

29 September 2020

Newsflash:

Overview of the New Labour Codes



Newsflash

Overview of the New Labour Codes

*For Client Circulation
29 September 2020*

1.0 Introduction

The long awaited three Labour Codes were introduced in the Parliament during the monsoon session as anticipated. The Lok Sabha and the Rajya Sabha cleared three Labour Law Codes— Industrial Relations Code Bill, 2020, Code on Social Security Bill, 2020 and Occupational Safety, Health and Working Conditions Code Bill, 2020 on September 22, 2020 and September 23, 2020, respectively. However, the same are yet to receive the assent of the President of India. It may be noted that the fourth Code, i.e. the Code On Wages 2019 was cleared by both the houses of parliament in July 2019 and received Presidents assent I on 8th August 2019. However, many provisions of the Code of Wages 2019 are still not implemented and are yet to be made effective`

The major challenge in bringing about any labour reforms is to facilitate employment growth while protecting workers' rights. Further, with the passage of time, labour laws needed an overhaul to ensure simplification and updation, along with provisions which can capture the needs of emerging forms of labour (e.g., migrant workers, contract workers, gig workers etc.).

This newsflash discusses these new proposed modification and the approaches taken by these Codes.

2.0 Details of Acts which are being subsumed by the Four labour codes.

Labour Codes	Acts being subsumed
Code on Wages, 2019	<ol style="list-style-type: none"> 1. Payment of Wages Act, 1936; 2. Minimum Wages Act, 1948; 3. Payment of Bonus Act, 1965; and 4. Equal Remuneration Act, 1976
Occupational Safety, Health and Working Conditions Code, 2019	<ol style="list-style-type: none"> 1. Factories Act, 1948; 2. Mines Act, 1952; 3. Dock Workers (Safety, Health and Welfare) Act, 1986; 4. Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996; 5. Plantations Labour Act, 1951; 6. Contract Labour (Regulation and Abolition) Act, 1970;

Labour Codes	Acts being subsumed
	<ol style="list-style-type: none"> 7. Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979; 8. Working Journalist and other Newspaper Employees (Conditions of Service and Miscellaneous Provision) Act, 1955; 9. Working Journalist (Fixation of Rates of Wages) Act, 1958; 10. Motor Transport Workers Act, 1961; 11. Sales Promotion Employees (Condition of Service) Act, 1976; 12. Beedi and Cigar Workers (Conditions of Employment) Act, 1966; and 13. Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981
Industrial Relations Code, 2019	<ol style="list-style-type: none"> 1. Trade Unions Act, 1926; 2. Industrial Employment (Standing Orders) Act, 1946, and 3. Industrial Disputes Act, 1947
Code on Social Security, 2019	<ol style="list-style-type: none"> 1. Employees' Provident Funds and Miscellaneous Provisions Act, 1952; 2. Employees' State Insurance Act, 1948; 3. Employees' Compensation Act, 1923; 4. Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959; 5. Maternity Benefit Act, 1961; 6. Payment of Gratuity Act, 1972; 7. Cine-workers Welfare Fund Act, 1981; 8. Building and Other Construction Workers' Welfare Cess Act, 1996; and 9. Unorganised Workers Social Security Act, 2008

3.0 Major Changes / Salient Features

Individual Summary of all these codes is given at the latter part of this Newsflash. Some of the key highlights of certain important amendments prescribed under the Labour Code are as follows:

- Contract Labour definition has been revised to include inter- State migrant worker and part-time worker and excludes worker:
 - a. who is regularly employed by the contractor for any activity of his establishment or employment
 - b. who is governed by mutually accepted standards and conditions of employment
 - c. who is engaged on permanent basis
 - d. who gets periodical increment in the pay, social security coverage and other welfare benefits, in such employment with the contractor
- The definition of Inter-state migrant workmen now also includes:
 - a. person directly recruited by the employer in one State for employment in another State; or
 - b. persons who have come on their own from one state to another (called the destination state) or have subsequently changed the establishment within the destination state.

The Code also introduces a wage capping of INR 18,000 for a person to be referred as an inter-state migrant worker.

