India's new labour codes: Prepare for the challenges ahead
The Dbriefs Geography Updates series
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Agenda

• Background
• What’s changing?
• Impact of the wage definition
• Work force categorization
• Offences and penalties
• Way forward
• Questions and answers
Background
Labour codes – an overview

- **Consolidates 29 existing legislations**
- **Uniformity in definitions**
- **Emphasis on use of technology**
- **Accountability and transparency**
- **Effective enforcement**
- **Ease of implementation**

- **New codes**
  - Code on wages
  - Code on occupational safety, health and working conditions
  - Code on social security

- *The codes are awaiting notification of effective date*
- # The draft rules have been issued
- Existing schemes to be valid for one year to the extent they are not contrary to the provisions of the code

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Legislations subsumed

The code on wages 2019
• The Payment of Wages Act, 1936;
• The Minimum Wages Act, 1948;
• The Payment of Bonus Act, 1965; and
• The Equal Remuneration Act, 1976

The code on social security 2020
• The Employees' State Insurance Act, 1948;
• The Employees' Provident Funds and Miscellaneous Provisions Act, 1952;
• The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959;
• The Maternity Benefit Act, 1961;
• The Payment of Gratuity Act, 1972;
• The Cine-Workers Welfare Fund Act, 1981;
• The Building and Other Construction Workers' Welfare Cess Act, 1996;
• The Unorganised Workers' Social Security Act, 2008
Legislations subsumed (cont’d)

The industrial relations code 2020

• The Trade Unions Act, 1926,
• The Industrial Employment (Standing Orders) Act, 1946 and
• The Industrial Disputes Act, 1947

The occupational safety, health and working conditions code 2020

• The Factories Act, 1948;
• The Mines Act, 1952;
• The Dock Workers (Safety, Health and Welfare) Act, 1986;
• The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996;
• The Plantations Labour Act, 1951;
• The Contract Labour (Regulation and Abolition) Act, 1970;
• The Inter-state migrant workers (Regulation of Employment and Conditions of Service) Act, 1979;
• The Working Journalist and other News Paper Employees (Conditions of Service and Misc. Provision) Act, 1955;
• The Working Journalist (Fixation of rates of Wages) Act, 1958;
• The Motor Transport Workers Act, 1961;
• Sales Promotion Employees (Condition of Service) Act, 1976;
• The Beedi and Cigar Workers (Condition of Employment) Act, 1966;
• The Cine Workers and Cinema Theatre Workers Act 1981
Polling question 1

What, in your view, would be the effect of the changes in the labour codes to your business?

• Financial implications
• Need for process change
• Realign salary structure
• All the above
• Don’t know/not applicable
What’s changing?
## Code on wages and code on social security

### Salient features

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Code on wages</th>
<th>Code on social security</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Code on wages</strong></td>
<td>• Applies to all establishments, employees and employers as defined unless specifically exempt in the code</td>
<td>• Coverage broadened to include gig/platform workers, fixed term employees, and those in the unorganized sectors with the organized sector</td>
</tr>
<tr>
<td></td>
<td>• Covers all employees including managerial cadre</td>
<td>• Existing schemes valid for a period of one year after effective date to the extent the same is not contradictory to provisions of the code</td>
</tr>
<tr>
<td></td>
<td>• Wage definition standardized</td>
<td>• Monetary thresholds to be brought in through schemes/notifications</td>
</tr>
<tr>
<td></td>
<td>• State government minimum wage rates to be aligned to national floor wages</td>
<td>• Period of limitation introduced</td>
</tr>
<tr>
<td></td>
<td>• Need to meet wages payment dates as prescribed</td>
<td>• No specific reference to international workers – expected to be introduced under the schemes</td>
</tr>
<tr>
<td></td>
<td>• Recoveries from wages specified with monthly recovery capped at 50%</td>
<td>• Stringent penalties and prosecution provisions provided for</td>
</tr>
<tr>
<td></td>
<td>• Settlement time of dues in case of resignation/dismissal shortened</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Time for preferring claims extended</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Role of inspector widened to include facilitation function</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Penalties and prosecution enhanced</td>
<td></td>
</tr>
</tbody>
</table>

