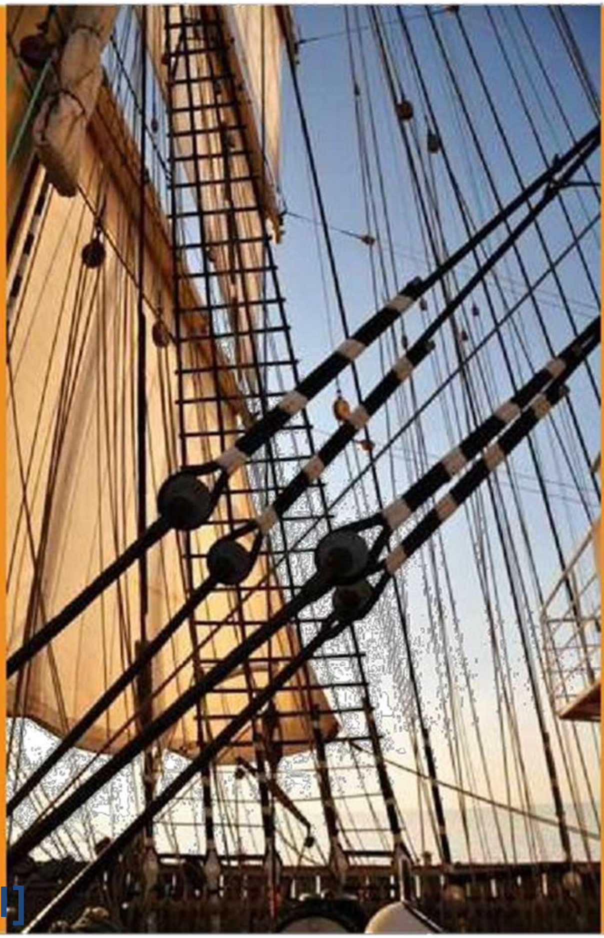
Implementation of Labour Codes



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[MUMBAI BANGALORE KOLKATA DELHI]

Why New Labour Codes

Economic Survey – States (Like Rajasthan from 2015) which are more flexible with Labour Laws are 25% more productive than their Counterparts

1. Only 10% of Entire Businesses in the Country is Organized

2. They are burdened with Compliance with almost 40 Central Labour Laws and 100 State Labour Laws

3. Labour Code looks to –

A. Simplify Labour Regulations

B. Balance between Employment Growth and Protection of Employee Rights

Why New Labour Codes..

Employers Requirement –

1. Centralized Registration
2. Relief from Inspector Raj
3. Flexibility

Employees Requirement –

1. Inspector's Duty Compromised
2. Labour Dept. Capability to implement

Government's Requirement –

1. Help Employers hire more
2. Cover more workforce – Unorganized workforce
3. EODB for Foreign Investors

New Labour Codes - Principles for Governance

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1. These Laws prescribe the 'bare minimum'

2. Contract Vs Status

3. Welfare Statutes interpreted with Equity & in view of principles of Justice

4. Acts not subsumed-

1. Professional Tax Acts of States
2. Shops & Establishments Acts
3. Specialized PF Laws for seamen and workers in coal mines
4. Sexual Harassment of Women at Workplace
5. Apprentices Act
6. Bonded Labour Act

New Codes

1. The Code on Wages – Consolidating 4 Laws - **Gazetted 8/8/2019**
2. The Industrial Relations Code – Consolidating 3 Laws - **Gazetted 29/9/2020**
3. The Code on Social Security – Consolidating 9 Laws - **Gazetted 29/9/2020**
4. The Occupational Safety, health and working Conditions Code – Consolidating 13 Laws - **Gazetted 29/9/2020**

They will become effective on the date notified – Possibly October 2021

Rule making provision has been considerably widened. Hence many provisions which were in the Act will now be governed through Rules

New Codes

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Sl. No.	Code on Wages 2019	Industrial Relations Code 2020	Social Security Code 2020	OSHW Conditions Code 2020
1	**Payment of Wages Act 1936**	Trade Unions Act 1926	Employees' Compensation Act 1923	**The Factories Act, 1948;**
2	**Minimum Wages Act 1948**	Industrial Employment (Standing Orders) Act 1946	**Employees' State Insurance Act 1948**	The Plantations Labour Act, 1951;
3	**Payment of Bonus Act 1965**	Industrial Disputes Act 1947	**Employees' Provident Fund & Misc Provisions Act 1952**	The Mines Act, 1952;
4	Equal Remuneration Act 1976		Employment ExChanges (Compulsory Notification of Vacancies) Act 1959	The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955;
5			Maternity Benefit Act 1961	The Working Journalists (Fixation of Rates of Wages) Act, 1958;
6			**Payment of Gratuity Act 1972**	The Motor Transport Workers Act, 1961;
7			Cine-Workers Welfare Fund Act 1981	The Beedi and Cigar Workers (Conditions of Employment) Act, 1966; and
8			Building & Other Construction Workers' Welfare Cess Act 1996	**The Contract Labour (Regulation and Abolition) Act, 1970;**
9			Unorganised Workers' Social Security Act 2008	The Sales Promotion Employees (Condition of Service) Act, 1976;
10				The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979;
11				The Cine Workers and Cinema Theatre Workers 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;

