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# DOCKET

*INFORMED. INDISPENSABLE. IN-HOUSE.*

## Are You Ready for India's New Employment Laws?

Employment and Labor



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## Key highlights:

- India's central government has released four codes to evolve and consolidate multiple long-established laws.
- Businesses operating in India need to understand the upcoming changes.

In 2019-2020, the Government of India introduced four new Labour Codes, namely, the [Code on Wages, 2019](#) ("Code on Wages"), the [Industrial Relations Code, 2020](#) ("IR Code"), the [Code on Social Security, 2020](#) ("Social Security Code") and the [Occupational Safety, Health and Working Conditions Code, 2020](#) ("OSH Code") (collectively, the "Labour Codes"). The Labour Codes

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subsume 29 existing employment legislations with the purpose of amalgamating, simplifying, and rationalising the relevant provisions of the subsumed laws.

The Labour Codes would soon be implemented by the Government of India, considering that only a few states are left to draft their own rules under the Labour Codes. This article highlights 10 key takeaways that conglomerates operating in India would have to take into consideration when the Labour Codes are implemented.

## **1. Inclusion of contract workers in the definition of employee**

As opposed to the extant regime, the definition of employee, as set out in the Social Security Code, also includes contract workers hired directly or through a contractor. Accordingly, when the Social Security Code would get implemented, the same would also become applicable to the contractual workers engaged by the employers. The same would entail additional compliance for companies.

## **2. Gig workers, platform workers, and aggregators have been introduced for the first time**

The Social Security Code has introduced the terms *aggregator*, *gig worker* and *platform worker*. An *aggregator* is defined as a digital intermediary or a marketplace for a buyer or user of a service to connect with the seller or the service provider.

The term *gig worker* has been defined as a person who performs work and earns from such activities outside of the traditional employer-employee relationship.

Similarly, the term *platform worker* has been defined as a person engaged in an employment form in which the organization uses an online platform to access other organizations or individuals to solve specific problems or provide specific services in exchange for payment.

The Social Security Code also provides that a scheme required by the Central Government for matters relating to life and disability cover, accident insurance, health and maternity benefit, and other benefits, may be wholly funded by the contributions of aggregators.

## **3. Wider definition of wages**

The Code on Wages and Social Security Code contain a unified definition of the term “wages,” which was interpreted differently under former employment laws. Upon a careful consideration and analysis of the definition of “wages,” it appears that the same comprises three essential components:

1. Remuneration expressed or capable of being expressed in terms of money that is payable to an employed person, if the express or implied terms of employment were fulfilled in respect of his employment or of work done in such employment;
2. An inclusive part consisting of (i) Basic Pay; (ii) [Dearness Allowance](#); and (iii) [Retaining Allowance](#), if any; and
3. An exclusionary part comprising of 11 types of payments such as bonus, House Rent Allowance, the contribution to pension or provident fund, conveyance allowance, overtime expenses, etc.

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After the implementation of the Labour Codes, all statutory benefits (such as Provident Fund, Gratuity, Bonus etc) will be calculated based on the allowances falling within the inclusive part of the “wages” and the exclusionary part of the wages exceeding one-half (50 percent) (or such other percentage as may be notified by the Central Government,) of the total remuneration.

## **4. Direct provisions for fixed-term employment contracts**

Fixed-term employment refers to employment wherein the employer hires an employee or worker for a specific period. The period is specified in the agreement and can be renewed with the mutual consent of both parties. Under the extant regime, fixed-term employment is not regulated by any employment law legislation. The Social Security Code and the IR Code not only define fixed-term employment but also stipulate that working hours, wages, allowances, and other benefits of fixed-term employees shall not be less than that of a permanent employee doing the same work or work of a similar nature.

## **5. Penalty for violations are considerably enhanced**

The Labour Codes impose enhanced penalties for violation of any of its provisions. Though various violations under the Labour Codes have been decriminalized, the fines pertaining to non-compliance have been substantially increased. Simultaneously, imprisonment provisions have been retained for serious and grave violations.

## **6. Mechanism for compounding offenses**

The existing legislative framework surrounding employment laws does not provide for the compounding of offenses (i.e., a settlement mechanism by which the offender is given an option to pay money in lieu of his prosecution). The Labour Codes have provided for the compounding of certain specified offenses by a gazetted or notified officer (i.e., a senior official whose appointment is published in the official government gazette) before or after the institution of prosecution proceedings.

