



# ASSESSMENT ON INDIA'S NEW LABOUR CODES

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APRIL 2021

## Background

With the main objective of simplifying labour laws and the government's focus on 'ease of doing business' in India, the Indian government is all set to amalgamate 29 existing labour laws into four distinct new labour codes.

These (new) labour codes are grouped into the following four categories:

- Wages
- Social Security
- Industrial Relations
- Occupational Safety, Health and Working Conditions

### Legend

<div style="background-color: #003366; color: white; padding: 2px 5px; display: inline-block;">Meter</div> <b>Procedural change</b> 	<div style="background-color: #003366; color: white; padding: 2px 5px; display: inline-block;">Meter</div> <b>Substantive impact</b> 
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## Labour Codes - Key Highlights of Major Provisions

### Key highlights of the Wages Code –

#### Category

#### Payment & Calculation of Wages

#### Summary of impact

The term 'wages' which is a critical definition has been redefined such that the statutory benefits may increase while the take home salary of employees may reduce. This may require further assessment to ensure salary components are redesigned to maintain the required balance e.g., if the total salary is split as 50% basic wages and 50% house rent allowance (HRA), then computation of some statutory benefits will exclude HRA unless the proportion of HRA exceeds 50%.

#### Highlights of revisions

Wages will constitute the following parts –

- **Part A (Wages)** – means all remuneration paid to employees which may include, amongst other components (on a non-exhaustive basis), basic pay, dearness allowance and retaining allowance. Where wages are paid in kind, then the value of up to 15% of the wages paid in kind will to be considered to form part of Wages (Part A) and used for the purposes of computing the benefits under the Wages Code.
- **Part B (Exclusions and proviso)** – means 11 specific components excluded from 'wages', and if nine of such excluded components which are specifically mentioned exceed 50% of the total (gross) remuneration payable to an employee (viz., Part A and Part B), the incremental amount exceeding 50%, will need to be considered as wages and included into Part A (Wages) for the purposes of Wages Code. However, conveyance and travel allowance, house rent allowance, overtime allowance and remuneration payable under any settlement or court award (though part of specific exclusions) are to be considered for the computation of wages and therefore form part of Wages (Part A) for the purposes of equal wages to all genders and payment of wages.

#### Impact Meter



**Category**

**Compliances are no longer limited by wages drawn**

**Summary of Impact**

The Wages Code applies to all employees irrespective of the wages drawn i.e., compliances are not limited by the wage thresholds.

**Highlights of revisions**

While the provisions of the existing enactments and the Wages Code are similar in many aspects, certain enactments are limited in their applicability. The Minimum Wages Act, 1948 (MWA) is currently applicable to only scheduled employment, however it empowers the State Governments to broaden the applicability of the MWA to other employments. Similarly, the Payment of Wages Act, 1936 (PWA) applies only to employees drawing wages up to INR 24,000. The Wages Code extends this applicability to employees beyond scheduled employment and employees drawing wages up to INR 24,000, respectively.

**Impact Meter**



**Time limit for payment of wages in case of employee separation**

**Summary of Impact**

If an employee resigns from employment, the employer has to clear his/her dues within two working days from the last working day (this is a new addition).

**Highlights of revisions**

The existing law specifies the time limit (viz., two working days) for payment of wages to employees only in case of termination, however, the Wages Code now provides the same time limit in case of resignation of employees.

**Impact Meter**



**Set-off and recovery from pay**

**Summary of Impact**

The wage ceiling for applicability of the permitted 'Deductions' has now been removed, therefore Companies cannot set-off or recover amounts from any employee outside the permitted list of 'Deductions'.

**Highlights of revisions**

1. The permitted list for set-off and recovery from wages is currently limited to employees drawing wages up to INR 24,000 under the PWA. This cap is being removed and so this permitted list now applies to all employees equally including contract labour.
2. For illustrative purposes, this means that Companies cannot recover a joining bonus from an employee who leaves employment within one month of joining, because joining bonus is not a permitted recovery.

