

HR Law Hotline

December 14, 2020

INDIA CONSOLIDATES AND CODIFIES ITS NATIONAL-LEVEL LABOUR LAWS

- India has enacted three new codes on employment conditions, social security and occupational health, safety and working conditions
- The Code on Wages was previously enacted in 2019
- The codes consolidate, subsume and replace 29 national-level labour laws
- The codes introduce several changes to the labour laws and impact both employers and employees
- *The codes are yet to be made effective*
- Draft rules corresponding to each of the 4 codes have been released by Ministry of Labour and Employment for public comments

India, one of the most labour-intensive countries of the world, has finally taken a leap of faith and codified 29 of its national-level labour laws into 4 codes. This is a bold and progressive move given that several labour laws were almost 70-80 years old and enacted largely in the industrial era. Indian economy has changed considerably since, and finally it's the time for our labour laws to change. The efforts to codify our labour laws had originally started in early 2000 and finally have seen the light of the day.

The Code on Wages, 2019¹ was notified² by the government in 2019. Please see our legal alert [here](#).

The remaining 3 codes, being the Industrial Relations Code, 2020, the Code on Social Security, 2020 and the Occupational Safety, Health and Working Conditions Code, 2020, were enacted on September 29, 2020. The effective date of the codes is yet to be notified in order for them to come into force.

While the codification exercise was primarily focused on consolidation of the labour laws relating to employment conditions, social security, wages and occupational health and safety and working conditions the exercise has, in this process, also led to:

- expansion of the ambit and applicability of some laws
- removal of multiple definitions and authorities
- transformation of obsolete laws
- ease of compliance
- rationalization of penalties and increased focus on implementation of the law.

A closer look at the codes reveals that while consolidating the national level laws, several new changes have been introduced which are likely to have an impact on employers in India.

A. INDUSTRIAL RELATIONS CODE, 2020³

The Industrial Relations Code, 2020 (**IR Code**) seeks to consolidate and amend the laws relating to trade unions, conditions of employment in industrial establishment or undertaking, investigation and settlement of industrial disputes.

It repeals and replaces the following three national labour laws:

- The Industrial Disputes Act, 1947
- The Trade Unions Act, 1926
- The Industrial Employment (Standing Orders) Act, 1946

The draft central rules to the IR Code, being the Industrial Relation (Central) Rules, 2020 have been released for public comments on October 29, 2020.

B. CODE ON SOCIAL SECURITY, 2020⁴

The Code on Social Security, 2020 (**SS Code**) seeks to amend and consolidate the laws relating to social security with the goal to extend social security to all employees and workers either in the organised or unorganised sector.

It repeals and replaces the following nine national labour laws:

- The Employees' Provident Fund and Miscellaneous Provisions Act, 1952
- The Employees' State Insurance Act, 1948
- The Employees' Compensation Act, 1923
- The Maternity Benefits Act, 1961

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7. The Payment of Gratuity Act, 1972

8. The Unorganized Workers' Social Security Act, 2008

9. The Building and Other Construction Workers' Welfare Cess Act, 1996

The draft central rules to the SS Code, being the Code on Social Security (Central) Rules, 2020 have been released for public comments on November 13, 2020.

C. OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020⁵

The Occupational Safety, Health and Working Conditions Code, 2020 (**OSH Code**) seeks to consolidate and amend the laws regulating the occupational safety, health and working conditions of the persons employed in an establishment.

It repeals and replaces thirteen national labour law, as follows:

1. The Factories Act, 1948
2. The Plantations Labour Act, 1951
3. The Mines Act, 1952
4. The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955
5. The Working Journalists (Fixation of Rates of Wages) Act, 1958
6. The Motor Transport Workers Act, 1961
7. The Beedi and Cigar Workers (Conditions of Employment Act) 1966
8. The Contract Labour (Regulation and Abolition) Act, 1970
9. The Sales Promotion Employees (Conditions of Service) Act, 1976
10. The Inter-state Migrant Workmen (Regulation of Employment) Act, 1981
11. The Cine-Workers and Cinema Theatre-Workers (Regulation of Employment) Act, 1981
12. The Dock-Workers (Safety, Health and Welfare) Act, 1986
13. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996

The draft rules to the OSH Code, being the Occupational Safety, Health and Working Conditions (Central) Rules, 2020 have been released for public comments on November 19, 2020.

