

## HR Law Hotline

August 06, 2019

### INDIA CONSOLIDATES AND CODIFIES ITS LABOUR LAWS - THE CODE ON WAGES, 2019

- India initiates codification of its labour laws on equal remuneration (anti-discrimination), wages, minimum wage rates and bonus payments to employees.
- The Code on Wages, 2019 has been passed by both Houses of the Parliament and is currently awaiting Presidential assent and publication in the Official Gazette.
- This is the first in the series of four labour codes that have been proposed by the government and is expected to pave way for the other labour codes including the code on employee health and safety and social security.

India begins the process of codification of its labour laws, a long-awaited and much-needed reform. India's new Code on Wages, 2019 ("Code on Wages") has been approved by both the Houses of the Parliament.<sup>1</sup> It is now awaiting Presidential assent in order to become law.

Once the effective date of the Code on Wages is notified, it shall subsume and repeal the following important labour laws:

- a. The Payment of Wages Act, 1936 (**POWA**)
- b. The Minimum Wages Act, 1948 (**MWA**)
- c. The Payment of Bonus Act, 1965 (**POBA**)
- d. The Equal Remuneration Act, 1976 (**ERA**)

The Code on Wages shall regulate wage and bonus payments in all employments and aims at providing equal remuneration to employees performing work of a similar nature in every industry, trade, business, or manufacture. The Code on Wages also aims to transform old and obsolete labour laws, 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.

The Code on Wages shall come into force on such date as maybe specified by the Central Government by way of a notification in the Official Gazette. It is possible that different provisions of the Code on Wages may come into force on different dates as maybe notified<sup>2</sup>. The Rules under the Code on Wages are yet to be released for public review.

#### COVERAGE AND 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 POWA which applied to only those employees who drew monthly wages of up to INR 24,000 (approx. US\$ 340) and the MWA which applied only to scheduled employments, the provisions of the Code on Wages relating to payment of wages shall extend to all employees irrespective of their wage ceiling and type of employment.

#### KEY FEATURES:

The Code on Wages comprises of 9 chapters. While the applicability, coverage, definitions and provisions mandating equal remuneration are listed out in Chapter I, Chapter II contains provisions relating to payment of minimum wages, Chapter III deals with 'Payment of Wages', Chapter IV deals with 'Payment of Bonus', Chapter V provides for constitution of an Advisory Board, Chapter VI deals with the manner of raising claims under the Code on Wages, Chapter VII provides for the appointment of an Inspector cum Facilitator, Chapter VIII lists out the offences and penalties and finally Chapter IX lists down the miscellaneous provisions.

Key features of the Code on Wages are as follows:

1. **Definition of 'Wages':** The definition of 'Wages' under the Code on Wages has been defined to include salary, allowances and other components expressed in monetary terms. The definition lists down the specific items including certain allowances 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 the 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'<sup>3</sup>.
2. **Distinction between 'Employee' and 'Worker':** The Code on Wages distinguishes between an 'Employee' and 'Worker'. An 'Employee' is any person (other than an apprentice engaged under the Apprentices Act, 1961),