- A contractor is identified as an “employer” having independent responsibilities – compliance responsibility from the principal employer reduced
# Code on wages and code on social security

## Areas of impact

<table>
<thead>
<tr>
<th>Areas of impact</th>
<th>Key change triggering the impact</th>
<th>Challenges to be addressed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definition of wages</td>
<td>• Uniform and wider definition of wages as compared to varied definitions under existing regulations</td>
<td>• Change in coverage of employees for ESI, Payment of Bonus Act etc.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Impact on PF and gratuity contributions</td>
</tr>
<tr>
<td>Provident Fund (PF)</td>
<td>• Change in definition of wages</td>
<td>• Increase in quantum of PF contributions for domestic employees drawing salary below wage ceiling (presently INR 15,000) and international workers</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Review of employment contracts and policies relating to employees earning more than INR 15,000 pm</td>
</tr>
<tr>
<td>Gratuity</td>
<td>• Change in definition of wages</td>
<td>• Likely increase in the quantum of gratuity – new inclusions in the definition - retroactive impact?</td>
</tr>
<tr>
<td></td>
<td>• Extending gratuity benefits to fixed term employees</td>
<td>• Individuals on fixed term employment entitled to gratuity benefits under the code on a pro-rata basis in addition to regular eligible employees</td>
</tr>
<tr>
<td>Overtime</td>
<td>• Employee covered under the schedule employment alone are eligible for overtime</td>
<td>• Employees in supervisory and managerial role also entitled for overtime wages – detailed rules awaited</td>
</tr>
<tr>
<td>Gig workers/platform</td>
<td>• Presently, there is no specific social security schemes for the gig/platform workers</td>
<td>• Government to introduce a scheme enabling such employees to be eligible for social security benefits</td>
</tr>
<tr>
<td>workers</td>
<td></td>
<td>• Aggregators will be required to contribute towards such scheme</td>
</tr>
<tr>
<td>Payment of wages</td>
<td>• Wage ceiling of INR 24,000 pm removed</td>
<td>• Impact on settlement timelines, capping of deductions from wages etc.</td>
</tr>
</tbody>
</table>
### Industrial relations code and occupational safety, health and working conditions code

#### Salient features

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Details</th>
</tr>
</thead>
</table>
| **Industrial relations code**                   | • Limit of worker enhanced from 100 to 300 for applicability of standing order;  
• Constitution of works committee, if 100 or more workers are employed and ordered by appropriate government;  
• Grievance redressal committee to complete its proceedings within 30 days of receipt of application;  
• Prohibits employers, workers, and trade unions from committing any unfair labour practices such as restricting workers from forming trade unions, coercing workers to join trade unions, threatening worker, establishing employer sponsored trade union, etc.  
• Increase in retrenchment cost- additional compensation towards re-skilling fund, retrenchment compensation;  
• Preference to retrenched worker for re-employment within 1 year;  
• Notice of strike, lockout-extended to all industries;  
• Additional ground for strike - mass leave;  
• Prior approval of government - layoff, retrenchment, closure where 300 or more workers (factory, mine, plantation);  
• Introduction of concept of negotiating union |
| **The occupational safety, health and working conditions code** | • Single registration for all establishments;  
• Working hours: 8 hours with a spread of 48 hours in a week;  
• Issuance of appointment letter to employees/workers is mandatory;  
• Prohibition to engage contract labour in core activities;  
• Mandatory free health check-ups for below categories:  
  – Who has attained age of 45 years for prescribed industries (factory, mine, plantation); or  
  – Worker who are engaged in hazardous process/mines  
• List of benefits for inter-state migrant workers has been extended;  
• Flexibility in employment of women;  
• Constitution of safety committee and appointment of safety officer in prescribed industries;  
• Constitution of national occupational safety and health advisory board for monitoring the implementation of the code;  
• Enhancement of monetary penalties and introduction of compounding/composition |
## Impact areas

