



The 4 Codes presently enacted will repeal 29 Labour Laws

The Occupational Safety, Health And Working Conditions Code, 2020

I DIFFERENCE BETWEEN AN ACT AND CODE

An Act is a single law whereas a Code is a compilation of a number of Acts and Laws.

II INTENT CENTRAL GOVERNMENT

- a. Not to make many major changes in Labour laws presently applicable.
- b. Yet incorporate changes to factor in latest legal requirements.
- c. They have tried to maintain balancing effect between employer and labour as well as union.
- d. They have tried to cover the unorganised sector as far as possible, especially interstate migrant labour.

The Occupational Safety, Health And Working Conditions Code, 2020



- e. They have merged various definitions in all 29 Acts to bring harmony, simplicity and thereby reduce confusion.
- f. They have tried to increase coverage of law for even those categories which were not covered earlier.
- g. They have tried to incorporate certain important changes needed for industry in the present global competition.
- h. They have tried to reduce compliances from 29 to 4, maybe even 1 to ensure ease of doing business.

The Occupational Safety, Health And Working Conditions Code, 2020

III EVOLUTION

As per my information, these 4 Codes have taken 20 + years to see the light of this world.

The Second National Labour commission was constituted in 1999. During the Congress regime it went into the backburner and later it was taken up again. Recently the parliament referred the 4 codes to the parliamentary committee. To review the same there were members in the committee from all political parties in India.

This committee recommended 100 changes of which 74 were accepted, post which the 3 Codes were passed by the Parliament a few months back, whereas, the Wage Code was passed on 8/8/2019.

The Occupational Safety, Health And Working Conditions Code, 2020

IV SOME MAJOR MONETARY CHANGES ADVERSELY AFFECTING THE INDUSTRY

- a. In the definition of “wage” in each of the 4 Codes, they have simplified the definition to include i) Basic, ii) DA, iii) Retaining allowance and excludes a) Bonus, b) House Accommodation, c) Contribution for Provident Fund, d) Conveyance Allowance, e) Special Expenses, f) HRA, j) Remuneration As Per Award Or Settlement, h) Overtime Allowance, i) Commission, j) Gratuity and k) Retrenchment Compensation.

In my opinion therefore as per the 4 new Codes, now the only 2 components important for the calculation by the industry is “Basic” and “DA”, the basis being as follows:-

In my opinion this “retaining allowance” would mean and refer to a place such as “sugarcane factory” where an employee is retained between 2 sugarcane crushing seasons and would not cover any normal private company. The reason and basis for my this statement is:-

“Retaining allowance” is not defined in any of the 4 Codes, and also in the 29 old Acts it is enacted only in the Provident Fund Act at Section 6, Explanation 2 which reads:

The Occupational Safety, Health And Working Conditions Code, 2020



“For the purposes of this Section, “retaining allowance” means an allowance payable for the time being to an employee of any factory or other establishment during any period in which the establishment is not working, for retaining his services.”

With respect to the Payment of Bonus Act, “Retaining Allowance” is only mentioned in Judgements such as Managing Director, Chalthan Vibhag Sahakarikhand Udyog, Chal V/s Government Labour Officer & Ors. (1981 Supreme Court) (Retaining allowance falls within the definition of the expression “salary or wage” within the meaning of Section 2(21) of the Payment of Bonus Act, 1959).

In the 4 Codes they have excluded all other components from this definition. A change is that earlier HRA and in my opinion all other allowances was included in the definition of “wage”, especially under Minimum Wages Act except “conveyance” but it all is now excluded.

Similarly, in the definition of “wages” under the Industrial Disputes Act, earlier for calculation of layoff compensation, retrenchment compensation, etc, it included all allowances including “conveyance” which is now excluded from the 4 Codes.

The Occupational Safety, Health And Working Conditions Code, 2020

So also, in case of Provident Fund, earlier the only exclusion mainly was “HRA” whereas now in my opinion all allowances stand excluded.

For calculation of Employee’s State Insurance contribution, earlier only exclusion was “conveyance”, whereas now in my opinion even other allowances stand excluded.

