

NEW LABOUR CODES AND THE WAY FORWARD

BACKGROUND & HISTORY

OLD

Archaic labour laws,
several from pre -
independence

Was created/
tailored/designed
for the Industrial
era in India



NEW

2020 / 21 surging
forward to meet
the needs of
future India

Labour Reforms!

LAWS THAT HAVE BEEN SUBSUMED

Minimum Wages Act
Payment Of Wages Act
Payment of Bonus Act
Equal remuneration Act

1



The Code on Wages, 2019
(notified 8th Aug, 2019)

Factories Act
Contract Labour (Regularization and Abolition) Act
Building and Other Construction Workers Act
And others...

2



The Occupational Safety, Health and
Working Conditions Code, 2020
(notified 29th Sep, 2020)

Provident Fund Act
Employee State Insurance Act
Payment of Gratuity Act
And others....

3



The Social Security Code, 2020
(notified 29th Sep, 2020)

Industrial Disputes Act
Trade Unions Act
Standing Orders Act

4



The Industrial Relations Code, 2020
(notified 29th Sep, 2020)

Draft Rules Published
Date of Applicability Awaited

OBJECTIVES OF THE NEW LAWS



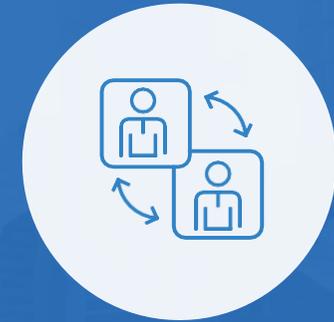
**AMALGAMATION AND
SIMPLIFICATION OF
THE EXISTING LAWS**



**EASE OF
COMPLIANCE**



DIGITIZATION



**EMPLOYER - EMPLOYEE
EQUAL FOOTING**

HOW DOES IT IMPACT MY ORGANIZATION?

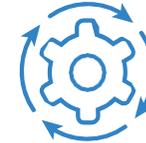
While there is a lot of talk about the codes, how it will impact your organization is what this deck seeks to bring to fore.

Broad impacts of the Labour Codes:



FINANCIAL IMPACT

Changes to fundamental concepts will mean an increased spend and need to have more working capital in hand at all times



OPERATIONAL IMPACT

The organization will need to change policies, processes and operational protocols in light of the new Codes



FUNCTIONAL IMPACT

Change management will be a comprehensive exercise with the need to educate key stakeholders



EMPLOYEE IMPACT

Changes in wage structure and allowances will mean continued employee interaction and clarification in light of the codes

How?

Definition of Wages & Employee has changed - Impact:

1. Change in Wage structure
2. Increased Payment of Social Security Contribution
3. Increased Gratuity
4. Decreased Retrenchment compensation
5. Wider Overtime payment net, lower payout
6. Lower Leave encashment on separation, periodic leave encashment
7. Wage payment to be made on time

Contractor payout before the 7th of each month

F&F in 48 hours

Cost Benefit Analysis should be undertaken by organizations in order to decide the best strategy



Where?

From **Selection to Separation**, changes to policies and procedures

Safety requirements for all establishments in line with the code

No Contract labour in Core Activity

Additional checkpoints to oversee hours of work & overtime (up to 125 hours a quarter)

New registers - fewer filings

Uniform Standing orders sector wise - adoption sufficient

Fixed Term Employment is a legally recognized engagement model





What?

Changed perspective in Risk Management

Change to Compliance norms

Comprehensive Change Management exercise

Comprehensive changes to HRMS tools

Potential impact to HR roles & responsibilities

Education of Global stakeholders on need for change

Education of all stakeholders as to the compliance requirements and risk analysis

Education of HRBPs in respect of changes and need for the changes



Who?

Employees may see a drop in the take home contribution

Employees will see an increased retiral and future benefit

There will be a change in many policies that impact the entire employee lifecycle

Revised Terms & Conditions in the existing appointment letters may need to be issued in compliance with the code



THE NEW LABOUR CODES - DECODED!

