

Changing landscape of **LABOUR LAWS** in **INDIA**

An Opportunity
For Professionals



Let us understand few Important figures

**146
Crore**

India's
Population

**99-100
Crores**

Working
Population

**52
Crores**

Total # of
workers

**10-
20%**

Organized
Sector

80-90%

Unorganized
Sector

52

Central Labour
Laws

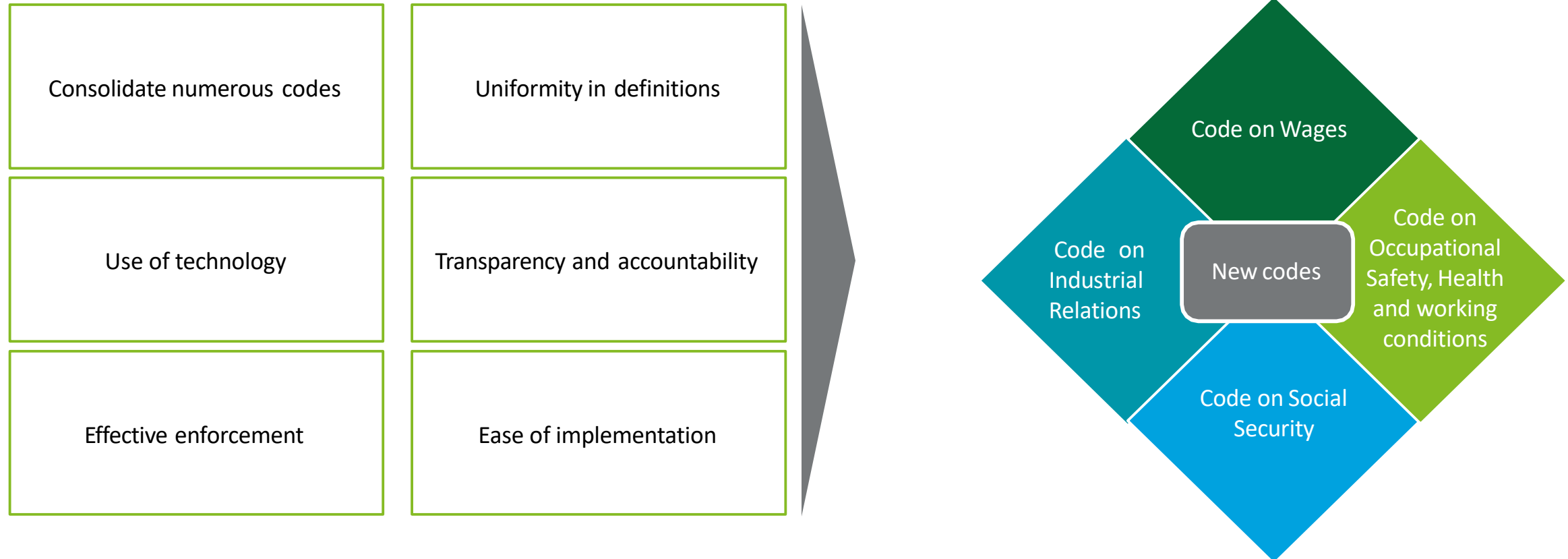
200

State Labour
Laws

**400,000
+**

Labour Law
Cases pending

Labour codes – an overview





Overview of the codes

Legislations subsumed

₹ The code on wages 2019

- The Payment of Wages Act, 1936;
- The Minimum Wages Act, 1948;
- The Payment of Bonus Act, 1965; and
- The Equal Remuneration Act, 1976

🔒 The code on Social Security 2020

- The Employee Compensation Act ,1923;
- The Employees' State Insurance Act, 1948;
- The Employees' Provident Funds and Miscellaneous Provisions Act, 1952;
- The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959;
- The Maternity Benefit Act, 1961;
- The Payment of Gratuity Act, 1972;
- The Cine-Workers Welfare Fund Act, 1981;
- The Building and Other Construction Workers' Welfare Cess Act, 1996;
- The Unorganised Workers' Social Security Act, 2008



Legislations subsumed (cont'd)

The industrial relations code 2020

- The Trade Unions Act, 1926,
- The Industrial Employment (Standing Orders) Act, 1946 and
- The Industrial Disputes Act, 1947

