

# India Enacts Major Employment Law Reforms

**By Lavanga V. Wijekoon, Hinna Upal, Vikram Shroff\* and Archita Mohapatra\*  
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In September 2020, the Indian legislature passed multiple laws that, taken together, constitute the most significant reforms of employment law in decades. Broadly speaking, these reforms expand the coverage of health and safety, social security, and wage laws to new categories of businesses and workers—including, in some cases, “gig workers.” They also create new obligations with regard to industrial relations, such as requiring employers to allow and recognize a “negotiating union” in covered businesses.

These laws do not yet have an effective date, but it is likely that the reforms will become effective soon. Businesses operating in India should therefore prepare for these significant changes.

## **The Occupational Safety, Health and Working Conditions Code, 2020**

This law consolidates and amends 13 federal labor laws regulating occupational safety, health and working conditions of employees.<sup>1</sup> It applies to businesses employing at least 10 workers.

The law will require such businesses to register in a centralized database, replacing the current system that requires multiple registrations under separate laws with differing headcount thresholds. This harmonization of standards will extend certain employee protections – including hours of work, leave entitlements, overtime hours and corresponding pay, night shifts, and weekly holidays – to a broader range of businesses.

## **The Industrial Relations Code, 2020**

This law consolidates and amends three federal labor laws<sup>2</sup> relating to trade unions and settlement of industrial disputes. With no headcount threshold for applicability, this law appears to be drafted so broadly as to cover all employers except those specifically excluded.

Importantly, this law requires employers to allow for and recognize a “negotiating union” as a collective representative of their workers.

The law also forms a “worker re-skilling fund” for retrenched workers whose employment has been terminated. The employer is required to contribute into this new fund an amount equivalent to 15 days’ wages last drawn by each retrenched worker. Payment must be made immediately before the retrenchment so that the employee may benefit from the fund within 45 days of termination. The fund will also receive contributions from “other sources” as may be prescribed by the government. The law is currently silent on what exactly constitutes “re-skilling.”

This law requires select businesses, such as factories having at least 300 workers in the preceding 12 months, to obtain prior permission from the labor authorities in order to retrench any worker. This actually constitutes an easing of the current legal regime, which imposes this permit requirement on businesses with at least 100 employees.<sup>3</sup>

### **The Code on Social Security, 2020**

This law amends and consolidates nine current federal labor laws<sup>4</sup> relating to social security, with the goal of extending social security coverage to all workers, including those not in “traditional” employment relationships, such as “gig workers.” Thus, many workers previously designated as “independent contractors” will now be entitled to social security benefits relating to life and disability insurance, accident insurance, health and maternity benefits, old age and child care (crèche).

While permanent employees currently are eligible for statutory gratuity payments upon completion of five years of “continuous service,” this law expands gratuity benefits to categories of employees not previously covered, including, for example, employees on fixed-term contracts. In the case of an employee who is employed on a fixed-term basis, the employer shall pay gratuity on a pro-rata basis.

### **The Code on Wages, 2019**

Passed by the legislature in August 2019, but awaiting effective date notification alongside the three laws discussed above, this Code on Wages consolidates four federal laws relating to wages and bonus payments.<sup>5</sup> Whereas some current laws apply only to certain industries and types of employees (such as factory workers), this law will extend these wage protections to all employees. Prominently, this reform creates a minimum wage for all employees, which the government will determine taking into account the minimum living standards of workers and depending on such factors as geographic location. This law also allows for payment of wages through electronic means and mandates that wage periods for employees may not exceed one month.

## Conclusion

In preparation for these four new laws becoming effective, businesses with employees in India should scrutinize their employment policies and practices and identify areas that will need change in order to comply.

Such preparation is particularly important because one of the government's stated purposes in enacting these reforms is to strengthen its enforcement of employment protections. For example, the Code of Wages specifically creates new positions of "Inspectors cum facilitators" empowered to inspect employer facilities for compliance with wage protections. Similarly, the Occupational Safety, Health and Working Conditions Code and Code on Social Security both create centralized registrations that will facilitate the federal government's inspections and enforcement of these laws. Thus, businesses out of compliance with these significant new reforms may be subject to penalties and enhanced governmental scrutiny.

Littler is monitoring these reforms as they develop and will report on any significant developments.

*\* Vikram Shroff is a partner, and Archita Mohapatra is an associate, at Nishith Desai Associates, a law firm based in Mumbai, India.*

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