1



THE CODE ON WAGES, 2019

(NOTIFIED 8TH AUG, 2019)

Laws Amalgamated : 4

Minimum Wages Act

Payment Of Wages Act

Payment of Bonus Act

Equal remuneration Act

HIGHLIGHTS OF THE CODE ON WAGES, 2019

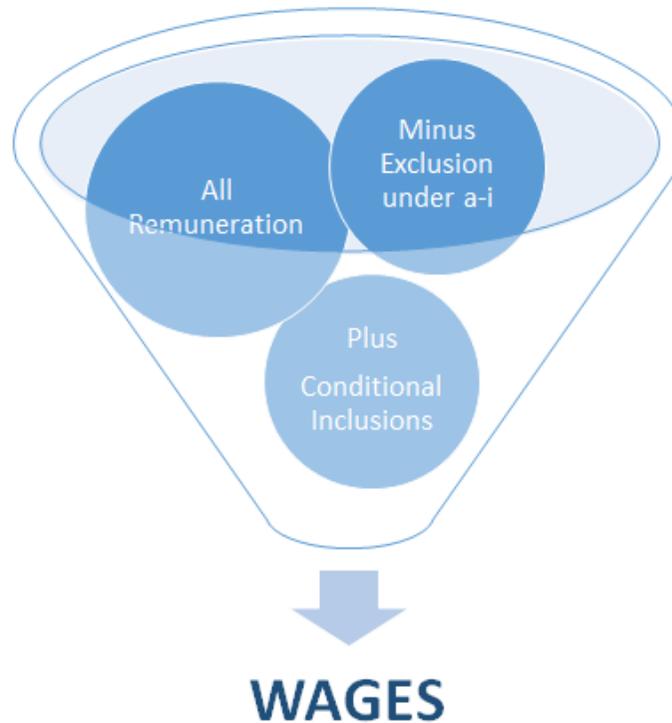
1. Provision of minimum wages will apply to all employees, up to the level of supervisors
2. New definition of employee & worker
3. Central Govt. to fix a 'Floor Wage' - Minimum threshold for all States to fix minimum Wages
4. State Govt. will fix one minimum rate of wages & fix factors for different categories of employees considering skill, arduousness of work, and geographical location
5. Provisions relating to payment of wages applicable to all employees without any wage ceiling
6. Payment of Wages to be done before the expiry of the 7th day after the wage month irrespective of number of employees
7. Additional disqualification of the employee for receiving bonus is added that an employee who is convicted for sexual harassment is not eligible to receive bonus

THE CODE ON WAGES, 2019

AN ILLUSTRATION

Remuneration	
Basic	9000
DA	3000
HRA	3000
Monthly advance bonus	1000
Conveyance	1000
Washing	2000
TOTAL	19000

Wages	
Basic	9000
DA	3000
TOTAL	12000



Remuneration	
Basic	9000
DA	3000
HRA	5000
Monthly advance bonus	1000
Conveyance	5000
Washing	2000
TOTAL	25000

Wages	
Basic	9000
DA	3000
Conditional inclusion	500
TOTAL	12500

THE CODE ON WAGES, 2019

Departure From Current Law

CURRENT LAW	THE WAGE CODE
Definition of Minimum Wages, through Airfreight Judgment = Gross wages	New wage definition that limits excluded allowances to only 50% of total remuneration
Applicability of provisions limited to prescribed wage threshold	All Employees now covered under Wage Code irrespective of wages
Only dealt with individual contributors/workers	All Employees are now been covered irrespective of role or designation
Definition limited to direct employment	Contractor is also Employer
Limited to Scheduled Employments	Minimum Wages for all - Scheduled Employment done away with
Date of payment of wages differs as per number of employees in establishment - 10th or 7th based on total headcount	Payment of Wages to be done before the expiry of the 7th day after the wage month irrespective of number of employees

2



THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020

(NOTIFIED 29TH SEP 2020)

Laws Amalgamated : 13

The Factories Act, 1948

The Plantations Labour Act, 1951

The Mines Act, 1952

The Working Journalist and other News Paper Employees (Conditions of Service and Miscellaneous Provision) Act, 1955