The occupational safety, health and working conditions code 2020

- The Factories Act, 1948;
- The Mines Act, 1952;
- The Dock Workers (Safety, Health and Welfare) Act, 1986;
- The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996;
- The Plantations Labour Act, 1951;
- The Contract Labour (Regulation and Abolition) Act, 1970;
- The Inter-state migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979;
- The Working Journalist and other News Paper Employees (Conditions of Service and Misc. Provision) Act, 1955;
- The Working Journalist (Fixation of rates of Wages) Act, 1958;
- The Motor Transport Workers Act, 1961;
- Sales Promotion Employees (Condition of Service) Act, 1976;
- The Beedi and Cigar Workers (Condition of Employment) Act, 1966;
- The Cine Workers and Cinema Theatre Workers Act 1981





Definitions and their impact

Code on Wages / Code on Social Security

Definition of wages

Meaning and inclusions	Specified exclusions	Conditional inclusions	Value of remuneration in kind
<p>Means all remuneration whether by way of salaries, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, in terms of employment, express or implied, where fulfilled, be payable to a person employed in respect of his employment, and includes –</p> <ul style="list-style-type: none">• Basic pay;• Dearness allowance; and• Retaining allowance, if any.	<ul style="list-style-type: none">• <i>Statutory bonus payable but not forming part of remuneration;</i>• <i>Value of house accommodation and utilities (such as light, water, medical attendance, etc.);</i>• <i>Employer contribution to provident fund/ pension together with accretions;</i>• <i>Conveyance allowance or value of travelling concession;</i>• <i>Sum paid to defray special expenses due to nature of work;</i>• <i>House rent allowance;</i>• <i>Remuneration payable under any award settlement;</i>• <i>Any overtime allowance;</i>• <i>Any commission payable;</i>• Any gratuity payable on termination;• Any retrenchment comp/ benefit payable or ex gratia payment made	<p>Where the aggregate of specified exclusions as highlighted:</p> <ul style="list-style-type: none">• exceeds one-half or such other notified percentage of all remuneration calculated under this clause,• amount which exceeds such one-half or other percent, so notified• shall be deemed as remuneration• & shall accordingly be added under this clause <p>Conveyance/value of travel concession, house rent allowance, remuneration payable under award or settlement and overtime allowance shall be taken for computation of wage – for the purpose of equal wages to all genders</p>	<p>Where an employee is given remuneration in kind</p> <ul style="list-style-type: none">• in lieu of either the whole or part of the wages payable to him• value of such remuneration as does not exceed 15% of total wages payable to him <p>Shall be deemed to form part of wages of such employee.</p>

Code on Social Security

Key definitions and implications

Employer

Means a person who employs directly or through any person or on behalf of any person one or more employees in his establishment
Includes a **Contractor** and legal representative of the deceased employer.

