Widening social security cover

Draft code on social security & welfare would expand benefits

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Through a Draft Labour Code on Social Security & Welfare, the government has drawn up a plan to consolidate 15 different social security statutes into a common piece of legislation.

Through this, the ministry of labour & employment hopes to bring workers of almost all categories — including casual workers, those earning below the minimum wage and those in the unorganised, part-time, seasonal and self-employed sectors — under a robust, defined and comprehensive social security net. The impact, when it takes a final shape, is likely to be felt by businesses in terms of additional costs of compliance, more so for small entities.

The concept of amalgamating and simplifying these laws are based on recommendations of the Second National Commission on Labour in 2002. Which had taken inspiration from the International Labour Organization's Social Security (Minimum Standards) Convention, 1952. The World Social Security Report, issued in 2010 by the ILO, reported India's dismal record on social security protection for citizens.

The Code envisages compulsory registration for all types of workers through an Aadhaar-based system, portable social security accounts (VIKAS) and a three-tier regulatory structure, with a National Social Security Council (headed by the Prime Minister), the Central Board and State/UT Boards.

Under the Code, contributions from workers and employers will be supplemented by government outlays to create a social security corpus in each state. This will be used to provide assorted benefits to workers such as pension, provident fund, accident compensation and group insurance, as well as sickness and maternity benefits.

"The idea is to amalgamate and rationalise various existing laws. These give every worker a right to the benefits," said a senior ministry official. To this effect, the Code even gives supremacy to social security liabilities as opposed to all other debts, in cases of company liquidation.

However, this could also mean an increased burden of contribution for the employer. Currently, employers contribute 8.33 per cent of basic pay to the Employees' Provident Fund (EPF, if the worker earns a monthly wage over Rs 15,000). If the employee is eligible for Employees State Insurance (ESI) (i.e if earning a monthly wage under Rs 21,000) the employer contribution is a further 4.75 per cent of wages.

Under the proposed Code, the employer contribution to social security goes up to 17.5 per cent of wages, with reduced rates for industries having cess obligations. The existing safety nets, such as EPF and ESI, will be subsumed in this.

“Rather than a single worker enrolling in four schemes, he can get all the benefit from a single body,” says Brijesh Upadhyay, general secretary of the Bharatiya Mazdoor Sangh.

The costs associated for compliance under the new system might increase for certain sectors, says a spokesperson from Confederation of Indian Industry (CII). “How the added expense is viewed by companies depends on their outlook on comprehensive social security.”

One of the biggest issues the Code might resolve is the ongoing ambiguity on payment of social security contributions on wage components. “The definition of ‘wages’ in the Code is more specific as compared to the social security laws enacted just after India’s independence,” says Nishanth Ravindran, member, employment & HR practice, Nishith Desai Associates.

Apart from contributions towards the social security fund, there is a requirement to make a two per cent contribution for gratuity benefits under the Code. “As of now, barring the state of Andhra Pradesh, there is no obligation to contribute gratuity payouts to any government body,” says Atul Gupta, partner, Trilegal. This shifts the payment of gratuity from an employer-based model to a fund-based approach and allows for a more comprehensive social security structure.

The Code proposes to shift the liability of gratuity payouts from contractors to principal employers of contract labourers. This move will enhance the latter’s social security benefits but could mean additional payouts and compliance burden for sectors like automobiles and construction.

The greatest opposition to the Code might come from small businesses, previously exempt from many social security contributions. “Large corporate firms already have an organised social security structure. It’s the smaller firms that employ up to nine workers each which are likely to oppose the Code,” says a senior NITI Aayog official.

According to Gupta, the shift from having to make multiple registrations to comply under the existing laws might simplify compliance related issues for corporates after implementation. But, the inclusion of self-employed professionals, Hindu Undivided Familiess and the unorganised sector, and the necessity of compulsory registration, might complicate matters. Issues with implementation of the Aadhaar-based registration process and its underlying data privacy concerns are also areas of concern.

However, experts still say this Code has received a more favourable response than the previously drafted Industrial Relations Code and Wage Code. As with many such attempts to modernise India's complex system of labour laws, when this new system sees the light of day is difficult to gauge.

What works for the employee

- A worker earlier enrolling in four separate schemes can now get all the benefits from a single body
- Social security contributions will be supplemented by government outlays
- Payment of gratuity from an employer-based model to a fund-based approach, creating more comprehensive social security structure
- The Code gives supremacy to social security liabilities, as opposed to other debts in cases of liquidation

Impact on business

- Increased social security payouts
- Higher compliance costs, especially for small business
- Additional payouts in gratuity contributions for contract workers