<table>
<thead>
<tr>
<th>Areas of impact</th>
<th>Key change triggering the impact</th>
<th>Challenges to be addressed</th>
</tr>
</thead>
</table>
| Core activity                                       | • Introduction of concept of core activity                                                     | • Contract labour is prohibited to engage in core activities subject to certain exemptions  
  a) The normal functioning of the establishment is such that the activity is ordinarily done through contractor; or  
  b) The activities are such that they do not require full time workers for the major portion of the working hours in a day or for longer periods, as the case may be;  
  c) Any sudden increase of volume of work in the core activity which needs to be accomplished in a specified time |
| Mandatory issuance of appointment letter            | • Employee covered under extant act are sale promotion employees                               | • Appointment letter to be issued to every employee in specified format with mandatory details:  
  – Aadhar number  
  – Labour Identification Number (LIN) of the establishment  
  – Universal Account Number (UAN)/Insurance Number (ESIC), applicability of social security EPFO and ESIC benefits  
  • Appointment letter in specified format shall be issued to existing employees within 3 months of commencement of code |
| Leave encashment                                     | • Reduction in time limit to be eligible for leave with wages                                  | • Worker who has worked for 180 days or more in a calendar year will be entitled for leave with wages  
  • Worker shall be entitled on his demand for encashment of leave at the end of calendar year  
  • Where the leaves exceeds 30 days, worker shall be entitled to encash the exceeded leaves |
| Re-skilling fund                                     | • Introduction of new concept of re-skilling fund                                               | • Overall increase in worker’s retrenchment compensation  
  • In addition to existing retrenchment compensation, 15 days wages to be contributed to re-skilling fund maintained with government: within 10 days of retrenchment |
| Negotiating union                                    | • Introduction of concept of negotiating union                                                 | • It is mandatory on the employer to recognize negotiating union where the trade union is registered  
  • Going forward, negotiating union will negotiate on the terms of employment including consultation on standing orders |
Wage definition – impact
# Code on wages/code on social security

## Definition of wages

**Meaning and inclusions**

- Means all remuneration whether by way of salaries, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, in terms of employment, express or implied, where fulfilled, be payable to a person employed in respect of his employment, and includes –
  - Basic pay;
  - Dearness allowance; and
  - Retaining allowance, if any

**Specified exclusions**

- Statutory bonus payable but not forming part of remuneration;
- Value of house accommodation and utilities (such as light, water, medical attendance, etc.);
- Employer contribution to provident fund/pension together with accretions;
- Conveyance allowance or value of travelling concession;
- Sum paid to defray special expenses due to nature of work;
- House rent allowance;
- Remuneration payable under any award settlement;
- Any overtime allowance;
- Any commission payable;
- Any gratuity payable on termination;
- Any retrenchment comp/benefit payable or ex gratia payment made

**Conditional inclusions**

- Where the aggregate of specified exclusions as highlighted:
  - Exceeds one-half or such other notified percentage of all remuneration calculated under this clause,
  - Amount which exceeds such one-half or other percent, so notified
  - Shall be deemed as remuneration
  - And shall accordingly be added under this clause
- Conveyance/value of travel concession, house rent allowance, remuneration payable under award or settlement and overtime allowance shall be taken for computation of wage – for the purpose of equal wages to all genders

**Value of remuneration in kind**

- Where an employee is given remuneration in kind
  - In lieu of either the whole or part of the wages payable to him
- Value of such remuneration as does not exceed 15% of total wages payable to him
- Shall be deemed to form part of wages of such employee

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Key impact areas

Change in the definition of wages

- **Wages** – was defined in a varied manner under the existing regulations
- Attempt to simplify and have a standard definition across all subsumed regulations

- Need for companies to map the definition with specific reference to the salary structure of the company and analyze the impact e.g.,
  - Quantum of contributions to retiral benefits impacting cost to the company/take home pay of employees
  - Coverage of employees under the Payment of Bonus Act, employees state insurance etc.