Applicability

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Laws	Minimum No:of Employees
PF	20
ESIC	10
Gratuity	10
Maternity Benefit	10
Social Security & Cess in respect of building and other construction workers	Every establishment which falls under building and other construction work
Social Security for Unorganized workers	Unorganized Sector/Workers, Gig Workers, Platform Workers

Definition of Wages

Wages have been defined u/s 2y of The Wage Code as –

- **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**

As per Social Security Code PF Deduction to be 10% and not 12%

Gender Equality finds a place

Definition of Wages

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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 payment	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%

For 3 months Central Govt can reduce employees'/employers' contribution to PF/ESI incase of Pandemic/ Endemic/ Natural disasters

Definition of Wages

Other Issues in Salary –

1. Cash in hand of employees may go down but CTC for employers may go up

2. Retirement benefits will certainly increase

3. **The gratuity will also go up if there is any change in basic wage.**

Organizations have to pay gratuity as an amount equaling 15 days of last drawn basic wage for each year of service. So, an increase in basic wage will result in an increase in gratuity paid.

4. Those in a higher salary bracket will pay more tax as the tax planning option would be limited to 50% of cost-to-company (CTC). For E.g. tax deductions for HRA may go down

5. Scope of Minimum Wages rationalized – "Floor Wages" will be declared by Central Govt and State Govt cannot go below that

Wage Code : Changes

1. Definition of Establishment covers 'any place' where any business/**occupation** is carried on.

Sec 2m – Establishment Any place from where any industry, trade, business, manufacture or occupation is carried on and includes Govt establishment

2. Appropriate Govt - Sec 2(d)-

A. For Central Govt undertakings & PSUs – Central Govt.
B. For other Undertakings registered in 1 State – State Govt
C. For Multi State Registered Undertakings – Central Govt.

3. Sec 4B: Deductions Sec 18(3) –

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

4. Minimum Rate - **Sec 6 & Sec 9 –**

A. Central Govt will notify "Floor Rate"
B. State Govt can go above Floor Rate

5. Overtime Rate (Sec 14 & 13) –

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

Wage Code : Changes

6. Employee (Sec 2k) – means –
A. Other than Apprentice
B. Employed to do Skilled, semi skilled, unskilled job
C. Any type of Work including managerial or administrative

7. Worker (Sec 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

8. 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

Wage Code : Changes

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9. Tim Limit for Wages (Sec 17) –

A. 7th of the month -

B. Incase of removed/dismissed/Retrenched employee – 2 working days

10. 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

11. 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

Wage Code : Changes

12. Equal Remuneration applicable to 'all' employees and not only 'workers'

13. Overtime rates to be minimum double the normal wage rate. It is again applicable to **all** categories

14. Full wages rate is payable to 'part time' employees also

15. Contractors and Sub Contractors will also be employers

16. MNREGA excluded specifically

Wage Code : Changes…

17. PF Enforcement Limit may change from Rs.15,000 over a period

18. Payment of Bonus Rs.21,000 may change over a period

19. Supreme Court's ***Surya Roshni*** case of 2019 applied to PF & gratuity also

20. Quantum of fine is increasing **BUT** prosecution is reducing

21. Definition of Worker is consistent – Earlier different definitions were there like workmen, employed person

22. Fixed Term Contract -

A. fully recognized if a person works for more than 1 year – Give Flexibility – Earlier only applicable to textiles industry, etc

B. Pro-rata gratuity is applicable

… Wage Code – Records, returns & notices – S 50

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1. **Employee Register**

2. **Display on notice board –**
   1. Category wise wage rate
   2. Wage period
   3. Date & time of payment of wages
   4. Name & Address of Facilitator Cum Inspector

3. Wage Slips

4. Proof of payment

Social Security Code : Changes

1. Definition of Employees for Social Security expanded to include
    - **A. Gig Workers**
    - B. Inter State Migrant Workers
    - C. Platform Workers & Film Workers
    - D. Other Unorganized Sector Workforce also

1A. Effected – 7th Schedule Aggregators – Ride Sharing, Food/grocery Delivery/ E-Market place/ healthcare/ hospitality/ content/ etc

2. National Security board to notify from time to time various benefits and lay down social security benefits to cover **90%** of unorganized workforce aggregating **50 Crs**