The Working Journalist (Fixation of rates of wages) Act, 1958

The Motor Transport Workers Act, 1961

The Beedi and Cigar Workers (Conditions of Employment) Act, 1966

The Contract Labour (Regulation and Abolition) Act, 1970

The Sales Promotion Employees (Conditions of Service) Act, 1976

The Inter - State Migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979

The Dock Workers (Safety, Health and Welfare) Act, 1986

The Cine Workers and Cinema Theatre Workers Act, 1981

The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996

HIGHLIGHTS OF THE OSH CODE, 2020

1. The Code applies to all Establishments, Factories, Mines, Plantations & Construction sites with different thresholds in number of workers
2. One registration for all establishments having 10 or more workers
3. Safety requirement for all establishments
4. If less than 50 contract labour, Contract Labour chapter does not apply
5. No Contract labour for core activity
6. Contractor who deploys his own employees and provides statutory benefits - not contractor and employees not contract labour
7. Contractor shall pay salary via bank transfer only - If Contractor fails to pay wages, Principal Employer shall pay
8. One licence for pan India deployment for a contractor – license valid for 5 years
9. Leave encashment mandated - no lapse of earned leave & carryover standardized at 30 per year
10. Overtime wages for workers - maximum limit to be 125 hours per quarter
11. Working hours of 8 hours a day
12. Interstate Migrant Worker includes individual traveling to another state for work provided wages is below Rs.18,000/- per month
13. Interstate Migrant Worker entitled to yearly journey allowance

OSH CODE, 2020

DEPARTURE FROM EXISTING REGIME

CURRENT LAW	OSH CODE, 2020
Does not deal with appointment letter	Mandatory Issuance of Appointment Letter in the prescribed format to all employees
Does not require a health check - up	Free of cost annual health check - ups for employees above 45 years of age
Employment of women prohibited in certain industries. Restrictions to employ women between 7 PM AND 6 AM	Subject to conditions, flexibility in employment of women enabled in all establishments for all types of work beyond 7 PM and before 6 AM – consent is a must
Threshold of Daily Working hours: 9 hours	Threshold of Daily Working hours: 8 hours
Leave entitlement after having worked for 240 days	Leave entitlement after having worked for 180 days
Lapse of leave beyond threshold Leave encashment at the time of separation	No lapse of leave Leave may be encashed every year
Payment of overtime wages limited to workers, excluding managerial cadre	Payment of Overtime wages to all workers, including supervisors

3



THE CODE ON SOCIAL SECURITY, 2020

(NOTIFIED 29TH SEP, 2020)

Laws Amalgamated : 9

The Employees' Compensation Act, 1923

The Employees' State Insurance Act, 1948

The Employees' Provident Fund 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 Cess Act, 1996

The Unorganized Workers' Social Security Act, 2008

HIGHLIGHTS OF THE CODE ON SOCIAL SECURITY, 2020

1. Social security extended to all employees and workers either in the organised or unorganised or any other sectors
2. Enrolment under EPF and ESI Scheme on voluntary basis even if the number of employees in that establishment is less than the threshold
3. Provision for payment of cess by employer in case of building and other construction work, payable on the basis of his self - assessment
4. Registration of every unorganised worker, gig worker or platform worker on the basis of self - declaration electronically or otherwise
5. Employer's contribution, or employee's contribution, or both, payable under Chapter III or Chapter IV, may be deferred or reduced, for a period up to three months at a time, in the event of pandemic, endemic or national disaster
6. Establishment and maintenance of separate accounts under social security fund, for the welfare of unorganised workers, gig workers and platform workers
7. Definition of contract labour to exclude permanent employees deputed at Principal Employer location
8. Fixed Term employees shall be eligible for gratuity compensation on pro rata basis and not on the basis of continuous service of five years

THE CODE ON SOCIAL SECURITY, 2020

Departure From Existing Law

CURRENT LAW	SOCIAL SECURITY CODE, 2020
ESI eligibility and payment is based on gross wages	ESI eligibility and payment is based on new definition of wages
PF contribution limited to Basic and Some allowances	PF contribution on new definition of Wages
PF and ESI Schemes mandatory for all qualifying Establishments	Opt-in and Opt-out is now available as an option
Gratuity Payable on Basic Wages	Gratuity Pay-out on new definition of wages from the day it becomes applicable
No concept of GIG work or Platform Work	Both concepts recognized and provided Social Security Benefits

4



THE INDUSTRIAL RELATIONS CODE, 2020

(NOTIFIED 29th SEP, 2020)

Laws Amalgamated : 3

Industrial Disputes Act

.....
Trade Unions Act

.....
Standing Orders Act

HIGHLIGHTS OF THE CODE ON INDUSTRIAL RELATIONS, 2020

INDUSTRY

1. Definition of Industry under IR Code has totally changed
2. It excludes charitable, social, philanthropic service & domestic service