Earlier in the Industry, practically, the emphasis of “wage” was on “Basic” and “DA” which for the calculation of retiral benefits, Employee’s State Insurance, Provident Fund, Bonus, Gratuity, etc. was excluded and would constitute 40% of indirect costs, which resulted into lesser financial outgo.

However, recently for calculation of Provident Fund Contribution, the Supreme Court Judgement of Vivekananda in 2017 compelled companies to calculate contribution and pay by including all allowances, (except HRA, or those allowances which are actual reimbursements), thereby ensuring that Provident Fund contribution was approximately up to 50% or more of wage, in the ceiling limit of Rs 15,000. This in my experience is the current practice in the Industry, and if so, then for us under these 4 Codes there would be marginal/negligible increase in costs.

The Occupational Safety, Health And Working Conditions Code, 2020



Now the 4 Codes lays stress, that for calculating wage under these codes, payments made under exclusions of this definition such as especially House Accomodation, Conveyance, HRA, Special Expenses, etc specified by me in Clause IV(a) of my presentation above, if exceed 50%, the amount which exceeds this amount shall be deemed as remuneration and added back as “wage”.

So also, under these 4 Codes, to ensure equality of wages especially for women, it has been qualified that for such calculation of 50% wage, even excluded allowances such as “Conveyance”, “HRA”, “Remuneration Under Award Or Settlement” and “Overtime” is to be included.

V COST INCREASE UNDER FOUR CODES.

1. My analysis of the financial impact of the Wage Code, 2020

a. Minimum Wages Act

Now there will be 2 sets of minimum wages-

i. The present system of declaring minimum wage as per calculation under the Minimum Wages Act 1948 for each Industry by each state, as is being done since 1948 till today, will continue.

ii. Now in addition, there will be a “FLOOR WAGE” declared by “CENTRAL GOVERNMENT” which may be differently fixed for different geographical areas, under Section 9(1) of the new Wage Code.

However, Section 9(2) of the new Wage Code stipulates that the minimum wage declared by State Government as being presently done, will be NOT LESS THAN the FLOOR WAGE declared by the Central Government.

The Occupational Safety, Health And Working Conditions Code, 2020



It further stipulates that if the MINIMUM WAGE declared by any State Government is more than the FLOOR WAGE declared by the Central Government, then the state shall not reduce the same.

It is reliably learnt by me that the Central Government has created 4 zones, East, West, North, South.

If I take the example of East then it could possibly also comprise of certain states such as Mizoram, Nagaland, Sikkim, Assam, etc where the minimum wages are at approximately Rs 6000 Per month whereas other locations in East could be Kolkata, etc where the present minimum wage could possibly be around Rs 10,000 to Rs 11,000.

Now if the Central Government declares one bench rate of minimum wage for East, at say Rs 10,000 per month then the states above named especially Mizoram, Nagaland, Sikkim, Assam, etc would have to pay MINIMUM WAGE at Rs 10,000 per month instead of the present Rs 6,000 per month, which would be a huge sudden increase without any corresponding increase in production, thus leading to huge cost increase for the Industry, making it unviable.

The Occupational Safety, Health And Working Conditions Code, 2020

b. Payment of Bonus Act

The chapter of Bonus in the Code is the same or similar to that of the earlier Payment of Bonus Act, of paying bonus between 8.33% to 20% unless the Government raises the present ceiling of “wage” at Rs 21,000 for eligibility under the Act and for actual calculation for the payment of Bonus at Rs 7000 or minimum wage, whichever is higher.

The only difference being that calculation for “Wage” will now be at a minimum rate of 50% of any “EMPLOYEE’S” remuneration ie Basic + DA- So costs will marginally go up. Here I may point out that even in the previous Bonus Act and also now in the Code, apart from ceiling, it always covered managers, supervisors, etc.

The Occupational Safety, Health And Working Conditions Code, 2020

Productivity Bonus

Even earlier under the Payment of Bonus Act, Bonus could be paid in two methods:-

- A) Bonus calculated on Profit and Loss basis.
- B) Productivity linked bonus- Section 31A of the Payment of Bonus Act.