- Apprentices registered under the Apprentices Act, 1961 are excluded from the definition of "Worker" and "Employee".
- New definitions introduced for "Platform Worker" including online platform and "Gig Worker"
- New definition introduced for "Fixed Term Employment" (FTE) to provide benefits to such employees at par with permanent worker. Termination on completion of tenure of FTE will also not be counted as retrenchment.
- The definition of "Industry" now has certain specific exclusions i.e. Companies engaged in charitable, social or philanthropic service, domestic services and certain Central and State Government activities.
- "Strike" now includes mass casual leave on any given day by 50% or more workers employed in an industry.
- Strikes and Lock outs -
 - a. Notice period for strike or lock-out - Within 60 days before strike (as opposed to 6 weeks in current regime)
 - b. Prohibition on strike or lockout within 14 days of notice - applicable to all establishments
(Reporting by the employer to the authority within 5 days)

- Retrenchment/ Lay off/ Closure - Establishment with 300 or more workers to take prior approval of Central or State Government before lay off or retrenchment or closure.
(as opposed to current r threshold of 100 workers)
- New provision added to provide powers to Central Government to defer or reduce the contribution rates (under PF and ESI) for a period of up to 3 months at a time in the case of a pandemic, endemic, or national disaster. This is obviously coming from the on-going Covid-19 pandemic.
- **Gratuity:** Permanent employees would be eligible for gratuity after completion of five years as presently exists under the Act, while fixed term employees will have no such criteria, such employees will be paid on the basis of the tenure of their employment with the organization
- **Overtime:** The Code has introduced a provision stating that overtime of workers is subject to their consent for the work.
- **Hours of work:** 8 hours of daily work for all workers;
(Period of work including rest interval and spread over to be notified.)
Prohibition of overlapping shifts is applicable to all establishments except for mines.
- **Leave with wages:** The Code applies provisions relating to annual leave with wages to workers of all establishments (1 day for every 20 days of work performed for establishments other than under ground mines and 1 day for every 15 days of work performed underground in mines). The eligibility limit has been changed to 180 days from 240 days of working.
- **Night shift of women:** The Code has made provision for employing women in night shift before 6 a.m. and beyond 7 p.m. with their consent and subject to conditions relating to safety, holidays and working hours or any other prescribed condition.
- Liability of principal employer regarding welfare facilities - Now the onus of providing canteens, rest rooms, drinking water and first aid is on the principal employer. The Code has done away with the requirement of the Contractor to provide such facilities in the first instance.

4.0 THE CODE ON WAGES, 2019

Below are the key highlights of changes introduced under the Code on Wages, 2019

- **Coverage:** The Code will apply to all employees. The central government will make wage-related decisions for employments such as railways, mines, and oil fields, among others. State governments will make decisions for all other employments. Wages include salary, allowance, or any other component expressed in monetary

terms. This does not include bonus payable to employees or any travelling allowance, among others.

- **Floor wage:** According to the Code, the central government will fix a floor wage, taking into account living standards of workers. Further, it may set different floor wages for different geographical areas. Before fixing the floor wage, the central government may obtain the advice of the Central Advisory Board and may consult with state governments.

The minimum wages decided by the central or state governments must be higher than the floor wage. In case the existing minimum wages fixed by the central or state governments are higher than the floor wage, they cannot reduce the minimum wages.

- **Fixing the minimum wage:** The Code prohibits employers from paying wages less than the minimum wages. Minimum wages will be notified by the central or state governments. This will be based on time, or number of pieces produced. The minimum wages will be revised and reviewed by the central or state governments at an interval of not more than five years. While fixing minimum wages, the central or state governments may take into account factors such as: (i) skill of workers, and (ii) difficulty of work.

- **Overtime:** The central or state government may fix the number of hours that constitute a normal working day. 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.

- **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.

- **Deductions:** Under the Code, an employee's wages may be deducted on certain grounds including: (i) fines, (ii) absence from duty, (iii) accommodation given by the employer, or (iv) recovery of advances given to the employee, among others. These deductions should not exceed 50% of the employee's total wage.