Employee *exclusion specified

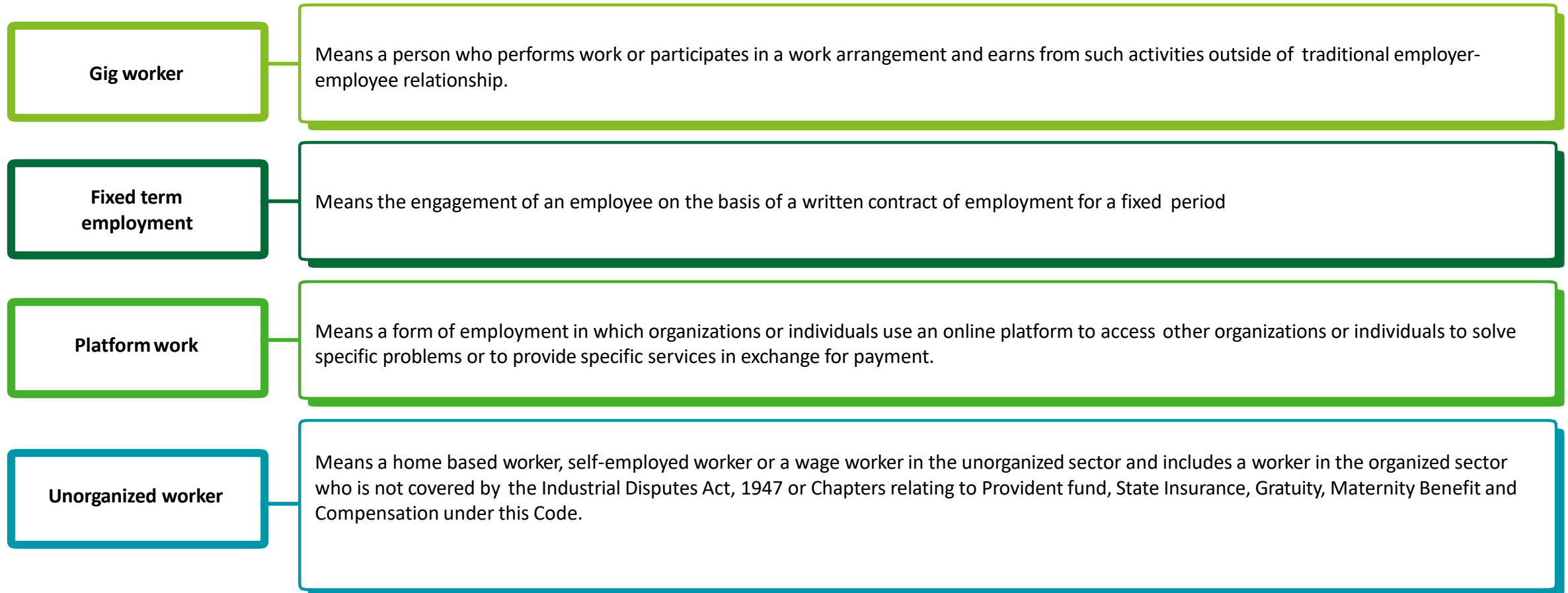
Any person (**other than an apprentice**) employed on wages by the establishment to do any skilled, semi-skilled, unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied and also includes a person declared to be an employee by the appropriate government

Contractor

In relation to an establishment means a person, who—
(i) undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment through contract labour; or
(ii) supplies contract labour for any work of the establishment as mere human resource and includes a sub-contractor;

Code on Social Security

Key definitions and implications



Code on wages and code on social security Salient features

Particulars

Code on wages

- Applies to all establishments, employees and employers as defined unless specifically exempt in the code
- Covers all employees including managerial cadre
- Wage definition standardized
- State government minimum wage rates to be aligned to national floor wages
- Need to meet wages payment dates as prescribed
- Recoveries from wages specified with monthly recovery capped at 50%
- Settlement time of dues in case of resignation/dismissal shortened
- Time for preferring claims extended
- Role of inspector widened to include facilitation function
- Penalties and prosecution enhanced

Code on social security

- Coverage broadened to include gig/platform workers, fixed term employees, and those in the unorganized sectors with the organized sector
- Period of limitation introduced
- No specific reference to international workers
- Stringent penalties and prosecution provisions provided for

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- A contractor is identified as an “employer” having independent responsibilities – compliance responsibility from the principal employer reduced

Code on wages and code on social security Areas of impact

Areas of impact	Key change triggering the impact	Challenges to be addressed
Definition of wages	<ul style="list-style-type: none"> • Uniform and wider definition of wages as compared to varied definitions under existing regulations 	<ul style="list-style-type: none"> • Change in coverage of employees for ESI, Payment of Bonus Act etc. • Impact on PF and gratuity contributions
Provident Fund (PF)	<ul style="list-style-type: none"> • Change in definition of wages 	<ul style="list-style-type: none"> • Increase in quantum of PF contributions for domestic employees drawing salary below wage ceiling (presently INR 15,000) and international workers • Review of employment contracts and policies relating to employees earning more than INR 15,000 pm
Gratuity	<ul style="list-style-type: none"> • Change in definition of wages • Extending gratuity benefits to fixed term employees 	<ul style="list-style-type: none"> • Likely increase in the quantum of gratuity – new inclusions in the definition - retroactive impact? • Individuals on fixed term employment entitled to gratuity benefits under the code on a pro-rata basis in addition to regular eligible employees
Overtime	<ul style="list-style-type: none"> • Employee covered under the schedule employment alone are eligible for overtime 	<ul style="list-style-type: none"> • Employees in supervisory role also entitled for overtime wages
Gig workers/platform workers	<ul style="list-style-type: none"> • Presently, there is no specific social security schemes for the gig/platform workers 	<ul style="list-style-type: none"> • Government to introduce a scheme enabling such employees to be eligible for social security benefits • Aggregators will be required to contribute towards such scheme
Payment of wages	<ul style="list-style-type: none"> • Max deduction upto 50% of total wages 	<ul style="list-style-type: none"> • Impact on settlement timelines, capping of deductions from wages etc.