**Impact Meter**



Category

Bonus pool enlarged

Summary of Impact

The percentage of available surplus to be considered as pool for statutory bonuses has been enlarged from 60% to 67% for companies other than banking companies. This may result in Companies needing to allocate higher amounts for statutory bonus pay-outs and higher statutory bonus pay-outs to employees.

Highlights of revisions

Under the Wages Code the pool for statutory bonuses will be enlarged because:

- a. The allocable surplus has been increased to 67% (from 60% currently) of the available surplus; and
- b. dividends cannot be deducted when computing the available surplus.

Impact Meter



Offences & Penalties

Summary of Impact

**The Wages Code decriminalises most offences and reduces imprisonment terms for certain offences.**

**Additionally, the Wages Code introduces the concept of the 'opportunity to remedy' before legal proceedings are initiated and also permits compounding of some offences that will reduce criminal liability by permitting non-compliances to be settled through fines, albeit enhanced fines.**

Highlights of revisions

1. Civil liability of the employers has been enhanced but the criminal punishment has been reduced in certain instances and removed altogether in some instances.
2. Inspector-cum-Facilitators will issue written direction to the employer for non-compliance before initiating prosecution. No such opportunity to cure a contravention of the Wages Code shall be granted if violation of similar nature is repeated within a period of five years from the date of first violation.

Impact Meter



## Key highlights of the Social Security Code

### Category

#### Employee Provident Fund ("EPF") – Computation

#### Summary of Impact

While there is no change in the rate of contribution towards EPF i.e., the contribution is 10% (or 12%, if notified), the new definition of 'Wages' may increase EPF contributions for employers while reducing the take home salary of employees.

#### Highlights of revisions

1. Wages will constitute the following parts –

Part A (Wages) – means all remuneration paid to employees which may include, amongst other components (on a non-exhaustive basis), basic pay, dearness allowance and retaining allowance.

Part B (Exclusions and first proviso) – means 11 specific excluded components, and if nine of such excluded components which are specifically mentioned exceed 50% of the total (gross) remuneration payable to an employee (viz., Part A and Part B), the incremental amount exceeding 50%, will need to be considered as wages and included into Part A (Wages) for the purposes of computing the benefits under the SS Code.

2. Presently, there is no express provision in the SS Code which caps the wages used to compute EPF (unlike Existing Law which offers a cap of INR 15,000). The Rules (EPF Scheme) or further Government notifications, when published, may clarify this.

#### Impact Meter



#### Gratuity – Computation and Coverage

#### Summary of Impact

1. Under the SS Code, gratuity is payable on a pro rata basis to fixed term employees and deceased employees (where duration of service is less than five years).

2. The new definition of 'Wages' may increase gratuity contributions for employers. This may require further assessment to ensure salary components are redesigned to maintain the required balance.

#### Highlights of revisions

1. There is now an obligation to pay gratuity in the following additional scenarios –  
 a. to fixed term employees (who serve below or for more five years). Service below five years will attract gratuity on a pro rata basis; and  
 b. to deceased employees on pro rata basis for service less than five years.

2. Please refer to Sr. No. 1 above to understand the how the definition of 'Wages' may alter the impact on gratuity.

#### Impact Meter



Category

ESIC – Computation

Summary of Impact

- 1.The new definition of Wages may increase ESIC contributions for employers while reducing the take home salary of employees. This may require further assessment to ensure salary components are redesigned to maintain the required balance.
- 2.Presently, there is no express provision in the SS Code which specifies the rates of contribution (employer + employee). The Rules or further Government notifications, when published, may clarify this – on balance of probability, contributions rates are likely to remain unchanged.

Highlights of revisions

- 1.Please refer to Sr. No. 1 above to understand the how the definition of 'Wages' may alter the impact on ESIC.
- 2.The SS Code caps the wages used to compute ESIC, but has not specified this cap. The Rules or further Government notifications, when published, may clarify this.

