

# THE POWER OF BEING UNDERSTOOD

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The Code on Wages, 2019



## 1. BACKGROUND:

The Code on Wages, 2019 was introduced in Lok Sabha by the Minister of Labour, Mr. Santosh Gangwar on July 23, 2019 and is enacted by the president of India on 8<sup>th</sup> August 2019. The Code devours the following four laws:

1. The Payment of Wages Act, 1936,
2. The Minimum Wages Act, 1948,
3. The Payment of Bonus Act, 1965,
4. The Equal Remuneration Act, 1976

## 2. SALIENT FEATURES:

- 2.1 Central/State Government to determine the factors by which the minimum wages shall be fixed for different category of employees. The state governments are empowered to notify minimum wage but not below floor wage decided by the central government.
- 2.2 The Code on Wage 2019 has defined definition of wage and empowered relevant state government to decide component of minimum wage through section 7 sub-section (1). In Most of the cases HRA was part of the minimum wage however; it will not be part on Minimum wage subject to specific notification issued by the State/Central Government. Therefor liability of Provident Fund may increase in case of lower salary.
- 2.3 The Code on Wage 2019 shall be applicable for all employees and workman irrespective of salary and designation.
- 2.4 The period of limitation for filing of claims by a worker has been enhanced to three years, as against the existing time period varying from six months to two years, to provide a worker more time to settle his claims.
- 2.5 Penalty provisions are made more stringent under the code on wage bill 2019.

## 3. DEFINITIONS:

Section - 2	
Section & Provisions	Definition
Sec.2 (k) "Employee"	Any person (other than an apprentice engaged under the Apprentices Act, 1961), employed on wages by an establishment with whatever roles and responsibility and designation.
Sec.2 (i) "Employer"	Means a person who employs, whether directly or through any person, or on his behalf or on behalf of any person, one or more employees in his establishment.  <b>Factory:</b> Occupier or defined factory manager is Employer. <b>Other Establishment:</b> Appointed Manager or Managing Director. Contractor and Appointed legal representative
Sec.2(m) "Establishment"	It includes any place where any industry, trade, business, manufacture or occupation is carried on and includes Government establishment.

“Contract”	It includes job work – Material supplier and Map-power supplier.
Sec.2 (g) “Contract Labour”	<ul style="list-style-type: none"> <li>• Any person hired for specific work by a contractor with or without knowledge of principle employer but excluded any person as a contract labour if;</li> <li>• Any person is a regular employee of the establishment for any activity of contractor establishment and not for establishment of principle employer.</li> <li>• Gets periodical increment in the pay, social security coverage and other welfare benefits from establishment of contractor.</li> </ul>

**3.1 Wages : Section :2 (y)** Means all remuneration,

Consider as Wages	Not Consider as Wages	Remark
Basic Wages	Statutory Bonus	
Dearness Allowance	Value of Any House Accommodations	
Retaining Allowance	Contribution towards Pension or Provident fund	
	Any Conveyance allowance	
	House rent allowance	
	Any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment	
	Overtime payment/Gratuity Payment	
	Commission to Employee	
	Any Retrenchment Payment and Ex-Gratia Payment	Due to Short-fall of minimum wage; many company pay ex-gratia payment to compensate short fall in minimum wage. It may not considered as wage according to Code on Wage 2019

#### 4. IMPORTANT KEY POINTS:

Section	Provisions	Law and Annotations
Section.2 (k)	Value of Remuneration	<ul style="list-style-type: none"> <li>Any payment made in any heads (Exclusion: Gratuity and Retrenchment) exceed 50% of total payment, the <b>EXCESS PERCENTAGES shall</b> be considered as wage.</li> <li><b>Explanation</b> - The value of remuneration in <b>KIND</b> which does not exceed fifteen percentages (15%) of the total wages payable to him shall be deemed to form part of the wages of such employee.</li> </ul>
Section.2 (z)	Not Consider as Workers	Person recruited as managerial/Supervisory or Administrative category and wage is above 15,000 or as notified by central government <b>shall not be considered as "worker"</b> but he will remain under definition of <b>"employee"</b> under code of wage 2019.

#### 5. PAYMENT OF MINIMUM WAGES ACT:

Section	Provisions	Law and Annotations
Section. 6 (1)	Fixation of Minimum Wages	Appropriate Government (State Government) empowered for fixing of minimum wage.
Section. 6 (2)	Time Bases & Piece Based Minimum Wages	<p>Minimum wage shall be classified in <b>"Time based minimum wage"</b> and <b>"Piece based Minimum wage"</b></p> <p>The Minimum rate of wages on time work basis may be fixed in accordance with any one or more of the following wage Periods, namely:</p> <ol style="list-style-type: none"> <li>Daily Basis</li> <li>Hourly Basis</li> <li>Monthly Basis</li> </ol>
Section. 6 (6)	Procedure for Fixing Minimum wage	<p>Consider following factors such as:</p> <ul style="list-style-type: none"> <li>Based on skill of workers geographical area or both, and difficulty of work like temperature or humidity normally difficult to bear, hazardous occupations or processes or underground work.</li> <li>Where employees are employed on piece work, the appropriate Government shall fix a minimum rate of wages for securing such employees a minimum rate of wages on a time work basis.</li> </ul>