## **7. Contributions to the worker re-skilling fund**

The IR Code requires that every employer retrenching its employees (i.e., terminating employees otherwise than as a result of disciplinary action, barring certain exceptions like retirement or termination on account of continued ill health) contribute to the “[worker re-skilling fund](#)” in an amount equal to 15 days’ wages last drawn by every impacted worker. While the initial version of the Code had provided for this contribution even in case of closing the establishment, this proposed alteration avoids a significant financial liability that would have arisen out of mass redundancies in the event such compliance would have been required also for closure of an establishment.

## 8. Pandemic-related provisions

In view of the unprecedented impact that the COVID-19 pandemic has had on business, the OSH Code has introduced pandemic-related provisions. The OSH Code widens the power accorded to the appropriate government to exempt any establishments from any provision in case of a public emergency, to include situations of “disaster or pandemic in the whole of India or part thereof.” However, the period of exemption can be up to one year as against the current regime which provides for three months under the [Factories Act, 1948](#).

## 9. Moving towards digitalization and gender equality

The OSH Code provides that all important processes can be carried out electronically (including application for registrations and licenses, issue of registration certificates, and sending notice of commencement or cessation of operations). For the first time, a web-based inspection scheme has also been envisaged to be formulated by the appropriate government, considering all the relevant factors prescribed under the OSH Code.

The OSH Code 2020 provides that, instead of prohibiting the employment of women where it is of the view that their employment at such places is dangerous for their health and safety, the appropriate government may rather require the employer to provide adequate safeguards before employing women in dangerous operations. This provision has been carved out to provide employment opportunities and better working environment with adequate measures of health and safety.

## 10. Widened coverage of the Code on Wages

The Code on Wages has extended the coverage of the earlier provisions found in various enactments that it intends to repeal and replace.

- Provisions relating to equal remuneration: [The Equal Remuneration Act, 1976](#) (“ER Act”) provides that no employer shall pay to any worker a remuneration at rates less advantageous than those at which remuneration is paid by that employer to the workers of the opposite sex, for performing the same work or work of a similar nature. The Code on Wages also prohibits discrimination “on grounds of gender,” thus protecting all employees, irrespective of their gender, from discrimination in matters of remuneration for carrying out the same or similar work.
- Provisions relating to minimum wages: The [Minimum Wages Act, 1948](#) empowers the Government to fix the minimum rate of wages for the “scheduled employments” provided in the Act. The Code on Wages, however, contains provisions for universal minimum wage across employments in the [organized](#) and the [unorganized](#) sector.
- Provisions relating to the payment of wages: [The Payment of Wages Act, 1936](#) is applicable to employees earning not more than INR 24,000 per month as wages. The Wages Code, on the other hand, covers all employees irrespective of their monthly remuneration.

# Key takeaways for multinational corporations

## Restructuring of present employee benefit structure

After the implementation of the Labour Codes, provident fund contribution, gratuity, maternity benefit, bonus, leave encashment, and retrenchment payments will be calculated on the components or allowances falling within the inclusive part of the “wages” (subject to such wage ceiling as may be prescribed or notified by the Central Government). Therefore, companies need to review their present employee benefit and salary structure salary structure and examine whether each component (allowance and benefits) which is a part of their current structure is included or excluded from the definition of “wages” as and when the Labour Codes are implemented. Since the inclusions and exclusions provided under the Labour Codes are not exhaustive in nature, no fixed formula can be applied. The company would have to examine each component payable to its employees under the company’s employee benefit structure and salary structure.

## Review of the present HR policies

The Labour Codes have brought significant changes to the working hours and leave requirements of an employee. For instance, OSH Code stipulates that maximum working hours should not exceed eight hours (exclusive of the lunch break). Accordingly, companies are also required to review their present HR policies and align the same with the Labour Codes.

## Corporate liability

Under Section 32 of the [Industrial Disputes Act, 1947](#) (“ID Act”) relating to corporate liability, every director, manager, secretary, agent, or other officer or person concerned with management was deemed guilty in the event the company committed an offense under the ID Act. The onus was put on the “director, manager, secretary, agent or other officer or person concerned with management” to prove that the offense was committed without their knowledge or consent.

The IR Code 2020, however, puts the burden on the prosecuting authority to prove that the offense was committed with the consent or connivance of (or is attributable to any neglect on the part of) any director, manager, secretary, or other officer of the company. This change is in line with the corporate liability regime found in other jurisdictions and statutes.

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