Code on Wages and Code on Social Security

Employer obligations under the codes

Particulars	Code on Wages	Code on Social Security
Responsibilities	<ul style="list-style-type: none"> Ensuring payment of minimum and overtime wages Payment of wages within the timelines prescribed – for monthly wage period – before seventh of the succeeding month, for wages paid on a fortnightly basis – by second day after end of the fortnight; for dismissed/ resigned employees wages to be settled within 2 working days: Adhering to the limits specified for deductions from wages Complying with the limits relating to working hours and provide days of rest as specified 	<ul style="list-style-type: none"> Timely deposit of PF, ESIC contributions for employees and social security cess with respect to building and other construction workers Timely payment of gratuity & maternity benefit and compensation in case of any accident Social security for unorganized workers including audio visual workers, beedi workers, gig workers, etc. Reporting of fatal accidents and serious bodily injuries Reporting of employee vacancy(ies) to career centres
Records/ Registers	Maintenance of employee registers in prescribed form electronically/ otherwise	Maintenance of records and registers in prescribed form electronically/ otherwise
Wage Slips	Issuance of wage slip in prescribed form and manner to each employee	Issuance of wage slips in electronic forms/ otherwise
Notice display	Display of notice on the notice board at prominent place of the establishment	Display notices at work places in prescribed manner/ format
Filing of returns	-----	File returns electronically/ otherwise to the prescribed authority in manner/ period as may be prescribed
Payment of dues on death	In death cases, dues to be paid to the person nominated or to be deposited with the specified authority (being deputy chief labour commissioner (central)) within 3 months/ 6 months	Payment of dues to the eldest surviving member/ nominee/ legal representative of the employee

Code on Wages and Code on Social Security

Offences and penalties

Code on Wages	Code on Social Security	
Payment of wages less than the prescribed amount <ul style="list-style-type: none"> • First instance: Fine up to INR 50,000 • Second and subsequent commission (within 5 years from the date of first or subsequent offence): Imprisonment up to three months and/or fine up to INR 100,000 	Failure to pay/ deposit employees contributions deducted from employees' wages <ul style="list-style-type: none"> • Fine INR 100,000 and imprisonment between one to three years • For second and subsequent offence: Imprisonment up to 2 years and fine of 2 lakhs 	
Offence by employer	under Code on Wages	under Code on Social Security
<ul style="list-style-type: none"> • Non-maintenance/ improper maintenance of records • Failure to pay any contribution liable to be paid under the Code 	Fine up to INR 10,000	First instance – Fine INR 50,000 and imprisonment up to six months Second and subsequent instances: Fine of INR 300,000 and imprisonment between two to five years
<ul style="list-style-type: none"> • Non-compliance/ contravention of any other provision or rules • Deducts employers contribution, reduces wages, penalizes woman employee, fails to pay gratuity, maternity benefit, cess, fails to produce records 	<ul style="list-style-type: none"> • First instance: Fine up to INR 20,000 • Second and subsequent commission (within 5 years from the date of first or subsequent offence): Imprisonment up to one month and/or fine up to INR 40,000 	<ul style="list-style-type: none"> • First instance: Fine up to INR 50,000 and imprisonment of up to One year • Second and subsequent instances: Fine of INR 300,000 for failure to pay charges, cess, gratuity, maternity benefit or compensation and imprisonment between two to five years
<ul style="list-style-type: none"> • Non-compliance of the provisions of the Code after the timelines under the directions from Inspector cum Facilitator, including failure to produce documents to Inspector cum Facilitator 	Prosecution proceedings may be initiated after providing opportunity of being heard; No opportunity provided to the employer if violation of the similar nature is repeated within a period of 5 years from the first instance	<ul style="list-style-type: none"> • Fine up to INR 50,000 and/or imprisonment of 1 year; No opportunity provided to the employer if violation of the similar nature is repeated within a period of 5 years from the first instance
<ul style="list-style-type: none"> • Fails to submit returns, obstructs executive officer, fails to pay compensation, send a statement of fatal accident 	Not specifically included under code on wages	<ul style="list-style-type: none"> • Fine up to INR 50,000
<ul style="list-style-type: none"> • Dishonestly makes a false return, report, statement or information to be submitted 	Not specifically included under code on wages	Imprisonment up to six months

