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A TeamLease company

CODE ON WAGES 2019

A PRIMER

India is not known to be an easy place to do business, with archaic labour laws mostly set in colonial times. Often it has been easier to stay under the radar in the unorganised sector, as formalisation brought with it a heavy compliance burden. Consequently, of India's 6.3 crore enterprises, only 10 lakhs are registered with the EPFO, only around 12 lakh are registered for GST. This is set to change.

India's journey of regulatory reform towards Ease of Doing Business took a historic step ahead on 8th August 2019 when the Code on Wages 2019 received Presidential assent. While details of compliance are yet to be notified, this Act marks a significant departure from the cumbersome and complex labour legislation of about 27000+ compliances, under more than 400 Acts, that weighs Indian businesses down. It is quite possible to achieve the aims of regulation, without burdening the companies unnecessarily - this is the objective of the Code on Wages 2019.

The key lies in redesigning laws and compliance processes through the three-vector framework of Rationalisation, Simplification and Digitisation. This primer gives the main features of the new legislation and its impact on workers, on employers and on the economy.

The Code on Wages 2019 seeks to regulate wage and bonus payments in all employments where any trade, business, or manufacture is carried on and consolidates four laws into one integrated Code:

[The Payment of Wages Act, 1936](#)

[The Minimum Wages Act, 1948](#)

[The Payment of Bonus Act, 1965](#)

[The Equal Remuneration Act, 1976](#)

This exercise implements the proposal of the Second Indian National Labour Commission, which suggested the rationalization of labour laws in 2002. With this, old and obsolete labour laws have been transformed, some of which were enacted in the pre-Independence era and meant primarily for factories and industrial establishments, into a more accountable and transparent law.

Applicability

The Code on Wages will apply to employees in the organized and un-organized sectors. While the Central Government will continue making wage-related decisions for employments such as railways, mines, oil fields, central public sector undertaking etc., the State Governments shall make such decisions for all other employments including for private sector establishments. Unlike the Payment of Wages Act, 1936 which applied to only those employees who drew monthly wages of up to INR 24,000 and the Minimum Wages Act, 1948 which applied only to scheduled employments, the provisions of the Code on Wages shall extend to all employees irrespective of their wage ceiling and type of employment.

Wages

The definition of 'Wages' under the Code on Wages has been defined to include all remuneration by way of salary, allowances and other components expressed in monetary terms. The definition lists specific items such as conveyance and house rent allowance which are excluded from the ambit of 'Wages'. An interesting feature to be noted here is that the excluded components cannot exceed one half or such other percent as notified by the Central Government of all remuneration payable to the employee. In the event that it does so, then the amount exceeding the one half or such percent as specified by the Central Government shall be considered as 'Wages'

Enforcement

The Code provides for appointment of Inspector-cum-Facilitator, who has been obligated to give advice to employers and workers relating to compliance with the provisions of the Code and to carry out inspections of the establishments, etc. Thus, the inspector-raj has been modified to extend the services of the inspector as a guide giving the most effective means of complying with the provisions of this Code. There is also the provision for the Government to notify an inspection scheme which shall also provide for generation of a web-based inspection schedule, thereby increasing transparency and control allegations of harassment. For firms or businesses that have now covered under the Code on Wages Act for the first time, the role of the Inspector-Facilitator will be important in ensuring a speedy and seamless adoption of compliances.

Compliance

While the details of the compliances are yet to be worked out by the government, some aspects mentioned point in the direction of reduced compliance burden for existing companies and greater transparency. For instance, the Code mandates an employer to maintain a single register containing the details of the persons employed, muster roll, wages and such other details as to be specified by the appropriate government. This would ease the requirement for employers to maintain separate records under different legislations. The Code also provides for the display of a notice on the notice board at a prominent place at the establishment containing the abstract of the Code on Wages, category-wise wage rates of employees, wage period, day or date and time of payment of wages and the name and address of the Inspector cum Facilitator having jurisdiction.