Impact Meter



Maternity benefits

Summary of Impact

- 1.There is no change in the duration of maternity leave and other maternity benefits.
- 2.However, in terms of the SS Code, wages for the purposes of maternity benefits (and also payable during maternity leave) are no longer computed as being 'all remuneration paid or payable in cash to a woman'. Instead, the term 'Wages' in the SS Code materially lowers the wages drawn by eligible female employees (opting for maternity benefit).

Highlights of revisions

**Every woman will be entitled to maternity benefit at the rate of the average daily wage for the period of her actual absence.** However, the term 'Wages' as defined in the SS Code could affect the computation of average daily wage for the purpose calculating maternity benefit. This is a result of the following two provisos to the definition of 'Wages':

**Proviso 1:** If nine of the excluded components which are specifically mentioned exceed 50% of the total (gross) remuneration payable to an employee, the incremental amount exceeding 50%, will need to be considered as wages.

**Proviso 2:** Conveyance and travel allowance, house rent allowance, overtime allowance and remuneration payable under any settlement or court award (though part of specific exclusions) are to be considered for the computation of wages and therefore form part of 'Wages' for the purposes of equal wages to all genders and payment of wages.

Impact Meter



## Category

New concepts and social security for Gig and Platform workers

### Summary of Impact

There are many persons engaged in work not covered by traditional statutory social security schemes. The SS Code devises some new concepts intended to identify such persons and fix their eligibility for some form of social security benefits (being benefits which are not reserved 'traditionally' for employees) which the Government has the power to devise

### Highlights of revisions

1. These new concepts are summarized below –
  - a. **Aggregator** – a marketplace (online or offline) or digital intermediary which connects buyers and sellers of services and goods. Schedule VII of the SS Code provides classification of Aggregators.
  - b. Platform work – Digital (online) platform used by organizations or individuals to access other organizations or individuals for services or solutions for problems.
  - c. Platform worker – any person engaged in platform work (as specified in point 2a (i) above).
  - d. Gig worker – a person who performs work and earns from such activities outside a traditional employer– employee relationship.
2. Companies would need to assess if they would be an 'Aggregator' under Point 1 a. above.
3. Point 1 d. above could have an impact on Companies, while it is broadly and ambiguously worded, the concept of a Gig worker could also mean to include an independent consultant, freelancer, or temporary or part-time workers. There is limited information in the SS Code on the obligations connected with concepts referred in points 1 a to d above. The rules of the SS Code or further Government notifications may provide more information on this topic.

### Impact Meter



## Key highlights of the OSH Code –

### Category

#### Contract labour – Prohibited for Core Activities

#### Summary of Impact

Core activity has now been defined and non-core activities have been identified. Within core activities, contract labour cannot be employed, however, the law specifically provides certain exceptions. It's a factual determination on case by case basis whether the companies fall within these four exceptions and if they can demonstrate that they fall under these exceptions they can continue to employ contract labour even in such core activities.

#### Highlights of revisions

Core activity has been defined in the OSH Code to mean any activity for which the establishment is set up and includes any activity which is essential or necessary to such activity. While engagement of contract labour has been prohibited by the OSH in core activities, it provides certain exceptions to this prohibition.

Firstly, the prohibition applies to only establishments that employ 50 or more contract labour.

Secondly, it applies only where contract labour is supplied as manpower i.e., as a mere resource.

Thirdly, OSH Code provides a list of 11 exceptions for which engagement of contract labour is allowed:

- a. sanitization works, including sweeping, cleaning, dusting and collection and disposal of all kinds of waste;
- b. watch and ward services including security services;
- c. canteen and catering services;
- d. loading and unloading operations;
- e. running of hospitals, educational and training Institutions, guest houses, clubs and the like where they are in the nature of support services of an establishment;
- f. courier services which are in nature of support services of an establishment;
- g. civil and other constructional works, including maintenance;
- h. gardening and maintenance of lawns and other like activities;
- i. housekeeping and laundry services, and other like activities, where these are in nature of support services of an establishment;
- j. transport services including ambulance services;
- k. any activity of intermittent nature even if that constitutes a core activity of an establishment.