3. **1%-2%** of turnover of Companies employing gig workers to be contributed towards social security of workforce. It will impact Companies like Amazon, Swiggy, Ola, Uder, etc. **(S 114(4)) The New Model Businesses**

4. **Period of work for eligibility of Gratuity** may be reduced to less than 5 years in service (For Working Journalists its already reduced to 3 years)

Social Security Code : Changes

5. S 43 : Incase Corporation Considers **Incidence of sickness** in persons higher due to –

a. Insanitary working conditions
b. Neglect of health conditions by employer

Claim for payment due to excess expenditure may be sent to the employer

6. Sec 45 : ESIC Scheme for unorganized/ Gig/ Platform Workers also

7. Chapter VI : Maternity Benefit -

a. Compulsory Maternity leave and bonus for post-natal care (Rs.3500).
b. Two breaks during the day until the child attains 15 months of age.
c. Employers with more than 50 employee should have a creche in vicinity
d. In employment letter of a woman employee, the terms should be specified. Even on notice board such terms to be mentioned

8. Provision for Expats

… SS Code – Records, returns & notices – S 123

1. **Employee Register**

2. Untoward Events details, deaths, recruited,

3. **Display on notice board –**
    1. Category wise wage rate
    2. Wage period
    3. Date & time of payment of wages
    4. Name & Address of Facilitator Cum Inspector

4. Wage Slips

5. Proof of payment

Industrial Relation Code : Changes (Approved by more than 16 States Already as in 2020)

It encourages Set up of Big Factories/Establishments.

1. Standing Orders regarding **wage rate, Paydays, Holidays & Workers Classification** is mandatory for establishments with more than 300 workers (now 100).

1A. A Model standing Order to be framed Central Govt and may be adopted in **6 Months**

2. Prior permission Provisions relating to **closure, layoff and retrenchment** will apply only for establishments with more than 300 workers (now 100)

3. 14 days prior notice for **strike / Lock out** (period of pending proceedings before tribunal is not included in these 14 days). Notice is Valid for 60 Days

4. Recognition/Registration of Trade Unions brought in. It shall be a body Corporate

5. The threshold for negotiation (Collective bargaining) with **Sole Trade Unions** reduced from 75% of workers to 51% workers (incase of multiple trade unions)

…Industrial Relation Code : Changes (Approved by more than 16 States Already as in 2020)

6. Incase where no trade Union has more than 50% worker strength, then a Negotiating Council will be appointed with those Trade Unions which have more than 20% worker strength. 1 Member per 20% of worker strength to be appointed.

7. Scope of Minimum Wages rationalized – "**Floor Wages**" will be declared by Central Govt and State Govt cannot go below that

8. Officer bearers of Trade Unions to be **working in the company**

9. Definition of Industry (Sec 2p) –

A. Includes even those which are run only on contractual employees
B. Does not include – Charitable, Religious, Social or spiritual Organisations
C. With or without Capital
D. Non-Profit Making Bodies Included
E. Does not include Appropriate Government
F. Domestic Service

…Industrial Relation Code : Changes (Approved by more than 16 States Already as in 2020)

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10. Payment for retrenchment – 15 Days

11. Worker Re-Skilling Fund (Sec 83) – 15 Days Avg Pay of retrenched workers to be contributed to the fund

12. "Works Committee" for Entities with more than 100 employees (in last 12 months) -

A. Representatives of Employer & Employee to be there
B. Representative of Employees to be no less than those of employer
C. The Forum should help in maintaining amity & good relations between employer & employee

13. "Grievance Redressal Committee" for Entities with more than 20 employees -

A. Representatives of Employer & Employee to be there
B. Representative of Employees to be no less than those of employer
C. The Forum should help in redressal of individual grievances

…Industrial Relation Code : Changes (Approved by more than 16 States Already as in 2020)

14. All cases pending in Erstwhile regime shall be transferred in "**Industrial Tribunal**" set up under these Codes

15. Written Contract of Employment Mandatory

16. Payment to Suspended Worker-

A. 50% of Wages – for 90 days
B. 75% post 90 days if delay in proceedings is not due to fault of worker

17. 21 days notice to a worker incase of any change in terms of employment as per 3rd Schedule

Occupational Safety, Health & Working Conditions : Changes

1. Workers below monthly remuneration of 18K to only be considered Migrant workers. They can take benefit of –
    A. PDS
    B. ESIC/PF
    C. Building Cess

1A. Contractors Employing migrant Workers of less than 50 only to take OSHW Code License. They will require only one license and not multiple licenses