- **Determination of bonus:** All employees whose wages do not exceed a specific monthly amount, notified by the central or state government, will be entitled to an annual bonus. The bonus will be at least: (i) 8.33% of his wages, or (ii) Rs 100, whichever is higher. In addition, the employer will distribute a part of the gross profits amongst the employees. This will be distributed in proportion to the annual wages of an employee. An employee can receive a maximum bonus of 20% of his annual wages.
- **Gender discrimination:** 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, and responsibility required are the same.
- **Advisory boards:** The central and state governments will constitute advisory boards. The Central Advisory Board will consist of: (i) employers, (ii) employees (in equal number as employers), (iii) independent persons, and (iv) five representatives of state governments. State Advisory Boards will consist of employers, employees, and independent persons. Further, one-third of the total members on both the central and state Boards will be women. The Boards will advise the respective governments on various issues including: (i) fixation of minimum wages, and (ii) increasing employment opportunities for women.
- **Offences:** The Code specifies penalties for offences committed by an employer, such as (i) paying less than the due wages, or (ii) for contravening any provision of the Code. Penalties vary depending on the nature of offence, with the maximum penalty being imprisonment for three months along with a fine of up to one lakh rupees.

Click the link below for complete text on **THE CODE ON WAGES, 2019:**

https://www.prsindia.org/sites/default/files/bill_files/Code%20on%20Wages%2C%202019%20as%20passed%20by%20LS.pdf

5.0 THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020

Below are some of the key highlights of the Occupational Safety, Health and Working Conditions Code, 2020

- **Coverage:** The Code will apply to establishments employing at least 10 workers. It will apply to all mines, docks, and establishments carrying out any hazardous or life-threatening activity (as may be notified by the central government). Certain provisions of the Code, such as health and working conditions, apply to all employees. Employees include workers and all other persons earning wages for any work, including managerial, administrative, or supervisory work.
- **Exemptions:** The appropriate government can exempt any workplace or activity from the Code in case of a public emergency, disaster, or pandemic for up to a year. Further, the state government can exempt new factories from the Code for the specified period for creating more economic activity and employment.
- **Registration and license:** Establishments covered by the Code are required to register within 60 days (of the commencement of the Code) with registering officers, appointed by the central or state government. Factories may be required to obtain a license to operate. The Code requires those hiring workers such as beedi and cigar workers and contract labourers to obtain licenses.
- **Duties of employers:** Duties of employers include:
 - (i) providing a workplace that is free from hazards,
 - (ii) providing free annual health examinations in notified establishments, and
 - (iii) informing relevant authorities in case any accident at the workplace leads to death or serious bodily injury to any employee. Additional duties are prescribed for employers in factories, mines, docks, plantations, and building and construction work, including provision of a risk-free work environment, and instructing employees on safety protocols.
- **Rights and duties of employees:** Duties include taking care of their own health and safety, complying with safety and health standards, and reporting unsafe work incidents to the Inspector. Employees also have certain rights including the right to obtain information on safety and health standards from the employer.
- **Work hours:** No worker will be required or allowed to work in any establishment for more than eight hours in a day. For overtime work, workers must be paid at twice the rate of daily wages. Prior consent of workers is required for overtime work. Women

can work past 7 pm and before 6 am, subject to any safety-related or other conditions prescribed by the government.

- **Leave:** Workers cannot be required to work for more than six days a week. Further, they must receive one day of leave for every 20 days of work per year.
- **Working conditions:** Working conditions will be notified by the central government. Conditions may include hygienic work environment, clean drinking water, toilets, ventilation, and adequate lighting.
- **Welfare facilities:** Welfare facilities such as canteens, first aid boxes, and crèches, may be provided as per standards notified by the central government. Additional facilities may be specified for factories, mines, docks, and building and construction works, such as welfare officers and temporary housing.