The definitive list of exclusions (as specified above) applies as a rule to engagement of all contract labour in an establishment; that is to say that Companies can employ contract labour for one or all of the 11 activities unconditionally including as specified in point (k) above, which is a broad exception.

In addition, it allows engagement of contract labour in core activity if one of the following three situations arise:

1. the normal functioning of the establishment is such that the activity is ordinarily done through contractor;
2. the activities are such that they do not require full time Workers for the major portion of the working hours in a day or for longer periods, as the case may be;
3. any sudden increase of volume of work in the core activity which needs to be accomplished in a specified time.

These further exceptions increase the possibility of justifiable hiring of contract labour even in core activities. However, the justification will have to be tested on facts specific to each activity within a Company before it is utilized to hire contract labour.

#### Impact Meter



Category

Contract Labour-  
Applicability of  
contract labour  
provisions

Summary of Impact

Part I of Chapter XI which contains provisions dealing with registration and licensing requirements, and other provisions concerning supply of contract labour will not apply to the Company to the extent that services are being provided by or to the Company (i.e., contract for service and not a contract for manpower supply). Therefore, for Companies, the impact is mitigated as far as Part I of Chapter XI is concerned.

Highlights of Revisions

Contract labour' now excludes workers regularly employed by a contractor for any activity of the contractor's establishment and where such employment is also governed by mutually agreed conditions of employment, and such worker gets periodical increment in the pay, social security coverage and other statutory benefits.

The Wages Code further emphasizes that the provisions for supply of contract labour (Chapter XI – Part 1) apply only to manpower supply contractors.

Therefore, where:

- 1.an employee of the Company as part of services or products goes to the customer premises; or
- 2.service provider's employee comes to the Company's premises as part of their services or products,

the provisions of Part I of Chapter XI will not apply. This means they will not be treated as contract labour for the purposes of Part I Chapter XI.

Impact Meter



Overtime work

Summary of Impact

- 1.Consent of Worker is mandatory for overtime work and overtime wages must be paid to each Worker (who works in excess of working hours prescribed by the Government) ("**OT Wages**").
- 2.Under the existing law, OT Wages are paid at twice the rate of wages drawn and computed on the gross wages (excluding bonus and wages for overtime). However, the new definition of wages may affect the computation of OT Wages for Workers.

Highlights of Revisions

The term 'Wages' as defined in the OSH Code could affect the computation of OT Wages. This is a result of the following two provisos to the definition of 'Wages':

**Proviso 1:** If nine of the excluded components which are specifically mentioned exceed 50% of the total (gross) remuneration payable to an employee, the incremental amount exceeding 50%, will need to be considered as wages.

**Proviso 2:** Conveyance and travel allowance, house rent allowance, overtime allowance and remuneration payable under any settlement or court award (though part of specific exclusions) are to be considered for the computation of wages and therefore form part of 'Wages' for the purposes of equal wages to all genders and payment of wages.

Impact Meter



**Category**

**Inter-state migrant workers**

**Summary of Impact**

The definition of inter-state migrant workers has been broadened to mean any worker drawing wages up to INR 18,000, who (a) has been recruited from one state for employment in another state; or (b) has come from one state on their own for employment in another state.

The material impact of this change is that –

- a. Companies must provide such worker annual fare to visit her/his native place; and
- b. Companies are barred from recovering debts of such workers e.g., salary advances, after cessation of their employment with the Company – though such debts can be recovered before their employment ends.

**Highlights of Revisions**

This provision would impact a Company only if it is paying any person wages less than INR 18000.

For contract labour with wages less than INR 18000, Companies will have to ensure these obligations are met by the contractor and if these are not met by the contractor, these will become primary obligations of the Company.

