

Interesting News
in this edition

LABOUR CODE
SPECIAL - 1



**Do not compete....Neither Life nor Business nor Career
Is Competition.....
Create your own Value.... "Be that YOU"**

A Webinar on Labour Codes...Soon....

Where the definition
across 4 Codes are
similar for Wages,
Employee, Worker, etc....

The Definition for
Factory is not same in
OSH & WC Code
(Section 2(1)(w) and
Social Security Code
(Section 2(32))

But for the purpose of
Registration the
threshold remains at 10,
as per OSH & WC Code
(Section 2(1) (v) (iii))

Highlights

Entire Newsletter is
dedicated to News
about the Labour
Code's

Sample
Computation of
Wages as per the
Definition was tried
to..... refer P.3

3 Labor Codes Passed in Parliament

In a Historic Labour
reform movement, the
three Labour Code's

1. IR Code
2. Social Security Code
3. OSH & WC Code

were cleared by both
the house of
Parliament and await
Hon'ble President's
assent before being
gazetted notified.

It is still a long way for
the legislation to get
implemented with a
notification of "Rules or
Regulations or
Schemes" by
respective
Governments, as the
Labour is in the
concurrent list of the
Constitution.

The enabling clauses
in the Codes makes it
clear that the
Government must
bring about a
notification to put the
respective Codes into
effect, where it can be
individual provisions
..... for eg. Specific
Chapters in Social

Security Code....PF or
ESI.....

The Code's are drafted
towards Governments'
vision of "ease of
doing business", in
India.

The Labour Code's
does favour the
employer in the
following areas:

1. Head count
threshold
applicability for
establishments has
been increased to
300 (from 100) for
provisions covering
Retrenchment, Lay-
offs and
Certification of
Standing Orders
2. Threshold
applicability of any
manufacturing
facility as a Factory
is also enhanced to
20 with aid of
power and to 40
without aid of
power
3. A provision which
moots an
Organization
having offices
across India, can

- obtain a single
license, for
Contract Labour
4. Contract Labour
threshold
applicability is
enhanced to 50
(few had already
enhanced to this
or more than this)
5. Organizations can
voluntary apply for
ESI code, if their
head count is less
than 10, which was
not allowed
earlier.
6. Provisions of ESI will
mandatorily be
applicable to
establishments
which carry out
hazardous process
7. In case of multiple
trade unions (TU),
the TU with support
of at least 51% of
workers on the
muster roll of that
establishment will
be recognised as
the sole
negotiating union
by the employer.
If there is only one
TU, then they are
recognized to
negotiate with the
employer.

If any employee violates any provisions of the **THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020 (Sec 106)**

He or She will Fined which may extend upto **Rs.10,000.00**

FIRST OF ITS KIND FINE FOR EMPLOYEE

Fixed Term Employee

- Treated same as Permanent Employee with equal wages, perks and benefits
- Gratuity payable even if the services are less than 5 years (but 1 year or more)
- No notice for termination is required
- No retrenchment compensation required where the employee was separated on the expiry of the term

OSH & WC Code

Where there is a **DEATH** in a **WORK PREMISES (Accident or Dangerous Occurrences)** while imposing the fine, the court may direct that a portion of the fine, which shall not be less than fifty per cent. thereof, shall be given as compensation to the victim or to the legal heirs of the victim, in the case of his death.

OSH & WC Code is applicable to Shops and Commercial Establishments also...

As the Chapters covered under the Code.....includes, Contract Labour, Inter State Migrant Worker, Building and Other Construction Workers, Motor Transport workers, Journalists and Newspaper Employees, (including broadcast journalism), Cine workers, Bide and Cigar workers, Plantation and Mine workers.....