What has Changed?

Provisions of Payment of Wages Act, 1936

- Payment of Wages Act applicable for employees drawing wages less than Rs. 24,000 per month & in specified and notified establishments only
- No provision for payment of wages through bank account

Provisions of Code on Wages, 2019

- These provisions will apply to all employees and all establishments irrespective of wage ceilings.
- Wages may be paid through bank account.



Provisions of Minimum Wages Act, 1948

- Minimum Wages Act applies to scheduled employment only
- Power of fixation of minimum wages vests with both Central & State Govt. in their respective spheres.
- Separate minimum wages fixed for each type of employment
- Minimum wages must be revised by the Central or State Governments at least once every five years
- Section 2(h) of the Act defining 'wages includes house rent allowance'
- Overtime Wages provision varies from State to State

Provisions of Code on Wages, 2019

- Provision of minimum wage will apply to all employees
- Power of fixation of minimum wages vests with both Central & State Govt. in their respective spheres.
- Central Govt. to fix a 'National Minimum Wage' - Minimum threshold for all States
- Appropriate Govt. will fix one minimum rate of wages & fix factors for different categories of employees considering skill, arduousness of work, and geographical location. The State Governments cannot fix a minimum wage below the floor set by the Central Government.
- Minimum wages to be revised in five year intervals, not earlier.
- In Section 2(y), the definition of "Wages" excludes HRA; but Section 7 states an allowance to be adjusted with basic rate of wages.
- The Central or State Governments may fix the number of hours that constitute a normal working day. In case employees work in excess of a normal working day or work on a rest day, they will be entitled to overtime wage, which must be at least twice the normal rate of wages.

Provisions of Payments of Bonus Act, 1965

- For calculation of bonus, some allowances are excluded from wage
- Number of authorities/ forums to decide claims
- No provision of appellate authority
- Common penalty for every violation
- No provision of compounding

Provisions of Code on Wages, 2019

- Exclusions provided with a restriction that such allowances cannot be more than 50%
- One claim authority for all claims
- Provision of an Appellate
- Provision of graded penalty
- Provision of compounding of offences

Provisions of Equal Remuneration Act, 1976

- Prohibits gender discrimination in wage payment and in recruitment, transfers and promotions

Provisions of Code on Wages , 2019

Only prohibits gender discrimination amongst employees in matters relating to payment of wages by the same employer, in respect of the 'same work or work of a similar nature done by any employee.' It does not continue the principle of non-discrimination in the matters of recruitment, transfers and promotions



Provisions on Penalties

The Minimum Wages Act

Offences include (i) paying employees less than minimum wages, and
(ii) not providing for a day of rest in the week. Penalties include fine up to Rs 500 and imprisonment up to six months.

The Payment of Wages Act

Offences include (i) non-payment of wages at specified time period,
(ii) unauthorised deductions from wages. Penalties include fine up to Rs 7,500.

The Payment of Bonus Act

In case a person or company does not comply with the Act, they can be punished with imprisonment up to six months or fine up to Rs 1,000.

The Equal Remuneration Act

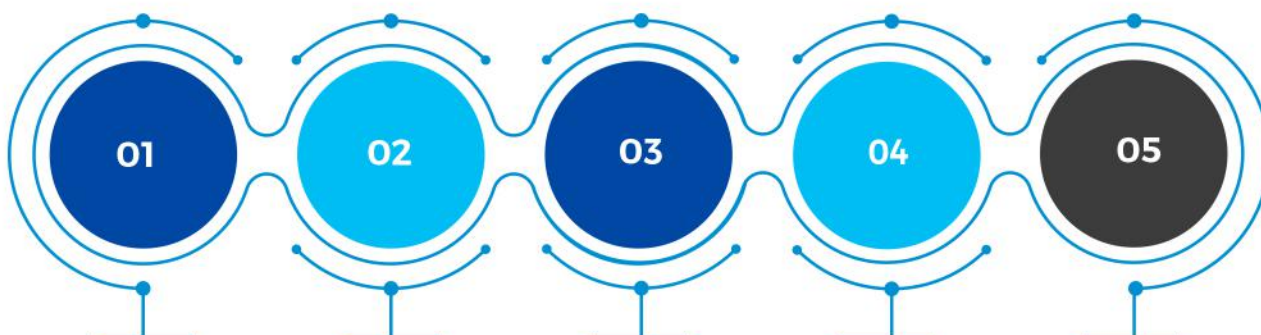
Offences include: (i) non-maintenance of documents in relation to employees, and
(ii) discrimination against women in recruitment. Penalties include fine up to Rs 20,000 or imprisonment up to one year.