Productivity linked bonus was payable to employees primarily engaged in sales, basis their performance.

The present Wage Code also has continued with both the above methods of payout.

The Occupational Safety, Health And Working Conditions Code, 2020

c. Payment of Wages Act

Under this Code, in my opinion, there is no additional financial impact on the company. But here I bring your attention to Section 17(2) of the Wage Code which once again repeats the stipulation that upon dismissal or termination, the employee shall be paid his wages within 2 working days.

d. The Equal Remuneration Act

Under this Code, in my opinion, there is no additional financial impact on the company.

The Occupational Safety, Health And Working Conditions Code, 2020

2. My analysis of the financial impact of the Social Security Code, 2020

a) In the chapter of Provident Fund there is no major change between the Code and the earlier Provident Fund Act.

However, in view of the new definition of wage, now our contribution will be at a minimum rate of 50% of the remuneration of the employee (subject to the present salary limit under Provident Fund of Rs 15,000).

The immediate effect of the change will be reduction in the take home of salary of the employee.

Here I may also point out 2 aspects-

i) That in view recent judgement of the Supreme Court in 2017 in the case of Vivekananda, companies are already contributing Provident Fund on approximately 50% of the employee's salary upto present ceiling of Rs 15,000.

If so then as explained earlier, at the moment, there is no much financial impact on the company.

The Occupational Safety, Health And Working Conditions Code, 2020



ii) However, I recently came across a latest news item that the government is proposing to enhance the salary limit under Provident Fund from present Rs 15,000 Per month to Rs 25,000 Per month, so again the costs for the Industry will go up and the take home for the employees in the salary bracket of Rs 15,000 Per month to Rs 25,000 Per month will reduce.

b) With regards to the chapter of Employee's State Insurance, again since now we will have to contribute at the rate of 50% of employee's remuneration (subject to the present ceiling of Rs 21,000) there is a cost implication on the Industry.

Here also now I have reliably learnt that the government is proposing to increase the salary limit for contribution from the present Rs 21,000 Per month to Rs 30,000 Per month, so again our costs will go up.

c) Now with regards to the chapter of Gratuity, I may point out that a major change when compared to the earlier Gratuity Act, is that for the calculation of wage, it has to be at 50% of the remuneration paid to the employees.

The Occupational Safety, Health And Working Conditions Code, 2020

Here in my opinion costs will substantially go up because only for this chapter of Gratuity in this Code, when we see the definition of “Employee” at Section 2(26), it includes supervisor, manager and administrative also, and though these were earlier also included in the Payment of Gratuity Act, now calculation of “Wage” for the payout of Gratuity will be at 50% of their remuneration.

The other addition being in case of Fixed Term Employee, he will be entitled to gratuity even on completion of 1 year of service, so again marginally adding to our costs.

Another very important change is at Section 57 of this Code, whereby it personally appears to me that the government is proposing to strictly enforce that all companies compulsorily take Gratuity Insurance for all its employees, unless in any company there already exists a “Trust”.

I may point out that this section was also there in the earlier Gratuity Act of 1972 since 1/10/1987 but was not brought into force till date.

The Occupational Safety, Health And Working Conditions Code, 2020

d) I now draw your attention to the chapter on Maternity benefits in this Code.

Here again, the primary cost impact on Industry will be payment of benefits including 26 weeks of paid leave at minimum rate of 50% of the employees remuneration, thereby upping costs. Here I may specially point out that since there is no wage ceiling, the payout for senior category of women will be substantially increased because since now their “wage” component will be Basic and DA at a minimum rate of 50% of their remuneration.

e) Now with regards to Employee’s Compensation the only major financial impact would be calculation of wage at 50% of the employee’s remuneration at time of accident or half monthly salary or paying compensation.