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- employed on wages by an establishment to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied. A 'Worker' refers to any person (except an apprentice as defined under clause (aa) of section 2 of the Apprentices Act, 1961) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied; however excludes *inter alia* (i) someone who is employed mainly in a managerial or administrative capacity; or (ii) someone who is employed in a supervisory capacity drawing a monthly wage exceeding INR 15,000 (approx. US\$ 210) or such amount as may be notified by the Central Government from time to time. Only certain limited provisions under the Code on Wages that relate to fixation and payment of minimum wages uses the term 'Worker'.
3. **Prohibition of Gender Discrimination:** Consistent with the ERA, the Code on Wages prohibits discrimination amongst employees on the ground of gender 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'<sup>4</sup>. '*Same work or work of a similar nature*' has been defined to mean work in respect of which the skill, effort, experience and responsibility required are the same, when performed under similar working conditions by employees and the difference if any, between the skill, effort, experience and responsibility required for employees of any gender, are not of practical importance in relation to the terms and conditions of employment.
  4. **Floor Wage:** The Central Government has been tasked with fixing a floor wage<sup>5</sup> a new concept being introduced by the Code on Wages, after taking into account the minimum living standards of workers and depending on the geographical areas. Basis the floor wage rate and consistent with the MWA, the appropriate government (Central or State) shall fix the minimum rate of wages payable to employees<sup>6</sup>. The minimum wages prescribed by the appropriate governments cannot be lesser than the floor wage. In the event that the existing minimum wages fixed by the Central or State Governments are higher than the floor wage, they cannot reduce the minimum wages. The minimum rate of wages shall be reviewed and revised in intervals not exceeding five years<sup>7</sup>.
  5. **Working Hours & Overtime:** The Central or State Governments may fix the number of hours that constitute a normal working day<sup>8</sup>. 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<sup>9</sup>.
  6. **Payment of Wages:** The Code on Wages provides for payment of all wages in current coin or currency notes or by cheque or by crediting the wages through digital or electronic mode in the bank account of the employee except in those industrial establishments as notified by the appropriate government<sup>10</sup>. It also specifies the time limit for payment of wages and clearly specifies that in the event that an employee is removed, dismissed, retrenched, resigns or becomes unemployed due to closure of an establishment, the wages shall be paid within two working days<sup>11</sup>.
  7. **Permissible Deductions:** Consistent with POWA provision, an employee's wages may be deducted on certain limited 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<sup>12</sup>. These deductions should not exceed 50% of the employee's total wages. In cases where the authorized deductions exceed 50% of the wages, the excess may be recovered by the employer in the manner prescribed<sup>13</sup>.
  8. **Bonus Payments:** Consistent with the POBA, the chapter relating to bonus payments under the Code on Wages shall apply to only those establishments employing atleast 20 employees or if atleast 20 employees have been employed on any day in that accounting year. All employees whose wages do not exceed a specific monthly amount, notified by the Central or State government, will be entitled to an annual bonus. The bonus shall be at least 8.33% of his wages or Rs 100, whichever is higher<sup>14</sup>. In addition, the employer will distribute a part of the gross profits amongst the employees. This will be distributed in proportion to the annual wages of the employee. An employee can receive a maximum bonus of 20% of his/her annual wages<sup>15</sup>.
  9. **Disqualification for Bonus:** Consistent with the POBA, the Code on Wages lists the criteria for disqualification of bonus. However, the Code on Wages has added dismissal from service on the ground of conviction for sexual harassment as an additional ground which would disqualify an employee from receiving his/her statutory bonus<sup>16</sup>.
  10. **Death of Employee:** The Code on Wages provides for payment of undisbursed dues of the employee in case of the employee's death. Such dues will be paid to the persons nominated by the employee and where there is no such nomination or for any reasons such amount cannot be paid to the person so nominated, then, the dues shall be deposited with the authority as specified in the rules, who shall deal with the amount in the manner provided in such rules<sup>17</sup>. The rules to the Code on Wage should prescribe the format of the nomination forms.
  11. **Records, Returns and Notices:** The Code on Wages mandates the employer to maintain a register containing the details of the persons employed, muster roll, wages and such other details in the manner to be specified in the rules by the appropriate government. It 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. There is also a provision for issuance of a wage slip<sup>18</sup>.
  12. **Inspector cum Facilitator:** With the objective of removing the arbitrariness and malpractices in inspection, the Code on Wages requires the appropriate Government to appoint Inspectors cum Facilitators (in the place of Inspectors), to carry out inspections and provide information to employers and employees for better compliance. Inspections will be done on the basis of a scheme to be decided by the Central or State Government.
  13. **Right to be Heard:** With the objective of facilitating compliance, the Code on Wages specifies that in the event that the employer violates provisions of the Code on Wages, the Inspector-cum-Facilitator shall not initiate any action against the employer unless the employer has been given an opportunity to rectify the non-compliance within a specified time period. However, in case of repetition of the same contravention within five years from the date on which such first violation was committed such an opportunity shall not be provided to the employer<sup>19</sup>.

14. **Offences:** The Code on Wages specifies penalties for offences committed by an employer, such as (i) paying less than the due wages, or (ii) for contravening any provision of the Code on Wages. Penalties vary depending on the nature of the offence, with the maximum penalty being imprisonment for three months and/or with a fine of up to Rs. 100,000 (approx. US\$1,425).
15. **Limitation Period:** The period of limitation for filing of claims by a worker has been enhanced to three years<sup>20</sup>, as against the existing time period varying from six months to two years. This would provide employees more time to protect their statutory rights under the Code on Wages.
16. **Actions taken under pre-existing laws:** The Code On Wages clarifies that any action taken under the repealed enactments including any notification, nomination, appointment, order or direction made thereunder or any amount of wages paid shall be deemed to have been done or taken or provided for such purpose under the corresponding provisions of the Code on Wages to the extent that they are not contrary to the provisions of the Code on Wages and until such time that they are repealed under the corresponding provisions of the Code on Wages or by a notification to that effect by the Central Government.