Under the Code on Wages 2019, employers who pay less than what is due under the Code will pay a fine of up to Rs 50,000. If an employer is guilty of repeat offence within five years, penalties include imprisonment up to three months or a fine of up to Rs 1 lakh or both.

Employers who do not comply with any other provision of the Code will pay a fine of up to Rs 20,000. If an employer is guilty of the same offence again within five years, penalties include imprisonment up to one month or a fine of up to Rs 40,000 or both.



Implications for Workers



Minimum wage now extends to all employments, including unorganised sector

There is a National Minimum Wage below which no State can fix the minimum wage rate. This levels the employment disparity across states

The provision of timely payment of wage and regulated deduction is now extended to all workers

Wages can now be received legally through bank accounts

The restriction on loading remunerations under allowances excluded for the calculation of bonus

Implications for Employers



Implications for Balanced Development

One of the major challenges that will emerge for the country through this Code is on the provision of a statutory wage floor, fixed by the Central Government. The state governments will not be allowed to fix minimum wages below the statutory floor fixed by the Centre. This removes the flexibility to accommodate geographical variations and can operate perversely for certain states and industries, if the floor is set too high. While an employer in Maharashtra may find a minimum wage of Rs 18,000 a month easy to pay, the same may not be possible in state like Tripura or West Bengal, for example. Further, as former Chief Economic Advisor, Arvind Panagariya has noted recently, "Labour intensive enterprises operate on paper-thin profit margins and if minimum wages are set reflecting the cost of living in metro cities, this would pose an existential threat to them". Therefore the Centre has to be cautious while fixing a minimum wage floor that will not disrupt the investment and growth potential of small states and labour intensive industries.

Figure: Per Day Lowest Minimum Wages for Unskilled Workers and Current Non-statutory National Floor Level Minimum Wage (Economic Survey 2018-19)



Source: The data pertaining to lowest level of minimum wage rates for unskilled workers notified by the State/Central Government and NFLMW notified by the Central Government have been collated from the latest minimum wage notifications issued by the respective governments. These notifications have been issued at different points of time ranging from December 2014 to April 2019.

Conclusions

The codification of labour laws is working towards removing the multiplicity of definitions and authorities, without compromising on the basic concepts of employee welfare and benefits. This makes for Ease of Doing Business by simplifying the law and compliance for employers and for the labour authorities to enforce the laws. The inclusion of the unorganised sector under the ambit of the Code on Wages is a path breaking change for a labour-intensive country like India. The use of Inspectors as Facilitators will aid compliance and this move sets the stage for a level field for workers in all types of employment. Encouraging digitization through introduction of web based inspection scheme, calling of information electronically for inspection, composition of offences etc. may also become a model for other ministries when it comes to enforcement. Through rationalisation, simplification and digitisation, this Code will go a long way towards improving compliance and formalisation of employment in India.





About Avantis

Avantis, a TeamLease Company, is India's leading Regulatory Technology (RegTech) solutions company and is a leader in the space of digitising compliance tracking and management. Avantis has a web and mobile based technology platform integrated with India's best Compliance Database.

AVACOM helps organisations migrate to a transparent, accountable, timely & efficient-compliance program.

For more information, Visit us at www.avantis.co.in

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