The Code includes three schedules containing lists of:

- (i) 29 diseases that the employer is required to notify the authorities of, in case a worker contracts them,
 - (ii) 73 safety matters that the government may regulate, and
 - (iii) 40 industries involving hazardous processes. The lists may be amended by the central government.
- **Inspectors:** The government can appoint inspector-cum-facilitators to conduct inspections and inquire into accidents. They have certain additional powers in case of factories, mines, docks, and building and construction works, including: (i) reducing the number of employees working in sections of the establishment, and (ii) prohibiting work in dangerous situations.
 - **Advisory boards:** The central and state governments will set up Occupational Safety and Health Advisory Boards at the national and state level. These Boards will advise the respective government on the standards, rules, and regulations to be framed under the Code.
 - **Safety committees:** The government may require certain establishments to constitute safety committees in case of a certain class of workers. The committees will be composed of representatives of the employer and workers and will function as

a liaison between them. The number of representatives of workers in the committee must not be less than that of the employer.

Click the link below for complete text on **THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020**:

https://www.prsindia.org/sites/default/files/bill_files/Occupational%20Safety%2C%20Health%20And%20Working%20Conditions%20Code%2C%202020_0.pdf

6.0 THE INDUSTRIAL RELATIONS CODE, 2020

Below are some of the key highlights of the Industrial Relations Code, 2020

- **Trade unions:** Under the Code, seven or more members of a trade union can apply to register it. Trade unions that have a membership of at least 10% of the workers or 100 workers, whichever is less, will be registered. The central or state government may recognize a trade union or a federation of trade unions as Central or State Trade Unions, respectively.
- **Negotiating unions:** The Code provides for a negotiation union in an industrial establishment, having registered trade unions, for negotiating with the employer. If there is only one trade union in an industrial establishment, the employer is required to recognize such trade union as the sole negotiating union of the workers. In case of multiple trade unions, the trade union with support of at least 51% of workers on the muster roll of that establishment will be recognized as the sole negotiating union by the employer.
- **Unfair labour practices:** The Code prohibits employers, workers, and trade unions from committing any unfair labour practices listed in a Schedule to the Code. These include:
 - (i) restricting workers from forming trade unions,
 - (ii) establishing employer sponsored trade union of workers,
 - (iii) coercing workers to join trade unions,
 - (iv) damage to employer's property, and
 - (v) preventing any worker from attending work. Any person who commits unfair labour practices is punishable with a fine between ten thousand rupees and two lakh rupees.

- **Standing orders:** All industrial establishments with at least 300 workers must prepare standing orders on certain matters. These include:
 - (i) classification of workers,
 - (ii) manner of informing workers about hours of work, holidays, paydays, and wage rates,
 - (iii) termination of employment,
 - (iv) suspension for misconduct, and
 - (v) grievance redressal mechanisms for workers.

The central government will prepare model standing orders, based on which the industrial establishments will prepare their standing orders.

- **Notice of change:** Employers must not change the conditions of service in certain matters without giving notice of the proposed changes to the workers being affected, or within 21 days of giving such notice. These matters include wages, contribution, allowances, working hours, and leave.
- **Lay-off and retrenchment:** Employers of non-seasonal industrial establishments such as mines, factories, and plantations with 50 to 300 workers must (i) pay 50% of basic wages and dearness allowance to a worker who has been laid off, and (ii) give one month's notice or wages for the notice period to the retrenched worker. Lay-off is the inability of an employer from giving employment to a worker due to reasons such as shortage of coal, power, or breakdown of machinery. Retrenchment means termination of services of a worker for reasons other than disciplinary action. Any person who contravenes these provisions is punishable with a fine between fifty thousand rupees and two lakh rupees.

Non-seasonal industrial establishments with at least 300 workers must take prior permission of the central or state government before lay-off, retrenchment or closure. The central or state government may increase this threshold by notification. Such establishments must pay 50% of basic wages and dearness allowance to a worker who has been laid off. In case of retrenchment, the employer must either give three months' notice or pay the retrenched worker for the notice period. Any employer who violates these provisions will be punishable with a fine between one lakh rupees and ten lakh rupees.