The Occupational Safety, Health And Working Conditions Code, 2020

3. My analysis of the financial impact of the Industrial Relations Code, 2020

a) The newest addition to cost is worker reskilling fund at Section 83 whereby in case of retrenchment, the payout will not only be entitled to retrenchment compensation to the retrenched worker, but also a one-time lump sum amount of half month's salary to be paid to reskilling fund.

4. Lastly my analysis of the financial impact of the Occupational Safety Code, 2020

a) Firstly, I draw your attention to the Contract Labour Chapter whereby as per new definition of "wages", costs will go up since for all calculations for all contract labour of their salary and benefits eg. Wage, Employee's State Insurance, Provident Fund, Bonus, Gratuity, leaves, etc the calculation will be at 50% of remuneration.

b) Similar would be the financial impact for wages and benefits for Sales Promotion Employees under this Code.

The Occupational Safety, Health And Working Conditions Code, 2020

c) So also, while granting leaves to our own employees now the wage calculation will be at 50% of their remuneration, thereby costs will increase.

VI SOME ADDITIONAL IMPORTANT NEGATIVES FOR INDUSTRY

1. Now as per Industrial Relations Code Section 14, the EMPLOYER (PAN INDIA) needs to recognise a union or a negotiating council in an establishment having a registered union.

Earlier there was no such law except in the State of Maharashtra, if an establishment had 50 or more employees, then under MRTU and PULP Act, they could approach the Industrial court and seek recognition. This above is in addition to setting up a “works committee” in an establishment having 100 or more worker, and a “grievance redressal committee” for all establishments employing 20 or more workmen under the Industrial Relations Code.

I may point out that the requirement of having a “Works Committee” and “grievance redressal committee” was in force under the Industrial Disputes Act, even earlier.

The Occupational Safety, Health And Working Conditions Code, 2020

2. As per Section 14(2) of the Industrial Relations Code, if there is one union then employer will need to recognise it as the sole negotiating union.
3. As per Section 14(3) of the Industrial Relations Code if there is more than 1 union, then employer will recognise that union having 51% or more members.
4. As per Section 14(4) of the Industrial Relations Code if there is more than 1 union, and none have 51% or more members, then each union will get representation at the rate of one representative for every 20 members.

The important fallout is management recognising one union and others resorting to agitation and/or disruption of work by way of show of strength.

5. For certifying Standing Orders, the certifying officer will compulsorily call union or where no union, employee's representatives.

Now, Employee Representatives is not defined so it could mean “Works Committee” or even “Grievance Redressal Committee”.

The Occupational Safety, Health And Working Conditions Code, 2020

6. Under Sales Promotion Act, for a dispute of termination, etc, an employee could approach under Industrial Disputes Act earlier only for 11 notified Industries namely Pharmaceutical as well as i) Cosmetics, soaps, household cleaners and disinfectants, ii) ready garments, iii) soft drink manufacturing industries, iv) biscuits and confectioneries, v) Ayurvedic, Unani and Homoeopathic Medicines, vi) Automobiles including accessories and spare parts, vii) Surgical equipments, artificial prosthesis and diagnostics, viii) Electronics, computers including accessories and spares, ix) Electrical appliances, x) paints and varnishes.

Now as per the Industrial Relations Code, this is applicable to Sales Promotion Employees in all Industries. So, we can expect increased litigation.

7. A new addition in the Industrial Relations Code is at Section 50(2) whereby any dismissed or terminated workman can approach the Labour Court IN INDIA and seek interim relief, which the Court may grant based on Prima Facie facts and documents before it, pending full hearing of the case. So if Interim Relief is granted, he could also start getting wages pending Final hearing of the dispute.

Earlier this was only permissible only in Maharashtra under the MRTU and PULP Act.

The Occupational Safety, Health And Working Conditions Code, 2020

8. As per Minimum Wages, Section 5 and 6 of the Code on Wages, the word used is “employee” which includes Supervisor, Manager and Administrative.

Does this mean there will be a Minimum Wage payable to this category also?

Section 5 reads- “No employer shall pay to any employee wages less than the minimum rate of wages notified by the appropriate Government.”