FIXED TERM EMPLOYMENT

1. IR Code allows hiring workers on fixed term contract
2. Eligible for all benefits like that of a permanent worker
3. Gratuity payable on pro-rated service
4. No retrenchment compensation payable on termination of fixed term employment

APPLICABILITY

1. IR Code applies to workers only – worker definition akin to present workman definition
2. However, for the purpose of Trade Union, worker means all persons employed

HIGHLIGHTS OF THE CODE ON INDUSTRIAL RELATIONS, 2020

GRIEVANCE REDRESSAL COMMITTEE (GRC)

1. GRC mandated for establishment with 20 or more workers
2. Maximum number of members in GRC to be 10
3. Disputes arising out of Individual worker grievance relating to non - employment, terms of employment or conditions of service to be heard by GRC
4. Aggrieved worker shall approach GRC within 1 year from the date of cause of action
5. GRC to complete proceedings within 30 days
6. If aggrieved by decision of GRC, or if grievance is not resolved within 30 days, the worker may file application to **Conciliation Officer through Trade Union** within 60 days
7. After the expiry of 45 days from date of application made to Conciliation Officer, the worker may approach the Industrial Tribunal directly - such application to be made within 90 days
8. Discharge, dismissal, retrenchment or termination of individual worker is deemed to be industrial dispute and worker can approach industrial tribunal within 2 years
9. No conciliation of an Industrial Dispute if it is raised after 2 years
10. **Reference System removed:** In respect of any other Industrial Dispute, on failure of conciliation, the worker can approach Industrial Tribunal
11. Labour Court replaced by Industrial Tribunal. Tribunal will consist of judicial & administrative member
12. Tribunal empowered to give interim relief to the worker

HIGHLIGHTS OF THE CODE ON INDUSTRIAL RELATIONS, 2020

TRADE UNION

1. For registration of TU, at least 7 members should apply. However, TU will be registered, only if they have 10% membership or 100 whichever is less
2. If there is only one registered Trade Union of workers, then the employer shall recognize the same as sole negotiating union
3. If there are more than one registered TU of workers, the TU with support of at least 51% will be recognized as sole negotiating union
4. If no TU has 51% or more, then negotiating council should be constituted. The Negotiating Council must have support of not less than 20% of the workers. Each such Negotiation Council shall have one representative
5. Minister cannot be office bearer of any Trade Union

STRIKES & LOCKOUTS

1. Prohibits strikes and lockouts in all industrial establishments:
 - a. without giving 14 days' notice (where notice is valid for 60 days)
 - b. during the pendency of conciliation proceedings before a conciliation officer
 - c. during pendency of the proceedings before the tribunal
 - d. during the pendency of arbitration or settlement or while an award is in operation

HIGHLIGHTS OF THE CODE ON INDUSTRIAL RELATIONS, 2020

STANDING ORDERS

1. Threshold of 300 or more workers for an industrial establishment to obtain certification of standing orders, if the standing order differs from the model standing order made by the Central Government
2. If the employer adopts model standing order of the Central Government with respect to the matters relevant to the employer's industrial establishment, then the model standing order would be deemed to be certified
3. Standing Orders provision is applicable to both Factory & Non-Factory establishments including IT/ITES/BPO, Hotels, Shops & Malls, etc
4. Domestic Enquiry – The disciplinary enquiry shall be completed ordinarily within a period of 90 days from the date of suspension of the worker
5. Worker entitled to 50% of wages for the first 90 days and 75% thereafter

CODE ON INDUSTRIAL RELATIONS, 2020

Departure From Existing Law

CURRENT LAW	IR CODE
Workman definition excludes person employed in supervisory capacity drawing wages above 10,000/- and managerial cadre	Worker definition includes person employed in supervisory capacity drawing wages upto 18,000/- and excludes managerial cadre
Chapter VB applies to 100 or more workmen	Chapter VB applies to 300 or more workers
Framework of Fixed term employment limited to written contract for a fixed period	Framework of Fixed Term Employment widened to include benefits similar to permanent worker and gratuity, if service rendered is of 1 year or more
Maximum Number of GRC members: 6	Maximum Number of GRC members: 10
Appropriate Government to refer disputes to Boards, Courts or Tribunal	Reference System removed, except in case of National Tribunal in select matters
Threshold of Applicability of Standing Orders : 100 or workmen	Threshold of Applicability of Standing Orders : 300 or more workers
No such provision	Concept of Negotiating Union and Negotiating Council
No such provision	Payment of 15 days' wages to Worker Reskilling Fund in case of retrenched worker