Industrial relations code and occupational safety, health and working conditions code Salient features

Particulars	
Industrial relations code	<ul style="list-style-type: none"> • Limit of worker enhanced from 100 to 300 for applicability of standing order; • Constitution of works committee, if 100 or more workers are employed and ordered by appropriate government; • Grievance redressal committee to complete its proceedings within 30 days of receipt of application; • Prohibits employers, workers, and trade unions from committing any unfair labour practices such as restricting workers from forming; trade unions, coercing workers to join trade unions, threatening worker, establishing employer sponsored trade union, etc. • Increase in retrenchment cost- additional compensation towards re-skilling fund, retrenchment compensation; • Preference to retrenched worker for re-employment within 1 year; • Notice of strike, lockout-extended to all industries; • Additional ground for strike - mass leave; • Prior approval of government - layoff, retrenchment, closure where 300 or more workers (factory, mine, plantation); • Introduction of concept of negotiating union
The occupational safety, health and working conditions code	<ul style="list-style-type: none"> • Single registration for all establishments; • Working hours: 8 hours with a spread of 48 hours in a week; • Issuance of appointment letter to employees/workers is mandatory; • Prohibition to engage contract labour in core activities; • Mandatory free health check-ups for below categories: <ul style="list-style-type: none"> – Who has attained age of 40 years for prescribed industries (factory, mine, plantation); or – Worker who are engaged in hazardous process/mines • List of benefits for inter-state migrant workers has been extended; • Flexibility in employment of women; • Constitution of safety committee and appointment of safety officer in prescribed industries; • Constitution of national occupational safety and health advisory board for monitoring the implementation of the code;

• **Enhancement of monetary penalties and introduction of compounding/composition**

Industrial relations code and code on occupational safety, health and working conditions

code Impact areas

Areas of impact	Key change triggering the impact	Challenges to be addressed
Core activity	<ul style="list-style-type: none"> Introduction of concept of core activity 	<ul style="list-style-type: none"> Contract labour is prohibited to engage in core activities subject to certain exemptions <ol style="list-style-type: none"> The normal functioning of the establishment is such that the activity is ordinarily done through contractor; or 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; Any sudden increase of volume of work in the core activity which needs to be accomplished in a specified time
Mandatory issuance of appointment letter	<ul style="list-style-type: none"> Employee covered under existing act are sale promotion employees 	<ul style="list-style-type: none"> Appointment letter to be issued to every employee in specified format with mandatory details: <ul style="list-style-type: none"> Aadhar number Labour Identification Number (LIN) of the establishment Universal Account Number (UAN)/Insurance Number (ESIC), applicability of social security EPFO and ESIC benefits Appointment letter in specified format shall be issued to existing employees within 3 months of commencement of code
Leave encashment	<ul style="list-style-type: none"> Reduction in time limit to be eligible for leave with wages Leave can be demanded for encashment while in service 	<ul style="list-style-type: none"> Worker who has worked for 180 days or more in a calendar year will be entitled for leave with wages Worker shall be entitled on his demand for encashment of leave at the end of calendar year Where the leaves exceeds 30 days, worker shall be entitled to encash the exceeded leaves
Re-skilling fund	<ul style="list-style-type: none"> Introduction of new concept of re-skilling fund 	<ul style="list-style-type: none"> Overall increase in worker's retrenchment compensation In addition to existing retrenchment compensation, 15 days wages to be contributed to re-skilling fund maintained with government: within 10 days of retrenchment
Negotiating union	<ul style="list-style-type: none"> Introduction of concept of negotiating union 	<ul style="list-style-type: none"> It is mandatory on the employer to recognize negotiating union where the trade union is registered Going forward, negotiating union will negotiate on the terms of employment including consultation on standing orders

Focus areas for Businesses to be Future ready

Understand "wage"

and quantify financial impact



LITIGATIONS /
ENQUIRES /
INSPECTION



ALIGNING HR POLICIES

– e.g. Maternity benefit, Gratuity,
PF , working hours, leave and
overtime policy, retrenchment
policy etc.