**Impact Meter**



**Leave encashment**

**Summary of Impact**

1. Change in threshold for leave entitlement and option for leave encashment has been introduced in the OSH Code.
2. Under the existing law, leave encashment (on termination of employment) is computed on the gross wages (excluding statutory bonus, value of house accommodation or facilities, employer EPF contributions, travel allowance, special expenses and gratuity). However, the new definition of 'Wages' may affect the computation of leave encashment for workers.

**Highlights of Revisions**

1. A worker can choose to encash unused leaves at the end of every calendar year or choose to carry forward such unused leaves. However, only a maximum of 30 unused leaves can be carried forward.
2. Only when a worker has been denied leaves on application will he be permitted to carry forward without the limit of 30 days.
3. Please refer to Sr. no. 3 above to understand the how the definition of 'Wages' may alter the impact on leave encashment.

**Impact Meter**



**Manufacturing process**

**Summary of Impact**

3D and 4D printing process and prototyping is deemed to be a manufacturing process and any division of a Company engaged in this activity with 20 or more Workers will need to register itself as a factory.

**Category**

**Highlights of Revisions**

Manufacturing Process means any process for—

- 1.making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal; or
- 2.pumping oil, water, sewage or any other substance; or
- 3.generating, transforming or transmitting power; or
- 4.composing, printing, printing by letter press, lithography, offset, photogravure screen printing, three Dimensional or four Dimensional printing, prototyping, flexography or other types of printing process or book binding; or
- 5.constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or
- 6.preserving or storing any article in cold storage; or
- 7.such other processes as the Central Government may notify.

**Impact Meter**



**Duties of designers, manufacturers, importers or suppliers.**

**Summary of Impact**

To the extent it is reasonably practicable to do so, duty of care and diligence to ensure health and safety is cast upon the person designing, manufacturing, importing or supplying any article for use in an establishment.

Non-compliance –

- 1.leading to death may attract imprisonment of up to two years or fine of at least INR Five Lakhs (or both); or
- 2.leading to serious bodily injury may attract imprisonment of up to one year or fine between INR Two Lakhs to Five Lakhs (or both); or
- 3.in all other cases may attract fine between at least INR 50,000 to One Lakh.

**Highlights of Revisions**

As a manufacturer, importer, supplier and designer of any article, Companies must ensure safety standards for such article as far as reasonably practicable.

Though this reads as an onerous provision, the use of the phrase "reasonably practicable" assumes that a reasonable standard will be applied thereby diluting the impact considerably.

**Impact Meter**



**General penalty for offences**

**Summary of Impact**

Non-compliances of general provisions will attract higher fines, however no imprisonment.

Category

**Highlights of Revisions**

Except the specific offences mentioned in the OSH Code, for any general contravention and subsequent contravention of provisions of the OSH Code or any regulations thereunder, a Company may face only fines and management will not face any term of imprisonment. Decriminalization of the certain offences reduces significant personal liability of the senior management of the company.

An employer or principal employer, as the case may be can be fined between INR Two Lakh to Three Lakh, and additional INR 2,000 for each day of continuing offence.

**Impact Meter**



Leave encashment

**Summary of Impact**

**The OSH Code offers an opportunity to remedy non-compliances in the first instance before legal proceedings are initiated against the employer.**

**Highlights of Revisions**

**No complaint will be initiated against an employer for the first instance without prior notice by Inspector-cum-facilitator to comply and remedy the non-compliance.**

However, no such opportunity would be given in case of a repeat offence of same nature within three years.

**Impact Meter**



## Key highlights of the Industrial Relations Code –

### Category

Grievance  
Redressal  
Committee ("GRC")

#### Summary of Impact

It is mandatory to form a GRC composed of equal number of workers and representatives of the employer, in establishments with 20 or more workers. Existing committees with similar names, however without representation of workers, adequate representation of women workers, etc., can no longer act as substitutes for the GRC – the formation of a GRC meeting the minimum conditions of the IR Code is now mandatory.