Section.7	Components of Minimum wage as per Code of Wage 2019	Components of Minimum wage shall be as notified by the state government with following three possibilities;  1. Basic wage and an allowances connected with cost Index (Cost of Living Allowance/Dearness Allowance/Special Allowance) 2. Basic Wage with or Without Cost of Living Allowance 3. All-Inclusive
Section. 14	Wage for Overtime work	In case employees work in excess of a normal working day, they will be entitled to overtime wage, which must be at least twice the normal rate of wages.  <b>Explanation:</b> It should be on gross wage at the rate of double rate.

#### 6. PAYMENT OF WAGES ACT:

Section	Provisions	Law and Annotations
Section. 15	Mode of Payment of Wages	Wages will be paid in (i) coins, (ii) currency notes, (iii) by cheque, (iv) by crediting to the bank account, or (v) through electronic mode. The wage period will be fixed by the employer as either: (i) daily, (ii) weekly, (iii) fortnightly, or (iv) monthly.
Section. 17	Time limit for Payment of Wages	<b>Daily Wages:</b> Before end of shift (They should be paid for the weekly off also – Section13 Sub Section 1(B))  <b>Weekly Wages:</b> On last working day of the week  <b>Fortnightly:</b> Before end of second day after end of fortnight  <b>Monthly:</b> Within seventh day after last date of month  <b>Retrenched/Terminated/Resigned:</b> Within Two working date after retrenchment/termination/resignation

Section. 18	Deductions which may be made from wages	<p>Code of Wage allows deduction in following condition only:</p> <ol style="list-style-type: none"> <li>I. Fines</li> <li>II. Absence from duty</li> <li>III. Accommodation given by the employer, or</li> <li>IV. Recovery of advances given to the employee, among others</li> </ol> <ul style="list-style-type: none"> <li>• These deductions should not exceed 50% of the employee's total wage.</li> <li>• Where any deduction is made by the employer from the wages of an employee.</li> <li>• No fine shall be imposed without permission from the competent authority and opportunity to employee to explain his case. The total amount of fine which may be imposed in any one wage-period on any employee shall not exceed an amount equal to three percentages (3%) of the wages payable to him in respect of that wage-period.</li> <li>• A deduction for damage or loss shall not exceed the amount of the damage or loss caused to the employer by negligence or default of the employee.</li> </ul>
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#### 7. PAYMENT OF BONUS ACT:

Section	Provisions	Law and Annotations
Section 26 (1)	Eligibility of Bonus	Up to 21,000 Gross Salary and between 8.33% to 20% after completion of 30 days of work.
Section 26 (6)		Up to first 5 years of operations – Bonus to be paid only in respect of accounting year in which employer derives profit from such establishment.
Section 39 (1)	Mode of Payment of Bonus	Bonus should be paid in bank Account only - No cash bonus permissible.
Section 26(3)	Bonus Calculation	Employer has to pay bonus to an employee more than minimum bonus, if allocable surplus exceeds the amount of minimum bonus payable to the employee (an amount in proportion to the wages earned by the employee during the accounting year).

		<b>For Example:</b> Allocable Surplus Amounts is Rs. 15,00,000/- Bonus as per 8.33% Amount is Rs. 10,00,000/- In this case Bonus to be Paid 12.50% (Amount in Proportion to Such wages) Rs. 15,00,000/-
	Set On	When allocable surplus exceed maximum Bonus, then the exceed amount subject to max. 20% should be carrying forward for set on in next 4 accounting years.
	Set Off	When allocable surplus is nil or less than or equal to the minimum bonus. In this case the deficiency is carried forward to next 4 accounting years.

#### 8. GENDER DISCRIMINATION:

Section	Provisions	Law and Annotations
Section. 3	Prohibition of Discrimination on ground of Gender	The Code prohibits gender discrimination in matters related to wages and recruitment of employees for the same work or work of similar nature. Work of similar nature is defined as work for which the skill, effort, experience.

#### 9. OFFENCES AND PENALTIES:

Section	Provision	Fines & Penalty	Law and Annotations
Section. 54	Less Payment as defined in Code on Wage,2019	First offence – Penalty of Rs. 50,000	Repetitive offence within Five years, may lead to imprisonment up to three months and fine may extend up to one lakh rupees or both.
	Contravenes with any other Provision	Fine up to Rs.20,000	Repetitive offence within Five years, may lead to imprisonment up to one month and fine may extend up to Forty thousand rupees or both.
	Non Maintenance or Improper maintenance of Documents	Fine up to ten thousand rupees	