BEING COMPLIANT
by identifying areas of changes and
realign the internal processes to meet
the compliance requirements under the
codes

WORK FORCE CATEGORIZATION

into multiple categories and identifying
requirement, work allocation, compliances
accordingly

Transitioning to a new Legislative Framework is a journey.

Detailed assessment, i.e., comparing existing with new provisions

1. Review existing processes, policies and contracts
2. Map/compare the prescribed guidelines under the codes as applicable
3. Presentation before the management and stakeholders

Implementation and compliance

1. Assist in compliances under new codes
2. Provide handholding support over a fixed period
3. Assist with implementing any change in provisions, clarifications, notified after the effective date



Transition to New Codes

1. Creation of transition plan
2. Revision of compensation structure, policies, contracts etc
3. Assist in designing a robust internal process



Impact of change in “wage” definition case studies

Computation of wages

Impact of new wage definition

Example

Particulars	Amount (in INR per month)
Basic salary	12,000
Uniform and Washing Allowance	3,000
Statutory bonus	3,000
House Rent Allowance	3,000
Conveyance/ Travelling Allowance	3,000
Special allowance	6,000
Total	30,000

Amount of Wages

- Wages as per the current Minimum Wages Act (Basic + Special Allowance + HRA): INR 21,000
- Wages as per the current Payment of Wages Act (Basic + Special Allowance + HRA): INR 21,000
- Wages as per the current Payment of Bonus Act (Basic + DA + cash allowances): INR 27,000
- Wages as per the current EPF Act (Basic (including special Allowance) + DA + retaining allowance + other allowances*): INR 24,000
- Wages as per the current Payment of Gratuity Act (last drawn basic + DA): INR 12,000
- Wages as per the current Maternity Benefit Act: (Basic + cash allowances + incentive bonus): INR 27,000
- Wages as per the current ESIC Act: (Basic + cash allowances excluding bonus): INR 27,000
- **Wages as per the Code – INR 18,000 (Basic + Special Allowance)**

*As per SC ruling on Vivekananda Vidyamandir & Ors.

Code on Social Security

Impact of the new employee definition – Illustration

Pay Components		Existing Laws (INR per month)	Social Security Code (INR per month)
Basic Wages	A	14,000	14,000
House Rent Allowance	B	6,000	6,000
Conveyance Allowance	C	6,000	6,000
Special allowance	D	4,000	4,000
Wages to be considered for EPF purposes		24,000* (A+C+D)	18,000^ (A+D)
Wages to be considered for ESIC purposes		30,000** (A+B+C+D)	

*contributions can be restricted to INR 15,000

**Employee would not be covered under the current ESIC provisions

^If wage ceiling notified by the Central Government for the chapters on EPF & ESIC are same as the current ceiling (of INR 15,000 & INR 21,000 respectively), then such a person may not be regarded as an employee for EPF purpose but may get covered for ESIC purposes as per employee definition under the social security code

The Code on Social Security

Impact of the new wage definition on Gratuity / Maternity benefit – Illustration

Pay Components		Existing Laws (INR)	Social Security Code(INR)
Cost To Company		12,00,000	12,00,000
Basic Pay (40% of CTC)	A	4,80,000	4,80,000
House Rent Allowance	B	2,40,000	2,40,000
Leave Travel Concessions	C	1,00,000	1,00,000
Fuel reimbursement	D	1,20,000	1,20,000
PF Contributions	E	57,600	72,000
Statutory Bonus	F	1,00,000	1,00,000
Special allowance	G	1,02,400	88,000
Total wages to be considered for Gratuity		4,80,000	5,68,000
			+Adj for exclusion as per definition i.e. 32,000
Understanding the impact for an employee with 7 years of service			
Monthly Wages		4,80,000/12	50% of total remuneration i.e. 600,000/12
Monthly wages for gratuity purpose		40,000	50,000
Formulae for gratuity		Last drawn pay / 26 * 15 * no of years of service	Last drawn pay / 26 * 15 * no of years of service
Total Gratuity Amount		1,61,538	2,01,923
Total wages to be considered for Maternity Benefit		12,00,000 or 1,00,000 p.m.	6,00,000 or 50,000 p.m.

*It is assumed that lastdrawn salary and average salary for 12 months is same.

**THANK
YOU**

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