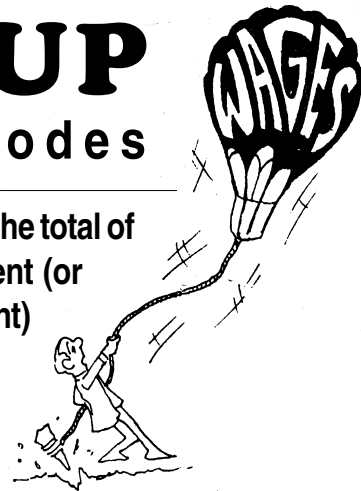


CTC will GO UP

Consequent to Labour Codes

Under the Code on Wages 2019 it has been specified that the total of the specified exclusions, if the same exceeds 50 per cent (or such other per cent as specified by the Central Government) of the remuneration, then the amount exceeding such 50 per cent would be deemed to be remuneration and would be added in wages as per the definition.



From April, when the next financial year begins, and the Labour Codes are introduced, the employers will have to restructure the wages of the employees in view of the increased gratuity and the leave-encashment provisions. Already reeling under the Covid impact, the employers should do their homework for restructuring of wages before the Codes are made effective. There are hidden provisions that will increase costs to companies (CTC). Some adjustments can be made on granting of annual increment since any steps in this direction after 1st April 2022 would be nearly impossible in view of section 40 of the Industrial Relations Code 2020.

Labour and employment regulations have far-reaching implications for every business organization. Firstly, these are crucial for a congenial and harmonious relationship between employers and employees. One cannot have high productivity and innovation in an environment saddled with rifts and disputes. Secondly, the labour and employee costs constitute between 10 per cent to 50 per cent of the total costs for most business organizations and the new laws will have an impact on the cost structure. Finally, the new regulations will require review and revision of all employment contracts, compensation structures, registrations, and compliances. Suitable changes will need to be

made in the governance structure and IT systems. This will require a “project management” approach and a transition roadmap.

‘Inclusions’ and ‘Exclusions’ needs to be understood:

The definition of wages is probably the single most important aspect that the industry needs to consider. The Code on Wages contains specific inclusions as well as exclusions in the definition of wages. Further, under the Code of Wages, it has been specified that the total of the specified exclusions, if the same exceeds 50 per cent (or such other per cent as specified by the Central Government) of the remuneration, then the amount exceeding such 50 per cent would be deemed to be remuneration and would be added in wages as per the definition. All companies need to consider the definition of wages, look at their employment letters, analyse each of the components of their employees’ CTC and may need to revisit the components in case of non-compliance with the definition of wages under the new proposed labour laws.

Impact of the new codes and take-home salary:

Due to the change in the definition of wages and the fact that the various social security

schemes such as Provident Fund, Gratuity, ESIC, etc. have now been pegged as a percentage of the 'wages' and not just the basic or basic plus dearness allowance, there is expected to be a change in the total pay-outs on account of social security and retirement benefits. Depending on the employment letters and salary breakup of existing employees, even the take-home salary of employees may be affected. Even TDS calculations based on the revisions in the take-home need to be carefully considered as the obligation to deduct TDS in case of salary is on the employer.

Much wider coverage:

Unlike the current labour laws, where coverage is different for each of the laws depending on the type of work done by the employee or coverage is restricted to workers or employees drawing certain remuneration, the 4 labour codes seem to apply to all employees and certainly have much wider coverage than each of the current laws looked at individually. The new labour codes also look at new-age working models and seem to give protection and legal remedies to 21st-century workers as well. The labour codes cover contract labour, fixed-term employment, gig workers, platform workers, and many more concepts. Thus, the laws appear to be forward-looking and are more inclusive.

Every enlightened and progressive employer must plan for the restructuring of the salary package in view of the retrospective increase in gratuity and leave encashment provisions which include hidden financial burden upon the employers.