While the government intends to implement all the four labour codes by April 2021⁶, each of the codes will need to have corresponding rules that will need to be finalized and notified based on public comments received. Additionally, state governments are also likely to notify separate rules for implementation of the codes, excluding possibly the SS Code.

As the changes are multifarious in nature, it may be possible that the government implements the codes and/or the provisions thereunder in a phase-wise manner, as seen in case of Companies Act, 2013.

ANALYSIS

The look and feel of the codes may appear more as an act of consolidation rather than reform. However, the codes introduce several changes that employers in almost all industry sectors, location and size will need to closely understand and implement.

1. The labour codes introduce employer-centric aspects such as:
 - a. single registration and licensing provision
 - b. legality of engaging contract workers in core activities in certain cases
 - c. increasing threshold for applicability of certain laws for factories and for engaging contract workers
 - d. increasing worker threshold for applicability of standing orders and government approval for retrenchment (termination) of workers
 - e. disqualification for receiving statutory bonus in case of dismissal from service for conviction for sexual harassment
 - f. allowing maintenance of registers in electronic form etc.
 - g. removal of imprisonment (decriminalization) as penalty in certain offences
 - h. providing limitation period for provident fund non-compliances
 - i. transferring labour courts into industrial tribunals and introducing inspector-cum-facilitator concept

These should certainly have a long-term positive impact on the industry and should contribute towards ease of doing business, an important focus of the current government.

2. The labour codes also contain some employee-centric aspects such as:
 - a. revised definition of wages leading to higher minimum wages, statutory bonus, provident fund, retrenchment compensation and gratuity
 - b. reduction in daily working hour limit in certain cases
 - c. grant of general permission for engaging women with employee consent between 7 pm - 6 am
 - d. need for consent for overtime work
 - e. provision for leave encashment on an annual basis
 - f. mandatory provision of same employee benefits and pro-rata gratuity payments to fixed-term employees
 - g. payment of wages by the end of the next day in case of employee resignation

The government seems to have made a conscious effort towards balancing the rights of employees' *vis à vis* those of employers.

3. Certain new and interesting concepts have been introduced including provisions in relation to fixed term employees, worker reskilling fund, social security for gig workers and platform workers, definition of core activity for engaging contract labour, recognition of trade union, notice period for strikes, compounding of certain offences, etc.

4. The social welfare measures such as worker reskilling fund and social security for gig workers, platform workers and unorganized workers proposed in the codes are innovative and commendable - if implemented pragmatically, it can have scope to immensely benefit India's working-class demographic.

5. Practical functionality and implementation of certain provisions such as toll-free helpline, electronic database for migrant workers and related compliance measures may however, remain subject to the proactivity of the policy makers in directing the information received through such avenues to proper channels.

While the effective date of implementation of the new labour codes is not yet certain, employers are advised to assess the impact of the changes and be ready to implement the codes once they are made effective, including legal, financial, accounting, human resources, workforce management, compensation & benefits, policies & processes and compliance requirements.

We take this opportunity to congratulate the Indian government for their stupendous efforts towards codification of Indian labour laws. We sincerely hope the codes fulfil the promise of ease doing business in India and at the same time ensure benefits and protection for the workers, thereby ensuring that the Indian economy succeeds and thrives in a post-Covid world.

HR Law Team

¹ <http://egazette.nic.in/WriteReadData/2019/210356.pdf>

² Notified in the government official gazette on August 8, 2019. Effective date of applicability yet to be notified.

³ The Industrial Relations Code, 2020 was passed in the Lok Sabha on September 22, 2020. It was subsequently passed by the Rajya Sabha on September 23, 2020, thereafter received Presidential assent on September 28, 2020. The Code was published in the government official gazette on September 29, 2020.

⁴ The Code on Social Security, 2020 was passed by Lok Sabha on September 22, 2020. It was subsequently passed by the Rajya Sabha on September 23, 2020, thereafter received Presidential assent on September 28, 2020. It was published in the government official gazette on September 29, 2020.

⁵ The Occupational Safety, Health and Working Conditions Code, 2020 was passed by the Lok Sabha on September 19, 2020. It was subsequently passed by the Rajya Sabha on September 22, 2020 thereafter received Presidential assent on September 28, 2020. It was published in the government official gazette on September 29, 2020.

⁶ <https://www.livemint.com/news/india/government-set-to-implement-four-new-labour-codes-by-april-11602727694495.html>

DISCLAIMER

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