

ROLL OUT LABOUR CODES IN PHASES

After defusing the fire by the agitators of Agnipath Scheme, the government is now planning to roll out all the Labour Codes i.e. Code on Wages, Industrial Relations Code, Code on Social Security and Occupational Safety & Health (OSH) – were passed by Parliament in September 2020 but these are yet to come into effect, mainly due to dithering by some major states to frame the rules under their domain.

The Associations of Employers and also some of the unions are of the opinion that these Codes should be rolled out in phases. It may be recollected that the Code on Wages was enacted in 2019 and first instance whereas the other Codes were enacted in 2020. Furthermore, The Code on Wages as defining 'wages' would apply in other Codes also hence it is to be implemented at first instance.

The employers, employees, trade unions and the readers of the Labour Law Reporter will be anxious to know about its implications, hence we have embarked upon the comparative study for ready reference and is attached herewith.

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CODE ON WAGES

What every employer and employee need to know salient and comparative features of earlier Labour Laws & New Code

| ACT | SUBJECT MATTER | EARLIER PROVISIONS | CODE ON WAGES |
|-----------------------------------|---|--|---|
| Minimum Wages Act, 1948 | Applicability | Applicable only on scheduled employments | Applicable to all employees including in organised an unorganised sector |
| | Wages | Section 2(h) of the Act defining 'wages' included house rent allowance | Section 2(y) excludes house rent allowance in the definition of 'wages' but section 7 states an allowance to be adjusted with basic rate of wages. Wages could also be divided 50% other than various allowances. |
| | Period/Revision of Minimum Wages | Minimum wages must be revised by the Central or State governments at least once in every 5 years | The Code on Wages also provides that minimum wages be revised in 5-year intervals |
| | Fixation of floor wages | No provision to fix floor wages | The Central Govt. will set a floor minimum wage and may set different minimum wages for different States and regions |
| | Over Time Wages | Allowed the relevant Central or State Governments to set Over Time wage | Sets Over Time Wage at two times the normal wage |
| | Time limit for claim for wages | Any claim for wages could be made within 6 months. | Claim could be made within 3 years. |
| Payment of Wages Act, 1936 | Applicability to employees | Applied to those employees drawing less than Rs.24,000 for filing claim | All employees are protected without any wage limit including supervisor and managers |
| | Payment to an employee on cessation of employee | Only within 2 working days of his termination of employment or closure of establishment | While retaining earlier provisions of 2 working days added retrenchment of an employee and also an employee resigning from his service |

| ACT | SUBJECT MATTER | EARLIER PROVISIONS | CODE ON WAGES |
|---|--|---|--|
| Payment of Bonus Act, 1965 | Applicability | Applicable on establishment employing 20 or more employees and factories | Applicable to establishments employing 20 or more persons |
| | Disqualification for Bonus | Disqualification for bonus as an employee for dismissal misconducts i.e. fraud, riotous & disorderly behaviour, theft and misappropriation. | For similar misconduct as enumerated earlier additionally for on conviction for sexual harassment. |
| | Mode of payment | By cash only | Will be created in the bank account of the employee |
| Equal Remuneration Act, 1976 | Gender Discrimination in fixation of wages | Prohibited gender discrimination in wage payment | Prohibits gender discrimination in matters related to wages and recruitment of employees for the same work or work of similar nature. Work of similar nature is defined as work for which the skill, effort, experience, and responsibility required are the same. |
| | Gender discrimination in recruitment | No reference prohibiting gender discrimination in recruitment. | Prohibits gender discrimination in recruitment, transfers and promotions |
| Minimum Wages Act, 1948 Payment of Wages Act, 1936 Payment of Bonus Act, 1965 Equal Remuneration Act, 1976 | Inspections | Inspectors were appointed to carry out (i) surprise checks and (ii) examine persons and require them to give information, among other Powers which were vested in them. | <p>Appointment of a Inspector-cum-Facilitator not only to carry out inspections and provide information to employer and employees for better compliance.</p> <p>Inspection will be done on the basis of an inspection scheme which will include a web based inspection schedule. The inspection schemes will be decided by the Central Government.</p> |
| | Territorial jurisdiction | Restricted | The jurisdiction of inspectors or facilitators is widened |

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| | | | <p>under the Wage Code on Wages and ensured that an employer has to deal with a single inspector for compliance instead of one under each labour law. It means an inspector in a city or town could be assigned to assess a company for compliance under the Wage Code in any other city. The Code empowers the govt. to notify a wider territory for an inspector, which could be done via randomised selection process. The govt. to conduct web-based inspection and seek information electronically</p> |
| | Cognizance of offences | In order to initiate prosecution of an employer only by an Inspector, a series of exercises like issuance of a show-cause notice and obtaining prior sanction from a higher authority. | Any officer authorised under the Code on Wages or by an employee or a registered trade union or any Inspector-cum-Facilitator can file a complaint within three years. |
| | Registers | Over 10 Registers i.e. four Registers under the Minimum Wages Act, 1948Two registers under the Payment of Wages Act, 1936Three registers under the Payment of Bonus Act, 1965One Register under the Equal Remuneration Act, 1976 | Only two registers are required to be maintained: – Employee Register under Form-IV Register of Wages, Overtime, Fines, Deductions for damage and loss under Form-I |
| | Returns | Four returns had to be submitted, one each under the Minimum Wages, Payment of Wages, Payment of Bonus and Equal Remuneration Acts respectively | Only one return to be filed that covers all the components under the different enactments |

| ACT | SUBJECT MATTER | EARLIER PROVISIONS | CODE ON WAGES ACT |
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| | Consequences | Penalties ranged from a lower range of Rs. 500 to upper range of Rs. 20,000 with imprisonment of 6 months to 1 year | Enhanced penalties of up to 1 lakh have been provided for with imprisonment of up to 3 months |
| Minimum Wages Act, 1948 | Penalties | Minimum Wages Offences include (i) paying employees less than minimum wages, and (ii) not providing for a day of rest in the week. Penalties include fine upto Rs.500/- and imprisonment upto six months. | Employers who pay less than what is due under the Code will pay a fine of upto Rs.50,000/-. If an employer is guilty of repeat offence within five years, penalties include imprisonment up to three months or a fine of up to Rs.1 lakh or both |
| Payment of Wages Act, 1936 | | Offences include (i) non-payment of wages at specified time period, (ii) unauthorized deductions from wages. Penalties include fine upto Rs.7500/-. | |
| Payment of Bonus Act, 1965 | Penalties | In case a person or company does not comply with the Act, could be punished with imprisonment up to six months or fine upto Rs. 1000/- | Employers who do not comply with any other provision of the Code will pay a fine of up to Rs. 20,000/-. If an employer is guilty of the same offence again within five years, penalties incl. imprisonment up to one month or a fine of upto Rs.40,000/- or both. |
| Equal Remuneration Act, 1976 | | Offences include: (i) non-maintenance of documents in relation to employees, and (ii) discrimination against women in recruitment. Penalties include fine up to Rs.20,000/- or imprisonment upto 1 year. | |

SAY GOODBYE TO INSPECTOR RAJ. Indian labour laws had neither been pro-labour nor pro-employer. These were pro-labour Inspectors who could carry out surprise checks and examine persons. Hence there have been constant vilifications which have been narrative of 'Inspector Raj'. After implementation of the Codes Inspectors-cum-Facilitators would make inspections on web based through automated centralised system and they will not have unlimited and arbitrary powers to harass the employers. If the desired objective and codification of the Codes is attained it will be helpful to ease of doing business.