The Definition of Wages across ALL 4 CODE's are Similar

Wages Means:

All Remuneration, whether by way of salaries, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment and, **includes**

- Basic pay
- Dearness allowance and
- Retaining allowance, if any

Exclusions (does not include):

Bonus	Value of house accommodation	Employer contribution to any pension or PF
Conveyance allowance	Sum paid to defray special expenses	HRA
Award or settlement	OT	Commission
Gratuity	Retrenchment Compensation	

- If payments made **under exclusions exceeds one-half**, or such other percent (as notified by appropriate government) **of all the remuneration** calculated.....the **amount shall be deemed as remuneration** and shall be accordingly **added in wages** under this clause
- **Any remuneration is payable in kind by his employer, the value of such remuneration does not exceed 15% of the total wages payable to him, shall be deemed to form part of the wages of such employee**

Any component that is fixed or guaranteed in nature is wages. Anything which is conditional, contingent or discretionary is not. Where employer contribution, expense reimbursements and end of service payment are excluded

Definition of Wages being same across as Labour Code's, find below a sample working of Compensation Structure, as per the definition. It will have THREE parts..... (1) Wages – all remuneration (2) Components which does not include – exclusions from wages (3) Total Remuneration.....

<u>Structure</u>	<u>Scenario – 1</u>	<u>Scenario – 2</u>	<u>Scenario – 3</u>	<u>Scenario – 4</u>
Wages (1)				
Basic	15000	18000	50000	30000
DA	6000	7400	0	0
Retaining Allowance	0	0	0	0
Sub Total	21,000	25,400	50,000	30,000
Others (Exclusions) (2)				
HRA	6000	9000	25000	25000
Conveyance Allowance	2000	2000	8000	5000
Bonus (monthly)	583	583	0	0
PF Employer Contribution	2730	3300	6500	3900
Sales commission	0	0	10000	3000
Overtime	3000	4000	0	5000
Sub Total	14,313	18,883	49,500	41,900
GRAND TOTAL (3)	35,313	44,283	99,500	71,900
50% of Grand Total (3)	17657	22142	49750	35950
Exclusions (2) exceeds one half of (3)	NO (14,313 does not exceed 17,657)	NO (18,883 does not exceed 22,142)	NO (18,883 does not exceed 22,142)	YES 41900 minus 35950
ADD to Wages				5950***
Remuneration of kind (Meal, Driver/Maid servant salary, Petrol, Telephone, etc)	0	0	2000 + 3000 + 3000 + 2000 = Rs.10,000	2000 + 0 + 2000 + 2000 = Rs.6,000
15% of Grand Total			14925	10785
ADD to Wages (as it is less than 15%)	0	0	10,000***	6,000***

******* Where such amount is added to Wages, it may have direct impact on PF, Gratuity (payment or actuarial valuation) or any other monetary instrument which is based on the Basic Wages..... It may not have any impact on PF if the Contribution is considered on RESTRICTED TO PF CEILING WAGES.

Other Observations:

- If Employer is paying compensations in the name of
 - Other Allowance or
 - Special Allowance or
 - In any name other than explained in EXCLUSIONS, it may be considered as Wages
- Currently the Employer Contribution towards PF, is considered only in CTC based compensation structures
- Employer contribution of ESIC and LWF are not considered in this definition
- The above computation will vary, EACH MONTH, when there is a difference in BONUS PAID, OVERTIME, SALES COMMISSION, etc.