IMPLICATIONS OF NON-COMPLIANCE

OFFENCES AND PENALTIES - HIGHLIGHTS

Impact

Higher real-time Financial Implications and higher risk of imprisonment for repeat offenders

Under the new Labour Codes

FIRST INSTANCE

Fine of INR 50,000/- to INR 10,00,000/- (Compoundable)

SUBSEQUENT COMMISION

Fine of INR 3,00,000/- to INR 20,00,000/-
or imprisonment of up to 3 years (Non - Compoundable)



What Is The Path Forward?

Key Stakeholders Questions, Thoughts, Concerns





KEY FAQs

How much will my cost go up by?

This is based on your current wage structure

Will the codes increase prosecutions?

Yes. The Code on Wages allows any employee, union or inspector to file a complaint before the Criminal Court

Will this make India less lucrative for business?

No. The law brings about transparency and ease of compliance

Has the Compliance burden increased?

No. By allowing digitisation of all registers and reducing returns, the burden has decreased

Can I choose to defer the adoption of the code in my establishment?

No. There is no scope for any deferment once the codes become applicable



KEY FAQs

Do we have to change any policies or procedures or is it only wage structure?

Yes. The codes impact a majority of the policies, processes and wage structure of the organization and there will need to be aligned accordingly

Do IT/ITES establishments have to follow any safety measures?

Yes, all establishments are covered under the OSH code

Do I have to pay overtime to all my employees?

No. OT to be paid up to the level of Supervisors.

Will the codes push for union formation?

No, there is no substantive basis for this

How does this new code impact separation?

Payout to happen within 48 hours of separation. Reduced retrenchment cost

What do you have to do?

Revisit of Compensation Structure

Re - alignment of HR and Payroll Processes

Review of Contract Labour Engagement

Pre - emption and Mitigation of Risks

Timely Capacity Building of HR and
Compliance Resources

Updation of Changing Regulatory regime

LCAP: The BCPA Labour Code Alignment Program



LCAP's mission is to help organizations be Labour Code ready and become 100% legally compliant. It is an end-to-end program to help align organizations align to the new Labour Codes.

BCPA has currently partnered with several companies and helping them align their wages, policies and processes with the codes - focusing on the legal and HR aspects while keeping financial impact in mind.

About BCPA

Advising industry leaders and experts alike, BCP Associates is the go-to Advisory for Indian Labour Law. Our team of experts, under the leadership of Mr. B C Prabhakar, have been instrumental in interpreting the Codes and over the years, have been part of the Labour Law policy think tanks for State & Central Governments.

The firm has over 150 Multinational Companies as its clients and provides services to over 500 companies all over India.

A neutral, objective and independent Legal Advisory & Audit firm, BCPA is an off-shoot of B.C. Prabhakar, Advocate, a firm specializing in Labour and Employment laws over the last 60 years.

**PRACTICAL WISDOM
TRUSTED SOLUTIONS**

BCPA's Labour Code Alignment Program

Preparing you for 2021's New Labour Code Landscape

In a year of sweeping Labour Reforms, you need expert advice to align with the legal requirements of the Codes.

Every Organization no matter the size, will need to limit exposure and mitigate risk. Fundamental changes will be warranted across the Industry to be compliant with the law.

THE NEW CODE

Effective 1st April, 2021 (proposed)

- 1 CODE ON WAGES 2019
- 2 INDUSTRIAL RELATIONS CODE 2020
- 3 CODE ON SOCIAL SECURITY 2020
- 4 OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE 2020

KEY IMPACTS

-  Wage structure & payroll
-  HR Policies & Processes
-  Social Security Benefits
-  Compliance
-  Health & safety
-  Contract Labour
-  Industrial Relations

OUR SOLUTION

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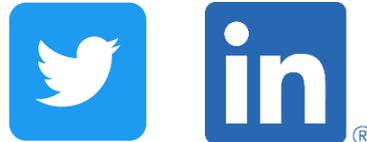
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Practical Wisdom, Trusted Solutions



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