Gratuity & other components:

The gratuity will be paid at higher rates for all the past years of service and encashment of leave will be calculated on the last drawn salary of the employees which can't be pre-empted by the employers. The costs will substantially go up because, in view of the definition of 'employee' under section 2(26) of Code on Social Security, 2020, it includes supervisor, manager and administrative also, and though these were, no doubt, earlier also included in the Payment of Gratuity Act, 1972, now

calculation of 'wage' for the payout of gratuity will be at 50% of their remuneration.

The other addition pertains to 'fixed-term employee' as called a clever device by unions as 'hire and fire', who will also be entitled to gratuity even on completion of one

year of service. On retention of the same pattern for payment of bonus, the liability for payment linked with minimum wages will be much higher side. The new definition of an 'employee' in all the four Codes has been expanded to include all professionals employed, who on putting in extra hours at work will be entitled to compensation for overtime at twice that of regular pay may have something to cheer for in the new labour Codes as the new law, if implemented in its entirety, would widen the purview of overtime payment to include all employees, including managerial staff. This will increase the expenditure of the employers since the senior officers (to be treated as employers) must work for much longer hours even after the prescribed number of working hours in a day.

Also an important change is at section 57

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of the Code on Social Security whereby the government will enforce that all companies compulsorily take gratuity insurance for all its employees, unless in any company there already exists a 'Trust'. The pay periodical deposit by employers will reduce the working capital.

Curtailing of Contract Labour System:

For the first time, the Occupational Safety, Health and Working Conditions Code, 2020 in its section 57 has defined 'Core Activity' for engaging contract labour. Hence, the scope of engaging contract labour through independent contractors will be restricted only in the prescribed trades whereas earlier there has been no such restriction in engaging contract labour even in the core activities.* Hence the cost to the employers will increase by engaging regular employees. As a result, thereto, the establishments will find it difficult to survive in the aggressive competitive scenario. If the workers are working at the premises of the principal employer then the Occupational Safety, Health and Working Conditions Code, 2020 provides it shall be the responsibility of the principal employer to provide amenities such as toilets, washrooms, drinking water, bathing facilities, changing room, first-aid box, canteen and crèche.

MORE INCREASES IN CTS

Under the new Codes, the computation of 'wages will include components like basic pay, dearness, retaining and special allowances. Even though some specified items like HRA, conveyance, statutory bonus, overtime allowance and commissions have been excluded for computing wages, which, under the Code, should be at least 50% of the total remuneration. Hence when these specified exclusions will cross 50% of the remuneration, the excess amount will be considered to determine 'wages' under the

Codes. For instance, gratuity, which was earlier calculated on the basic salary, will now be computed on 'wages', which could result in higher pay for the employees and a larger outgo for the employer.

The primary cost impact on employers will be payment of maternity benefit including 26 weeks of paid leave at the minimum rate of 50% of the employee's remuneration, thereby upping costs. Since there is no wage ceiling, the payout for the senior category of women will be substantially increased because since now their 'wage' components will be basic and DA at a minimum rate of 50% of their remuneration.

There is no provision requiring employers to change their CTC (cost to company) structure. On the contrary, the notice to workers or trade unions (substituting section 9 A of the Industrial Disputes Act has been retained under section 40 of the Industrial Relations Code, 2020). It is not restricted to serving of notice but creating industrial relations problems. Hence the process and change in the salary structure remain riddled with hassles. If the salary structure is not revised now to coincide with the financial year and also when annual increments are given to the employees by the employers, which is delayed will be difficult to implement thereafter. Whether it is still a good practice to do so needs to be considered by each employer based on the CTC structure, especially if the basic salary plus other included components is fixed less than 50% of the total remuneration.

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*Other hidden costs can be higher rate of accident compensation. The fines for violations are on much higher side. There will be steep increase of CTC. The appropriate governments of States and Central have rarely prohibited the continuation of contract labour system since it was known to all that the engagement of contract labour not only generates more employment but also it is economical for the employers. The governments both Central and State have also been engaging contract labour perhaps more than the private employers.