Figures in the Computation is for Illustrative purpose only

Penal Provisions under Code on OSH & WC

<u>Sl. No.</u>	<u>Provisions</u>	<u>Imprisonment / Fine</u>	<u>Section</u>
1	General penalty for Offences	Not less than Rs.2,00,000, but may extend upto Rs.3,00,000	94
2	Causing Obstruction to Chief Inspector / Inspector – cum-Facilitator	1. Punishment for a term which may extend upto 3 months or 2. A Fine which may extend upto Rs.1,00,000 or 3. Both <u>For repeat conviction it is</u> 1. Punishment for a term which may extend upto 6 months or 2. A Fine which may not be less than Rs.1,00,000 and may extend upto Rs.2,00,000 or 3. Both	95
3	Non-Maintenance of Registers, Record and non-filing of Returns	<ul style="list-style-type: none"> • Penalty which shall not be less than Rs.50,000 but which may extend to Rs.1,00,000 • For repeat conviction it is a Penalty which is not less than Rs.50,00 and may extend upto Rs.2,00,000 	96
4	Contravention of any Provisions	Penalty which shall not be less than Rs.50,000 but which may extend to Rs.1,00,000 <u>For repeat conviction it is</u> 1. Punishment for a term which may extend upto 3 months or 2. A Fine which may extend upto Rs.2,00,000 or 3. Both	97
5	Falsification of Records	1. Punishment for a term which may extend upto 3 months or 2. A Fine which may extend upto Rs.1,00,000 or 3. Both <u>For repeat conviction it is</u> 1. Punishment for a term which may extend upto 6 months or 2. A Fine which may not be less than Rs.1,00,000 and may extend upto Rs.2,00,000 or 3. Both	98
6	Omission to furnish Plans	Penalty of not less than Rs.1 Lakh, which may extend upto Rs.2 Lakhs	99
7	Disclosure of information, contrary to provisions	1. Punishment for a term which may extend upto 3 months or 2. A Fine which may extend upto Rs.1,00,000 or 3. Both	100
8	Wrongfully disclosing results of analysis.	1. Punishment for a term which may extend upto 6 months or 2. A Fine which may not be less than Rs.50,000 3. Both	101
9	Contravention of Hazardous Process	1. Punishment for a term which may extend upto 2 years or 2. A Fine which may extend upto Rs.5,00,000 <u>For repeat conviction it is</u> 1. Punishment for a term which may extend upto 3 years or 2. A Fine which may extend upto Rs.25,00,000 or 3. Both	102

10	Contravention of Safety provisions	<p>Death :</p> <ol style="list-style-type: none"> 1. Punishment for a term which may extend upto 2 years or 2. A Fine which may extend upto Rs.5,00,000 3. Both <p>Serious Bodily Injury :</p> <ol style="list-style-type: none"> 1. Punishment for a term which may extend upto 1 year or 2. A Fine which may extend upto Rs.2,00,000 ~ Rs.4,00,000 3. Both <p><u>For repeat conviction it is DOUBLE PUNISHMENT</u></p>	103
11	Contravention of Hazardous Special provisions	<ol style="list-style-type: none"> 1. Punishment for a term which may extend upto 2 years or 2. A Fine which may extend upto Rs.5,00,000 	104
12	Fails to appoint Manager to Factory	<ol style="list-style-type: none"> 1. Punishment for a term which may extend upto 3 months or 2. A Fine which may extend upto Rs.1,00,000 or 3. Both 	105
<p>Where an employee is convicted of an offence punishable, the employer of the establishment shall not be deemed to be guilty of an offence in respect of that contravention unless it is proved that he failed to take all reasonable measures for its prevention.</p>			

RELAY AND SHIFT DEFINED

"Relay" means a set of two or more persons carrying out the same kind of work during different periods of the day and each such period is called a "Shift"

- In few States of India, HRA is part of Minimum Wages, which will change after implementation of Codes..... Which have impact on the PF Contribution which is being considered (and PF Deducted on such HRA) now as Basic wages.....
- Besides, Once Codes are implemented, HRA is not to be considered for PF, where many establishments are currently considering if the Gross wages of few employees are less than 15,000 (PF ceiling).

If Employer FAILS or NEGLECTS to Insure the Eligible Employee under ESI on appointment,

And as a result the employee is disentitled to ESI Benefits (including Disablement benefit or Dependent Benefit), Then,

The ESIC Corporation will pay to the employee benefit at such rate to which he is entitled or would have been entitled if the failure or neglect would not have occurred, and the Corporation shall be entitled to recover from the employer

(Where contribution may be in Hundreds or Thousands, but Benefits may be in Lakhs too.....)..... Employer Beware...

- Once Social Security Code and Regulations / Scheme on ESI Chapter is notified, then establishments can apply and obtain Code Voluntarily, even if the Threshold count is less than 10 (which is not allowed now).
- Where a Manufacturing Facility is Hazardous, ESI coverage is MANDATORY irrespective of Threshold Head Count

AADHAAR Mandatory for

- Registration of Member (PF/Pension/EDLI)
- ESI Insurance
- Benefit under Maternity
- Benefit under Sickness benefit
- Benefit under Gratuity
- Availing Services under Career Centre

It is mandatory for a FOREIGNER EMPLOYEE also