#### Highlights of Revisions

1. A GRC is necessary in establishments that meet the worker threshold required for the applicability of this provision and must be formed as follows:
  - a. It should be composed of a maximum of 10 persons in the following proportion – 50% being representatives of the employer and 50% being workers.
  - b. Female representation is a must and proportionate to the number of women workers amongst the total workers employed.
  - c. The chairperson of the GRC will be appointed annually with persons representing the employer and employee having the right to do so every alternate year.
2. A GRC is empowered to hear all grievances filed by workers within one year from the occurrence of the grievance.
3. Each grievance must be disposed within 30 days by majority decision of the GRC + the majority decision must also include at least 50% consent from workers on the GRC.
4. All appeals or grievances not closed within 30 days can be raised with conciliation officer.
5. The specific process and powers of the GRC are to be announced in the rules or further Government notifications.

#### Impact Meter



Negotiating  
Union/Council

#### Summary of Impact

1. A registered Trade Union with support of at least 51% workers will be the sole Trade Union with the power to negotiate on behalf of all workers and a Company must recognise such Union as the negotiating union for the Company. This may reduce the burden of having to negotiate with multiple Trade Unions.
2. Recognition to a negotiating union or a council will be for three years, or five years if the Company and the Trade Unions mutually agree.

#### Highlights of Revisions

1. It is now obligatory to recognise a registered Trade Union with support of at least 51% workers as the negotiating union for a Company i.e., such Trade Union will be the sole Trade Union with the power to negotiate on behalf of all workers.
2. If there are multiple registered Trade Unions and no such Trade Union has the support of 51% of workers, then a Company is obliged to form a negotiating council with representatives of Trade Unions having the support of at least 20% of workers. Every Trade Union representing at least 20% of workers will be entitled to one representative in the council.

Category

3. If there are multiple registered Trade Unions with each representing less than 20% of the workers or there are no Trade Unions, then the rules of the IR Code will specify how employers should recognise representatives who will be authorised to represent workers.

Impact Meter



Prior notice for strikes and lock-out

Summary of Impact

Advance notice is a must for strikes and lockouts. Any such action without notice will be illegal.

Highlights of Revisions

Lock-outs and strikes in factories or commercial establishments are permitted only with prior notice of 60 day

Impact Meter



Worker re-skilling fund

Summary of Impact

A Company must contribute an additional sum to the worker reskilling fund for every retrenched worker – this will be an additional cost to Companie

Highlights of Revisions

For each worker retrenched under the statutory retrenchment provisions, the Company must contribute an amount equal to 15 days (last drawn) wages of each such worker into a re-skilling fund set up by the Government.

Impact Meter



Computation of Retrenchment compensation

Summary of Impact

**There is no change in the process of computing retrenchment compensation. However, the new definition of Wages may affect the computation of retrenchment compensation for workers.**

Highlights of Revisions

1. In case of a retrenchment, a worker will have to be paid 15 days' average pay. Average pay will mean the wages payable to a worker, in three complete calendar months in case of a worker earning monthly wages.
2. The term 'Wages' as defined in the IR Code could affect the computation of retrenchment compensation. This is a result of the following two provisos to the definition of 'Wages':

Category

**Proviso 1: If nine of the excluded components which are specifically mentioned exceed 50% of the total (gross) remuneration payable to an employee, the incremental amount exceeding 50%, will need to be considered as wages.**

**Proviso 2:** Conveyance and travel allowance, house rent allowance, overtime allowance and remuneration payable under any settlement or court award (though part of specific exclusions) are to be considered for the computation of wages and therefore **form part of 'Wages' for the purposes of equal wages to all genders and payment of wages.**

**Impact Meter**



## Key Contacts



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Arjun Paleri is a Partner in our employment team who specialises in advising foreign clients on their employment practices and issues in India. He also has extensive experience in-house roles including a long tenure with a technology company with global operations.

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We received tremendous service. I was very impressed with the knowledge of their lawyers, the quality of their advice, and their efforts to assist us with a difficult acquisition. I would highly recommend BTG to anyone seeking legal service in India.

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