2. Work Hours – 8 (fixed)

3. Factory definition –
    A. 20 Workers – Where Factory uses Power
    B. 40 Workers – Where factory uses no power

3. No Limit of manpower on occupations of hazardous nature

4. Women Workers special safeguards in all establishments

5. Women workers allowed in all establishments

6. Labour Portal for recording Inter State Migrant Workers Data – by Central & State Govt.

Implementation Module

1. “Impact Analysis” needs to be done for HR Cost

A. Budget of 2021-22
B. Sensitizing Employees

2. Gratuity & Other provisions may be re-calculated and impact may be taken

3. Employee Contracts should be re-formulated

4. Employees to be sensitized through trainings

5. Definition of Establishment covers ‘any place’ where any business/**occupation** is carried on. Hence, compliance would be done for staff at all locations including C&F Agents location (and not just factory)

6. Salaries needs to be re-structured

7. HR Technology Platforms to be revisited

8. Representations to be done to Ministry

...Implementation Module

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I. STAGE I : Labour Codes Implementation & Handholding – Implementation of The Labour Codes –

STAGE I - PHASE - I: Initial Training & Impact Analysis

- Study & Analysis of the Client's business including its interconnectivity with other foreign group companies
- Meeting / discussion and training of HR Team about Labour Codes and their intricacies at various Locations
- Group wise training program to be conducted.
- Impact Analysis on HR Cost & business (Bottom line and Cash Flows)
- Setting up Robust Platforms for Computing the Salaries/Wages
- Representation before Authorities under the likely Labour Codes provisions which could be detrimental to the business of the company.

...Implementation Module

STAGE I - PHASE - II: Framing of Broad Guidelines –

- Going through the current Salary Structures, filings and compliances and the corresponding changes required to be done in New Labour Codes regime
- Amendment of Employee Contracts as suitable under The New Labour Codes regime
- Proposing Options for better realignment of Optimum Model
- Handling Issues in gifts, non-cash compensation, perquisites given to employees.
- Handling changes in Contractual Labour Compliances and requirements
- Transitional Management Issues like Present Labour Disputes, Gratuity and other retirement benefits already due, etc.
- Proposing options for realignment of Salary/Wages Contracts post New Labour Codes Regime to capture additional Value/Cost on account of Implementation of New Labour Codes
- Proposing options for realignment of Salary/Wages/ Contractual Labour Contracts post New Labour Code Regime to capture additional Value/Cost
- Framing of Non-Cash Compensation/ gifts/ perquisites guidelines
- Review and suggest changes in documentation, processes and policies to meet The New Labour Codes Regime requirements. For Eg –
  - Salary Slips
  - Salary Contracts
- Going through the current disputes and appraising about the corresponding impact in New Labour Codes Regime

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STAGE I - PHASE - III: ERP Change Management

- Reviewing the existing ERP system for technical compatibility, coverage of Salary/Wages Components, Legal Requirements).configuration of the localization settings and impact of The New Labour Codes on the current business scenarios
- Custom-design changes in ERP, Internal Controls and Accounting like the following –
  - New Salary Structures
  - Tax Compliances as per new salary structures including impact of TDS
  - New deductions as per new Social Security Norms
  - Calculation of Working Hours, Overtime, etc
  - Revisiting Provisions Calculations
  - Others
- Our support in Automation of Reports under New Labour Codes

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STAGE I - PHASE – IV: Going Live

- Filling returns and payment of Taxes/other Legal outgoes
- Going Live with New Salary/Wage Contracts
- Setting of Optimum Salary/Wage Model including Optimum “Cash in Hand” Model

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STAGE I - PHASE - V: Support for First 3 Cycles of Compliances

- Filling of returns for First 3 Periods after the implementation of New Labour Codes
- Assistance in payment of all outgoes for First 3 Months after the implementation of New Labour Codes
- Filing all Transitional Returns for First 3 months as may be required
- Assistance making all reports for first 3 months post Implementation
- Validation of all reports, returns and documents filed
- Validation of 1st Set of Employee Contracts and Optimum Model
- Validation of 1st Set of Contractual Employee Contracts post Implementation.
- Validation of 1st Set of Other Contracts post Implementation.
- Aligning the "Optimum Model" to help ensure smooth functioning
- Running of User Comfort Testing for Returns, Payments, etc.
- Framing the Initial **"Labour Codes Manual"** for Easy Reference

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STAGE II - POST GOING LIVE MAINTAINANCE

- Periodic Health Check Ups under New Labour Codes
- Audits required to be conducted under New Labour Codes
- Assistance in payment of outgoes and filling returns
- Assistance in Changes in new salary/Wages/Contractual Labour Contracts
- Assistance in Assessments under New Labour Codes
- Drafting and submission of replies to any notices received from the Government
- Appeals incase any
- Submissions post Labour Codes implementation and all legal assistance required to present before the statutory authorities in case of requirement.

THANK YOU

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