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Code on Wages, 2019: 3rd Handholding Release

The Code on Wages, 2019 subsumes Four Labour Laws, i.e. Payment Of Wages Act 1936, Minimum Wages Act 1948, Payment Of Bonus Act 1965 And Equal Remuneration Act 1976. This Code contains some important provisions which have far reaching implications. These provisions are discussed herein.

WAGE CODE: IMPORTANT ISSUES

1. Appropriate Govt under Section 2(d)-

- A. For Central Govt undertakings & PSUs – The appropriate Govt would be Central Govt.
- B. For other Undertakings registered in 1 State – The appropriate Govt would be State Govt
- C. For Multi State Registered Undertakings – The appropriate Govt would be Central Govt.

TC Comments: Since Labour is a concurrent list subject, it is generally the confusion whether for the purpose of compliance an Organization would be accountable to 'Central' or 'State' Government. The term appropriate Government and the Codes clarify on the said point

2. Employee under Section 2k means –

- A. Other than Apprentice
- B. Employed to do Skilled, semi-skilled, unskilled job
- C. Any type of Work including managerial or administrative

3. Worker under Section 2z means –

- A. Other than Apprentice
- B. Employed to do Skilled, semi-skilled, unskilled job

- C. Technical, operational, supervisory or clerical job
- D. Not doing managerial or administrative job
- E. Doing Supervisory job and not drawing more than Rs.15000 per month .

TC Comments: Under Present Labour Laws, there is no clear distinction between Workmen and employees and sometimes it is seen that managerial staff also litigate with the employer organization contending that they are 'workmen'. So, under Wage Code, Employees and Workers are distinguished. Now, Supervisory staff who are in managerial and administrative role will not be classified as 'workers'. Also supervisory staff who are drawing more than Rs.15000 per month will not be classified as 'worker'.

4A. Wages have been defined u/s 2y of The Wage Code. The same has been analyzed as under –

- Inclusions – Basic, Dearness Allowance & Retaining allowance
- Exclusions - Bonus, House accommodation, PF (plus Interest), Conveyance Allowance, HRA, Sum paid, Award, Overtime, Commission
- Additional - Gratuity & Retrenchment

Provisio – Exclusions should be maximum 50%

Explanation – Payment in kind upto 15% of “Total Wages” shall be deemed to part of Wages.

4B. Deductions Sec 18(3) –

- A. Cannot be more than 50% of the total Wages.

TC Comments: The following illustration would provide a clearer picture on this aspect along with the financial impact on the HR Cost for the Employer and the Cash in hand for the employee.

Particulars	Current PF	Prospective PF
Basic	5,000	5,000
Other allowances	10,000	10,000
Total Salary	15,000	15,000
PF Contribution		
Employer	600	750
Employee	600	750
Total Deductions	1,200	1,500
Cash In Hand	14,400	14,250
% reduction in Cash In Hand		-1%
CTC for Employer	15,600	15,750
% increase in CTC for Employer		1%

5. Employer includes –

- A. Manager of a factory
- B. A person who has ultimate control like MD
- C. Contractor
- D. Legal representative of a deceased employer

Sec 43 requires that employer shall be responsible to pay all amounts due.

TC Comments: Employer would thus mean the owner so to say including the MD of the Company. It is pertinent to note that incase of 'every violation' for non-payment of wages,

the employer would be liable to a penalty and for repeated offence prosecution proceedings may be initiated also.

6. Minimum Rate under Sec 6 & Sec 9 –

- A. Central Govt will notify “Floor Rate”
- B. State Govt can go above Floor Rate

TC Comments: This is an important provision whereby the floor rate for wages would be decided by The Central Government and State Governments may declare a higher rate but not a lower floor rate of wages.

7. Overtime Rate (Sec 14 & 13) –

- A. Double the normal rate
- B. However, there should be an off day for every 7 day period

TC Comments: Important provision is that in every period of 7 days, the employer is duty bound to provide a weekly off. Even on payment of the ‘overtime rate’ this weekly off is a statutory liability of the employer.

8. Time Limit for Wages (Sec 17) –

- A. 7th of the month -
- B. In case of removed/dismissed/Retrenched employee – 2 working days

TC Comments: The time limit of 2 working days for payment of wages in case of removed/dismissed/Retrenched employee would be difficult to comply with.

9. Facilitator Cum Inspector (Sec 51) –

- A. Advise employers & Workers
- B. Inspect, require documents, examine people, search, etc
- C. His activities will be subject to IPC/CrPC

TC Comments: For ease of doing business, it is important that the Inspectors take informed judgements and facilitate business.

10. Penalties & Offenses –

- A. Pays less 1st Time – Fine Rs.50,000
- B. Pays less next Time – Fine Rs.1,00,000 and prosecution
- C. Commits any default 1st Time – Fine Rs.20,000
- D. Commits any default next Time – Fine Rs.40,000 and prosecution
- E. Non maintenance of records – Rs.10000

TC Comments: Penalties are substantial in the Current Wage Code. However, prosecution provisions are less stringent.

WAGE CODE – RECORDS, RETURNS & NOTICES – SECTION 50

The below mentioned records are required to be maintained by the Employer:

1. Employee Register
2. Display on notice board –
 - A. Category wise wage rate
 - B. Wage period
 - C. Date & time of payment of wages
 - D. Name& Address of Facilitator Cum Inspector
3. Wage Slips
4. Proof of payment Noticing

STAGES IN IMPLEMENTATION MODULE OF NEW WAGE CODE

To achieve seamless implementation of these Codes, they have to be done over a period of time, possibly 3months – 6 months. These stages should be further subdivided into phases with specific targets per phase. following are the stages along with different phases of Implementation of Labour Code Module:

STAGE I:

PHASE – I: Initial Training & Impact Analysis - This would involve calculating the “Impact” of the change in cost to the company and the payment in the hands of the employees.

PHASE – II: Framing of Broad Guidelines – The broad guidelines as far as changing contracts and processes should be framed.

PHASE – III: ERP Change Management – The ERP Vendors would be required to be handheld to build in the legal aspects of these labour codes into their ERPs.

PHASE – IV: Going Live/ Revalidation – This would require that once the Labour Codes go live, the systems be checked and revalidated for assurance.

STAGE II: POST GOING LIVE MAINTAINANCE – The First 3 returns/ sets of compliances would be critical and the processes regarding the same needs to be reviewed. Also, there would be up to ten no. of changes in the first few months which need to be continuously monitored.

TC Comments: For Better Understanding of the provisions, readers may view the video embedded below.

THE VIDEO FOR THE ABOVE ARTICLE CAN BE ACCESSED AT THE FOLLOWING LINK

LINK FOR THE VIDEO - <https://youtu.be/0POkoDVRglk>

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