Within one year of retrenchment of workers, if an employer seeks to re-employ a person, he must prefer retrenched workers over other persons.

- **Voluntary arbitration:** The Code allows for industrial disputes to be voluntarily referred to arbitration by the employer and workers through a written agreement. After investigating the dispute, the arbitrator will submit the arbitration award to the government. Industrial disputes include disputes related to terms of employment, non-employment and dismissal, retrenchment, or termination of workers.
- **Resolution of industrial disputes:** The central or state governments may appoint conciliation officers to mediate and promote settlement of industrial disputes. These officers will investigate the dispute and hold conciliation proceedings to arrive at a fair and amicable settlement of the dispute. If no settlement is arrived at, either party to the dispute can make an application to the Industrial Tribunal, constituted under the Code. The central government may also constitute National Industrial Tribunals for settlement of industrial disputes which: (i) involve questions of national importance, or (ii) could impact industrial establishments situated in more than one state. The tribunals will have two members each, one judicial member and one administrative member with the specified qualifications.
- **Exemptions from the Code :** The 2020 Bill provides that the central or state government may exempt any new establishment or a class of new establishment from all or any provisions of the Code in public interest.

Click the link below for complete text on **THE INDUSTRIAL RELATIONS CODE, 2020:**

https://www.prsindia.org/sites/default/files/bill_files/Industrial%20Relations%20Code%202020_0.pdf

7.0 THE CODE ON SOCIAL SECURITY, 2020:

Below are some of the key changes introduced under The Code On Social Security, 2020

- **Social security schemes:** Under the Code, the central government may notify various social security schemes for the benefit of workers. These include an Employees' Provident Fund (EPF) Scheme, an Employees' Pension Scheme (EPS),

and an Employees' Deposit Linked Insurance (EDLI) Scheme. These may provide for a provident fund, a pension fund, and an insurance scheme, respectively. The government may also notify:

- (i) an Employees' State Insurance (ESI) Scheme to provide sickness, maternity, and other benefits,
- (ii) gratuity to workers on completing five years of employment (or less than five years in certain cases such as for journalists and fixed term workers),
- (iii) maternity benefits to women employees,
- (iv) cess for welfare of building and construction workers, and
- (v) compensation to employees and their dependants in the case of occupational injury or disease.

In addition, the central or state government may notify specific schemes for gig workers, platform workers, and unorganised workers to provide various benefits, such as life and disability cover. Gig workers refer to workers outside of the traditional employer-employee relationship (e.g., freelancers). Platform workers are workers who access other organisations or individuals using online platforms and earn money by providing them with specific services. Unorganised workers include home-based and self-employed workers. It also provides for social security funds for unorganised workers, and gig and platform workers.

- **Coverage and registration:** The Code specifies different applicability thresholds for the schemes. For example, the EPF Scheme will apply to establishments with 20 or more employees. The ESI Scheme will apply to certain establishments with 10 or more employees, and to all establishments which carry out hazardous or life-threatening work notified by the central government. These thresholds may be amended by the central government. All eligible establishments are required to register under the Code, unless they are already registered under any other labour law.
- **Contributions:** The EPF, EPS, EDLI, and ESI Schemes will be financed through a combination of contributions from the employer and employee. For example, in the case of the EPF Scheme, the employer and employee will each make matching contributions of 10% of wages, or such other rate as notified by the government. All contributions towards payment of gratuity, maternity benefit, cess for building workers, and employee compensation will be borne by the employer. Schemes for gig workers, platform workers, and unorganized workers may be financed through a

combination of contributions from the employer, employee (or aggregators for gig workers and platform workers), and the appropriate government.

For the purpose of schemes for gig and platform workers, the Bill specifies a list of aggregators including ride sharing services and food delivery services. Any contribution from an aggregator may be at a rate notified by the government falling between 1-2% of the annual turnover of the aggregator, subject to a cap of 5% of the amount paid or payable by an aggregator to the gig and platform workers.