Section 6 reads- “(1) Subject to the provisions of section 9, the appropriate Government shall fix the minimum rate of wages payable to employees in accordance with the provisions of section 8.

(2) For the purposes of sub-section (1), the appropriate Government shall fix a minimum rate of wages--

- (a) for time work; or
- (b) for piece work.

The Occupational Safety, Health And Working Conditions Code, 2020



(3) Where employees are employed on piece work, for the purpose of sub-section (1), the appropriate Government shall fix a minimum rate of wages for securing such "employees" a minimum rate of wages on a time work basis.

(4) The minimum rate of wages on time work basis may be fixed in accordance with any one or more of the following wage periods, namely:-

- (a) by the hour; or
- (b) by the day; or
- (c) by the month.

(5) Where the rates of wages are fixed by the hour or by the day or by the month, the manner of calculating the wages shall be such, as may be prescribed.

(6) For the purpose of fixation of minimum rate of wages under this section, the appropriate Government,-

- (a) shall primarily take into account the skill of workers required for working under the categories of unskilled, skilled, semi-skilled and highly-skilled or geographical area or both; and

The Occupational Safety, Health And Working Conditions Code, 2020



(b) may, in addition to such minimum rate of wages for certain category of workers, take into account their arduousness of work like temperature or humidity normally difficult to bear, hazardous occupations or processes or underground work as may be prescribed by that Government; and

(c) the norms of such fixation of minimum rate of wages shall be such as may be prescribed.

(7) The number of minimum rates of wages referred to in sub-section (6) may, as far as possible, be kept at minimum by the appropriate Government.”

So in my opinion, technically in their breakup of wage, 50% of remuneration should be Basic + DA.

The Occupational Safety, Health And Working Conditions Code, 2020

VII SOME BENEFITS TO INDUSTRY.

1) In OSH code in chapter of contract labour, for 1st time any Central Act in Section 57 has defined “Core Activity” with respect to contract labour. Earlier this in India was defined only in Contract Labour Rules that too only by Andhra Pradesh. This often resulted into labour disputes as well as arbitrariness by labour enforcement officers.

2) For the 1st time Industrial Relations Code also defines “Fixed Term Employee” at Section 2(o). (But his cost will remain same as permanent worker doing same job). So, there is widespread speculation in all industries as to whether even for all present permanent jobs, we can convert to or employ only fixed term employees.

In my personal opinion though this is not clear, but I do not think that is the intention of the legislature while enacting these Codes or laws, for the simple reason then there will be no permanent workmen in the industry left, though work will continue being of perennial nature or permanent nature.

The Occupational Safety, Health And Working Conditions Code, 2020

I may inform all present, that though this was not defined in law earlier, but there was a mention in exclusion of Retrenchment at Section 2(oo)(bb) of Industrial Disputes Act 1947, basis which there have been rulings by court that some appointments were sham and bogus as work was continued on a permanent basis.

3) In case a company wants to effect layoff, retrenchment or closure, earlier the company having 100 or more workmen were covered, now the limit is raised to 300. (Here I may point out that even earlier prior to 1980 the limit was 300 which was brought down to 100 from 1980 onwards till now).

4) Another important aspect I wish to point out is that, under the Sales Promotion Act, 1976 there were prescribed a variety of leaves such as earned leave, holidays, compensatory holidays, medical leave, quarantine leave, extraordinary leave, leave not due, study leave, casual leave, casual leave with wages whereas, now under the Code there is only 1 leave prescribed so far which is privileged leave of 1 day for every 20 days working.

The Occupational Safety, Health And Working Conditions Code, 2020

5) As per practice in case of violation of law the Labour Law enforcement officers name the directors in the show cause notice as well as for filing criminal cases.

In my opinion for the 4 new Labour Codes, I suggest nominating “manager” for establishments as the “person responsible” wherever possible, thereby limiting risk of the Directors being named in criminal cases, except Factories Act where “occupier” is compulsorily a Director.

6) Earlier since 1952 under the Provident Fund Act there was no limitation period for the Provident Fund authorities to scrutinise noncompliance and thereby levy interest and penalty for all employers.

