the number of workers
 - Establishment" to mean a place where any industry, trade, business, manufacturing or occupation is carried on in which ten or more workers are employed.

"contractor", in relation to an establishment, means a person, who— (i) undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour; or (ii) supplies contract labour for any work of the establishment as mere human resource, and includes a sub-contractor;





HIGHLIGHTS Code on Occupational Safety, Health and Working Conditions, 2020

Prohibits contract labour in core activities, except where: (i) the normal functioning of the establishment is such that the activity is ordinarily done through contractor, (ii) the activities are such that they do not require full time workers for the major portion of the day, or (iii) there is a sudden increase in the volume work in the core activity which needs to be completed in a specified time.

- Defines a list of 11 non-core activities where the prohibition would not apply including: (i) sanitation workers, (ii) security services, and (iii) any activity of intermittent nature even if that constitutes a core activity of an establishment
 - **Daily work hour limit:** The 2020 Code fixes the maximum limit at eight hours per day. \bullet
- **Employment of women: Women will be entitled to be employed in all establishments for all types of** \bullet work. In case they are required to work in hazardous or dangerous operations, the government may require the employer to provide adequate safeguards prior to their employment





HIGHLIGHTS Code on Occupational Safety, Health and Working Conditions, 2020

New definition of "Employer" (i) In relation to an establishment which is a factory, the occupier of the factory; (i) in relation to mine, the owner of the mine, agent or manager referred to in section 67; (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 said affairs are entrusted to a manager or managing director, such manager or managing director; (iii) contractor; and (iv) legal representative of a deceased employer;

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 including a godown.

Definition of "Inter State Migrant worker" has been modified and ceiling limit of Rs 18000/- has been introduced





MAJOR DISCREPANCIES

The Code on Industrial Relations fixes the limitation for qualifying period as 1 year to be eligible for gratuity payment – The Code on Social Security and Code on Wages is silent on this issue

Bonus eligibility was earlier capped to employees earning Rs. 21,000 per month. The Code on Wages does not mention such capping, leaving room for obscurity

Labour Offices across the country are making the certification of Standing Orders mandatory while applying for or renewing CLRA licenses. However, the IR Code makes it mandatory to establishments having more than 300 workers to get their Standing Orders certified

The guiding provisions for termination of employment are unclear, since the chapter dealing with the topic under the Industrial Disputes Act is only applicable to factories, mines and plantations and not to non-factory establishments

Discrepancy (Sales Promotion Employees): Varying salary threshold for Sales Promotion Employees – OSH Code: Does not include any person being employed in a supervisory capacity, earning wages exceeding **Rs. 18,000** per mensem Code on Wages: Does not include any person being employed in a supervisory capacity, earning wages exceeding **Rs. 15,000** per mensem

Discrepancy in OSH COde 2020:

The OSH Code 2020 applies to establishments having 10 or more employees, which covers commercial establishments as well. Commercial establishments are squarely covered under the mandates of the Shops and Establishments Act. In view of the above, does a commercial establishment need to comply with the mandates of the Shops and Est Act as well as the OSH Code?

Till what extent shall the OSH Code override the provisions of the Shops & Establishments Act?



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TOUGH PENALTIES



E COMPOUNDING OF OFFENCES

The 2020 Codes on Industrial Relations and Social Security state that the offences punishable with imprisonment up to one year or with fine will be compoundable

For offences with fine, compounding is allowed for a sum of 50% of the maximum fine provided for the offence

For offences with imprisonment, compounding is allowed for a sum of 75%

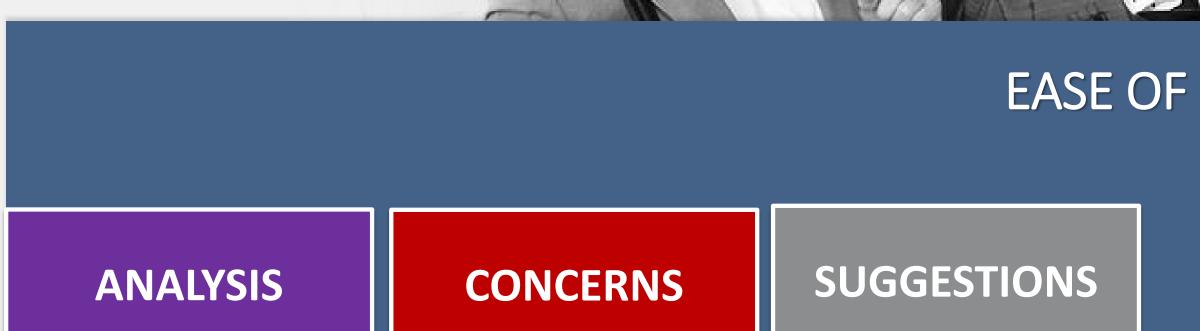
In the Code on Occupational Safety, 50% may be compounded where a 'penalty' is levied (e.g., for non-maintenance of registers) and 75% for 'offences' (e.g., for falsification of records)





Thank You !

LABOUR REFORMS 2014-2020: LEARNINGS TO TAKE BUSINESS **FORWARD**





EASE OF DOING BUSINESS A CORPORATE PERSPECTIVE