- **Social security organizations:** The Code provides for the establishment of several bodies to administer the social security schemes. These include:
 - (i) a Central Board of Trustees, headed by the Central Provident Fund Commissioner, to administer the EPF, EPS and EDLI Schemes,
 - (ii) an Employees State Insurance Corporation, headed by a Chairperson appointed by the central government, to administer the ESI Scheme,
 - (iii) National and State Social Security Boards, headed by the central and state Ministers for Labour and Employment, respectively, to administer schemes for unorganized workers (with the National Board also responsible for gig and platform workers), and
 - (iv) state-level Building Workers' Welfare Boards, headed by a Chairperson nominated by the state government, to administer schemes for building workers.

- **Inspections and appeals:** The appropriate government may appoint Inspector-cum-facilitators to inspect establishments covered by the Code, and advise employers and employees on compliance with the Code. Administrative authorities may be appointed under the various schemes to hear appeals under the Code. For instance, the appropriate government may notify an appellate authority to hear appeals against the order of the Inspector-cum-facilitator for non-payment of maternity benefits. The Code also specifies judicial bodies which may hear appeals from the orders of the administrative authorities. For example, industrial tribunals (constituted under the Industrial Disputes Act, 1947) will hear disputes under the EPF Scheme.

- **Offences and penalties:** The Code specifies penalties for various offences, such as the failure to pay gratuity, which may be punished with imprisonment of one year. The amount of penalty has been increased from Rupees Ten thousand to

Rupees One Lakh. The Code also provides for imprisonment of one to three years on deduction of employee contribution from salary and non-depositing. Subsequent failure to pay contributions attracts imprisonment of two to five years and fine of Rupees Three lakhs. Some offences may also be compounded (settled).

Click the link below for complete text on **THE CODE ON SOCIAL SECURITY, 2020**:

https://www.prsindia.org/sites/default/files/bill_files/Code%20On%20Social%20Security%2C%202020_0.pdf

Sources: Existing Central Acts; Labour Codes; PRS.

8.0 DISCLAIMER:

In this newsflash, we have summarized certain important amendments proposed under the Four Labour Law Codes— Code on Wages,2019, Industrial Relations Code Bill, 2020, Code on Social Security Bill, 2020 and Occupational Safety, Health and Working Conditions Code Bill, 2020 as passed by both the Houses of the Parliament. It may be noted that nothing contained in this newsflash should be regarded as our opinion and the Government or judicial authorities may or may not subscribe to the views expressed therein. We are not responsible for any liability arising from any statements or errors contained in this newsflash.

For further information please contact:

RSM Astute Consultech Pvt. Ltd. |

RSM - Lemon House, Guj Hira Bourse G&J Park, Icchapore
Surat 394 510

B/708, Mondeal Heights, Opp. Karnavati Club, S.G.
Highway, Ahmedabad 380015

T: + (91) 90992 08000

E: gujarat@rsmindia.in

W: www.rsmindia.in

Offices: Mumbai, New Delhi - NCR, Chennai, Kolkata, Bengaluru, Surat, Hyderabad, Ahmedabad, Pune,
Gandhidham, and Jaipur.



facebook.com/RSMInIndia



twitter.com/RSM_India



linkedin.com/company/rsm-india

RSM Astute Consultech Pvt. Ltd. (Including its affiliates) is a member of the RSM network and trades as RSM. RSM is the trading name used by the members of the RSM network.

Each member of the RSM network is an independent accounting and consulting firm each of which practices in its own right. The RSM network is not itself a separate legal entity of any description in any jurisdiction.

The RSM network is administered by RSM International Limited, a company registered in England and Wales (company number 4040598) whose registered office is at 50 Cannon Street, London EC4N 6JJ .

The brand and trademark RSM and other intellectual property rights used by members of the network are owned by RSM International Association, an association governed by article 60 et sec of the Civil Code of Switzerland whose seat is in Zug.

This Newsflash has summarized on the New Labour Code as passed by the Lok Sabha and the Rajya Sabha . It may be noted that nothing contained in this newsflash should be regarded as our opinion and facts of each case will need to be analyzed to ascertain applicability or otherwise of the said notification and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this newsflash.

29 September 2020