

Three New Labour Codes

Country: India

Summary

On September 2020, the Indian Parliament formally passes three new labour codes in to law.

The three codes; Industrial Relations Code, Social Security Code, and Code on Occupational Safety, Health and Working Conditions replaced and consolidated 25 central laws.

Definitions of “factory”, “employee”, “employer”, “metro” and “principal employer” are the same across all the three codes

Chapter One

The Industrial Relations Code, 2020

Industrial Relations Code, 2020

REPLACED LEGISLATIONS

1. Industrial Employment Standing Order Act, 1946
2. Industrial Disputes Act, 1947
3. Trade Unions Act, 1926



NEW LEGISLATIONS

Industrial Relations Code, 2020

Provisions

Key Changes

- ❑ Workers may approach the National Industrial Tribunal for settlement of an industrial dispute related to dismissal, retrenchment or termination within 45 days after the 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.
- ❑ 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 appropriate government shall set up a Worker Reskilling Fund, financed by contribution of the employer. The amount shall equal to fifteen days wages last drawn by the worker immediately before the retrenchment. The fund is utilised by crediting the amount within forty-five days of such retrenchment.
- ❑ Establishment with less than 300 workers can now lay-off, retrenched, closed without prior government approval. The previous limit was at least 100 workers.
- ❑ The Grievance Redressal Committee will now consist of maximum ten members in an industrial establishment employing 20 or more workers, up from six members in previous law.

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- ❑ In case any worker is suspended by the employer pending investigation or inquiry, said worker is entitled to subsistence allowance payable at 50% of the wages for the first 90 days of suspension; and at 75% of the wages for the remaining period of suspension.
- ❑ Mandatory notice of 14 days notice for Trade Unions to declare a strike.
- ❑ Employees can an raise industrial dispute with the employer within 2 years instead of 3 years.
- ❑ An industrial disputes can be voluntarily referred to arbitration by the employer as well as the workers via a written agreement referring the dispute to an arbitrator.

Definitions

Key Changes

- ❑ The central government will act as the “**appropriate government**” for any central public sector undertaking (PSUs), industries including railways, mines, telecom, and banking, and for any “Controlled Industry” deemed to be in public interest.
- ❑ Definition of “**Employee**” has expanded to include any person employed by an industrial establishment to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work.
- ❑ The definition of “**worker**” is now based on the wages being drawn by the worker – any worker / employee with wages up to INR 18,000 (approx. EUR 210) will fall under the category of worker.
- ❑ Introduction of “**Fixed Term Employees**”, i.e. workers employed for a fixed duration based on a contract signed between the worker and the employer. Fixed Term Employees are entitled to the same salary, benefits such as ESI, Medical Insurance, EPF, bonus, etc at par with regular employees who are doing work of same or similar nature.
- ❑ Definition of “**Employer**” has been modified under to include:
 - i. head of the department,
 - ii. occupier of the factory,
 - iii. manager of the factory,
 - iv. 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,
 - v. Contractor; and
 - vi. legal representative of a deceased employer

Definitions

Key Changes

- ❑ Definition of “**industry**” includes 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 new regulation also specifically excluded institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic services; sovereign functions; domestic services from this definition.
- ❑ Definition of “**Industrial Dispute**” includes any dispute between employers and employees / employers and workers / workers and workers which is connected with the employment, the conditions of labour, discharge, dismissal, retrenchment or termination of such worker.
- ❑ Definition of “**railways**” includes Metro railway.
- ❑ Definition of “**Negotiating union or negotiating council**” has been added. Recognising the role of such council in an industrial establishment having registered Trade Union for negotiating with the employer of the industrial establishment.
- ❑ Definition of “**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, which include:
 - i. basic salary, all reimbursements, all allowances, all benefits.
 - ii. dearness allowance;
 - iii. retaining allowance,

And specifically excludes components such as bonus payable under any law, house-accommodation / rent allowance, overtime allowance, special expenses, Gratuity, Retrenchment Compensation. The excluded components should not exceed 50% of the total remuneration.

Chapter Two

The Social Security Code, 2020

The Social Security Code, 2020

REPLACED LEGISLATIONS

1. The EPF and M.P. Act, 1952
2. The ESIC Act, 1948
3. The Maternity Benefit Act, 1961
4. The Building and other Construction Workers Cess Act
5. The Payment of Gratuity Act, 1972
6. The Cine Workers Welfare Fund Act, 1981
7. The Unorganized Workers' Social Security Act, 2008
8. Employees Compensation Act, 1923
9. The Employees Exchange (Compulsory Notification of Vacancies) Act, 1959