Now under the new Code the limitation period is 5 years which is a big sigh of relief.

7) Importantly, I wish to point out that earlier under the Contract Labour Act, 1970 the appropriate government had a right to abolish contract labour in certain operations of a company or a class of companies, if they felt the work was of perennial nature and essential for the working of the establishment.

Now this clause is done away with.

The Occupational Safety, Health And Working Conditions Code, 2020



However, I may point out that even earlier as well as now, Independently the employee has a right to challenge his relationship with the principal employer by raising a dispute under the Industrial Disputes Act thereby claiming the contract was supervised and controlled by the principal employer and hence was sham and bogus.

8) In case of strike under the Industrial Relations Code, workman all India in any establishment are now required to give 14 days strike notice or management required to give 14 days notice of lockout, which earlier was not there in Industrial Disputes Act but was earlier only applicable in Maharashtra under MRTU and PULP Act.

9) Similarly, now even if more than 50% workman in plant or field (especially pharma industry) concertedly take casual leave it would be construed as “strike”.

10) Earlier under the Provident Fund Act in case the management decided to appeal against the order of the Provident Fund commissioner they were required to deposit upto 75% of the dues.

Now it is a simple deposit of 25% under this new Code.

The Occupational Safety, Health And Working Conditions Code, 2020



- 11) Under the Industrial Relations Code it is now enacted that post retrenchment the offer of reemployment will be valid only for 1 year, whereas earlier it was indefinite.
- 12) Now in the Industrial Relations Code it is enacted that workman can raise a dispute only within 2 years of termination. Earlier there was no limitation and we could see cases filed even after 5-8 years, which as a result increased financial liability. In addition, the problem for the companies was that after so many years neither any papers were available nor witnesses were available.
- 13) Similarly, now any monetary claim can be raised by a workman, only in 1 year of his claim, subject to some reasonable extension. Earlier there was no limitation period.
- 14) Under Section 67 for the purposes of maternity benefit it is provided for that either the Government or a group of companies can come together and provide a common creche.
- 15) Another financial impact benefit would be that for all calculations especially for calculating Layoff compensation, Retrenchment compensation or Closure compensation, now it will be at 50% of Employees remuneration, so in my opinion there will be less financial outgo for the companies.

The Occupational Safety, Health And Working Conditions Code, 2020

As per the earlier Industrial Disputes Act, wages included all components for purposes of compensation or notice pay ie including conveyance, HRA, etc.

VIII PUNISHMENT

My general observation with regards the 4 Codes is that certain non compliances for the first time would amount to monetary penalties.

These also are now compoundable.

With respect to certain penalties there is criminal prosecution including imprisonment which is also in case there is a repetition of offences.

The Occupational Safety, Health And Working Conditions Code, 2020

IX RULES

I may also point out that in my opinion, for the 4 Codes each State Government will also have to formulate their State rules because in India, Labour falls under the “Concurrent List”.

X DATE OF ENFORCEMENT OF THE 4 CODES

It is reliably learnt that the government is planning to implement the 4 Codes along with the Central Rules with effect from 1/4/2021. The States are required to prepare their own Rules in line with the Codes.

The Occupational Safety, Health And Working Conditions Code, 2020

XI MY PERSONAL NOTES

a. No attempt to increase productivity or even quantify productivity in any company in India vis a vis global competition.

b. Secondly union recognition by management will lead to agitation and breakup of Industrial Peace.

I would personally have preferred if the Government would have appointed a third party to do the job of giving recognition, as that would ensure that during its process, at least the management could insist on all warring factions to maintain Productivity, Discipline, Peace and Harmony inside the establishment.

c. One of the options to the Government was to have a base salary at the rate of 50% and balance linked with productivity.

Alternatively, announce only a piece rate minimum wages instead of present day rate.

THANKING YOU



Sundeep Puri
Associates & Advocates

Adv Sundeep Puri, Adv R.V. Paranjpe,
Adv Vedika Puri and Adv Vanshaj Puri