#### OUR ANALYSIS:

The Code on Wages is likely to be seen as one of the important policy decisions of the Indian government during this term. It has the potential to impact almost 500 million workers across the country<sup>21</sup>. It has been a long-standing agenda of the government to codify and consolidate labour laws in order to promote ease of doing business in India. With almost 45 federal level laws and close to 100 state level laws dealing with labour and employment aspects, it was the need of the hour to consolidate, amalgamate, simplify, rationalize and codify these laws. While some of the draft codes were being discussed and deliberated upon for the last several years including by the previous governments, it is only now that the Code on Wages was put up and approved by the Parliament. Although the Code on Occupation Health, Safety and Working Conditions 2019 was also simultaneously introduced in the Parliament, it is yet to be passed.

Amongst several benefits, the codification of labour laws shall remove the multiplicity of definitions and authorities, without compromising on the basic concepts of employee welfare and benefits. In a way, it would be make it easier for employers to understand and thereby comply, and for the labour authorities to enforce the laws. Including the unorganised sector under the ambit of the Code on Wages and implementing a national level floor wage for minimum wages could end up becoming path breaking for a labour-intensive country like India. 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. The ease of compliance is also expected to promote setting up of more enterprises catalyzing the creation of more employment opportunities. Thanks to the Code on Wages and other continuing efforts of the government, please expect a higher ranking for India in the next World Bank survey on Ease of Doing Business!

While the government may have succeeded in combining laws relating to the same subject matter under one umbrella, on the flipside, most of the substantive provisions of those laws continue to exist under the Code on Wages. To that extent, the exercise may be viewed largely as a consolidation of laws rather than truly a reform. For example, should the Code on Wages apply consistently to all kinds of establishments – small sized, medium sized and large sized? Can the definition of 'wages' be further simplified to reduce or hopefully eliminate any litigation surrounding a complex definition? Are 'dearness allowance' and 'retaining allowance' necessary in the context of wages? Should bonus be paid to all employees merely on the basis of a salary threshold irrespective of their individual performance and/or contract?? Or for that matter, should the categories for protection from discrimination include factors such as age, marital status, sexual preference, etc.?

In a way, this may be seen as a lost opportunity for the government to take a hard look on the need or necessity of several of the archaic provisions and whether they are relevant based on today's realities of doing business in India and the changing nature of the employer-employee relationship. Simply creating one law by merging four labour laws and reducing compliances is unlikely to address the larger problems such as growing unemployment, the skill shortage in India or the never-ending litigation. Only time will tell if the Code on Wages will withstand the test of time!

– Preetha S & Vikram Shroff

You can direct your queries or comments to the authors

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<sup>1</sup> Passed by the Lok Sabha on July 30, 2019 and by the Rajya Sabha on August 2, 2019

<sup>2</sup> Section 1 (3) of the Wage Code

<sup>3</sup> Proviso to Section 2(y) of the Code on Wages

<sup>4</sup> Section 3 of the Code on Wages

<sup>5</sup> Section 9 of the Code on Wages

<sup>6</sup> Section 6 of the Code on Wages

<sup>7</sup> Section 8 (4) of the Code on Wages

<sup>8</sup> Section 13 of the Code on Wages

<sup>9</sup> Section 14 of the Code on Wages

<sup>10</sup> Section 15 of the Code on Wages

<sup>11</sup> Section 17 (2) of the Code on Wages

<sup>12</sup> Section 18 of the Code on Wages

<sup>13</sup> Section 18 (4) of the Code on Wages

<sup>14</sup> Section 26 of the Code on Wages

<sup>15</sup> Section 26(3) of the Code on Wages

<sup>16</sup> Section 29 of the Code on Wages

<sup>17</sup> Section 44 of the Code on Wages

<sup>18</sup> Section 50 of the Code on Wages

<sup>19</sup> Section 54 (3) of the Code on Wages

<sup>20</sup> Section 45 (6) of the Code on Wages

<sup>21</sup> <https://economictimes.indiatimes.com/news/economy/policy/rajya-sabha-passes-wage-code-bill/articleshow/70501009.cms?from=mdr>

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