NEW LEGISLATIONS

Industrial Relations Code, 2020

Provisions

Key Changes

- ❑ New categories of worker has been introduced in this code
 - “**gig worker**“ is a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship;
 - “**platform worker**“ is a person engaged in or undertaking platform work, i.e. a work arrangement outside of a traditional employer employee relationship in which organisations or individuals use an online platform to access other organisations or individuals to solve specific problems or to provide specific services or any such other activities which may be notified by the Central Government, in exchange for payment.
- ❑ This is first time in India that application based assignments performed by workers are recognised as employee-employer relationship.
- ❑ Constitution of a National Social Security Board for unorganised workers.
- ❑ Expand sources for funds from corporate social responsibility and constitute a “special purpose vehicle” for the purpose of implementation of schemes for unorganised workers.
- ❑ Significant reforms in the **Employees Provident Fund**
 - All establishments having 20 or more workers come under the purview of EPF,
 - Mandatory Aadhaar based registration,
 - Increase penalty amount from INR 10,000 to INR 100,000 and imprisonment of one to three years on deduction of employee contribution from salary and non-depositing of EPF. Subsequent failure to pay contributions will attract imprisonment of two to five years and fine of INR 300,000.

Provisions

Key Changes

❑ Changes in **Employees State Insurance Scheme (ESI)**

- Gig workers, plantation workers, unorganised sectors will come under ESI.
- ESI to be extended to any hazardous occupation and even when a single employee is employed.

❑ Changes in **Gratuity**

- Permanent employees will be eligible for gratuity after five years of continuous service,
- Working journalists will be eligible for gratuity after three years, down from five years.
- fixed-term employees will be paid on the basis of their tenure of employment with one organisation.

❑ Changes in **Maternity Benefit**

- Every woman is entitled to medical bonus of up to INR 3,500 where pre-natal confinement and post-natal care is not provided by employer or such amount as may be notified by the Central Government, with no threshold on the upper limit on this amount.

Chapter Three

Occupational Safety, Health & Working Condition Code, 2020

Occupational Safety, Health & Working Condition Code, 2020

REPLACED LEGISLATIONS

1. Factories Act, 1948
2. Mines Act, 1951
3. Dock Workers (safety, Health and Welfare Act, 1986
4. The Building and other Workers (Regulation of Employment and Conditions of Service) Act, 1996
5. The Plantations Labour Act, 1951
6. The Contract Labour (Regulation and Abolition) Act,1970
7. The Inter-State Migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979
8. The Working Journalist and other News Paper Employees (Conditions of Service and Misc. Provision) Act, 1955;
9. The Working Journalist (Fixation of rates of wages) Act, 1958;
10. The Motor Transport Workers Act, 1961;
11. Sales Promotion Employees (Condition of Service) Act, 1976;
12. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966
13. The Cine Workers and Cinema Theatre Workers Act, 1981



NEW LEGISLATIONS

Occupational Safety, Health
& Working Condition Code, 2020

Provisions

Key Changes

- ❑ Factory governed by the central government will come under the central government as the “appropriate government”. This include establishment of contractors. State Government may step in In other cases the factory is situated.

- ❑ This code will also cover audio visual productions, including feature films, non-feature films, television, web-base serials, talk shows, reality shows etc.

- ❑ Introduction of definition for “**Audio-Visual Worker**”, which will include singer, news reader, dancer, etc. It is prohibited to employ of audio-visual worker without agreement.

- ❑ Introduction of “Liability of “**Principal Employer**” which include, among others:
 - to provide welfare facilities such as canteens, rest rooms, drinking water where the contract labour is employed,
 - shall be liable to make payment of wages to the contract labour deployed by him or contract labour hired through a contractor

The manager has been excluded from the definition.

Provisions

Key Changes

- Central or state government rules shall apply to determine the work hours for different classes of establishment and employees.
- Employees shall be paid twice the rate of daily wage for overtime hours.
- No employee shall work more than six days a week, with the exception of motor transport workers.

Definitions

Key Changes

- ❑ The definition of the “**Factory**” has been revised to incorporate threshold limit of employees is of 20 in case of use of power and 40 in case without power. The law specifically excludes hotels, restaurant, eating place, Electronic Data Processing Unit, etc from this definition.
- ❑ Definition of “**hazardous substance**” provides any substance produced by industrial activity that has potential to cause physical or health hazards to human being and the environment.
- ❑ A new definition “**Industrial premises**” to include any place or premises (not being a private dwelling house) where any part of industrial, trade, business, occupation or manufacturing activity is carried out
- ❑ Definition of “**Inter State Migrant worker**” has been changed to include workers earning not more than INR 18,000.
- ❑ Definition of “**machinery**” has been introduced to include any article or combination of articles assembled, used or intended to be used for converting any form of energy to perform work.
- ❑ Definition of “**newspaper establishment**” has been significantly changed to cover all types of establishment run by individual or body of persons, whether incorporated or not.
- ❑ Definition of the “**Occupier**” has been revised to provide a comprehensive and clear definition.
- ❑ Definition of “**contract labour**” has been revised, it will include inter-State migrant worker but excludes part time employee and regularly employee.