**Impact areas**

1. **Increase in gratuity contributions** – applicable for past service periods impacting P and L account
2. **Requirement to pay higher gratuity** – impacting take home pay of employees for future
3. **Mandatory requirement to cover employees from ESI/statutory bonus perspective**
4. **Higher contributions to PF for employees with wages not exceeding INR 15000 pm**
Code on wages/code on social security

Definition of wages

- Specified exclusions - capped at 50% of total remuneration
- Remuneration in kind as does not exceed 15% of total wages be deemed to form part of wages

### All remuneration (INR)

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic</td>
<td>8,000</td>
</tr>
<tr>
<td>HRA</td>
<td>4,000</td>
</tr>
<tr>
<td>DA</td>
<td>1,000</td>
</tr>
<tr>
<td>Medical</td>
<td>3,000</td>
</tr>
<tr>
<td>Commission</td>
<td>4,000</td>
</tr>
<tr>
<td>Conveyance</td>
<td>5,000</td>
</tr>
<tr>
<td>Total</td>
<td>25,000</td>
</tr>
</tbody>
</table>

### Specified exclusions (INR)

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>HRA</td>
<td>4,000</td>
</tr>
<tr>
<td>Commission</td>
<td>4,000</td>
</tr>
<tr>
<td>Conveyance</td>
<td>5,000</td>
</tr>
<tr>
<td>Total</td>
<td>13,000</td>
</tr>
</tbody>
</table>

### Conditional inclusions (INR)

- Specified exclusions – 50% of total remuneration
- (13,000 – 50%*25,000) = 500

### Wages (INR)

- Total remuneration - 50% exclusions + inclusions
- (25,000 – 13,000 + 500) = 12,500

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The code on social security, 2020
Impact of the new wage definition – illustration

*Gratuity is payable on last drawn wages, for simplicity’s sake, it is assumed that last drawn salary and average salary for 12 months is same

<table>
<thead>
<tr>
<th>Pay components</th>
<th>Reference</th>
<th>Existing laws (INR)</th>
<th>Social security code (INR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>CTC including variable pay/ bonus</td>
<td>Total remuneration</td>
<td>15,00,000</td>
<td>15,00,000</td>
</tr>
<tr>
<td>Cost to company excluding variable pay</td>
<td>CTC</td>
<td>12,00,000</td>
<td>12,00,000</td>
</tr>
<tr>
<td>Basic pay (40% of CTC)</td>
<td>A</td>
<td>4,80,000</td>
<td>4,80,000</td>
</tr>
<tr>
<td>House rent allowance (40% of basic pay)</td>
<td>B</td>
<td>1,92,000</td>
<td>1,92,000</td>
</tr>
<tr>
<td>Leave travel allowance</td>
<td>C</td>
<td>1,00,000</td>
<td>1,00,000</td>
</tr>
<tr>
<td>Fuel reimbursement</td>
<td>D</td>
<td>1,20,000</td>
<td>1,20,000</td>
</tr>
<tr>
<td>PF contributions</td>
<td>E</td>
<td>57,600</td>
<td>1,04,375</td>
</tr>
<tr>
<td>NPS contributions</td>
<td>F</td>
<td>48,000</td>
<td>48,000</td>
</tr>
<tr>
<td>Telephone reimbursement</td>
<td>G</td>
<td>24,000</td>
<td>24,000</td>
</tr>
<tr>
<td>Sodexo meal e-vouchers</td>
<td>H</td>
<td>26,400</td>
<td>26,400</td>
</tr>
<tr>
<td>Gratuity</td>
<td>I</td>
<td>23,088</td>
<td>41,837</td>
</tr>
<tr>
<td>Special allowance</td>
<td>J</td>
<td>1,28,912</td>
<td>63,389</td>
</tr>
<tr>
<td>Variable pay/ bonus</td>
<td>K</td>
<td>3,00,000</td>
<td>3,00,000</td>
</tr>
<tr>
<td>Total wages to be considered for gratuity</td>
<td>Existing laws – A</td>
<td>4,80,000</td>
<td>8,69,789</td>
</tr>
<tr>
<td></td>
<td>Social security code – (A+H+J+K)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total of exclusions (B+C+D+E+F+G+I)</td>
<td></td>
<td>6,30,211</td>
<td></td>
</tr>
</tbody>
</table>

Understanding the impact for an employee with 7 years of service

| Monthly wages for gratuity purpose                  |        | 40,000              | 72,482                     |
| Total gratuity amount                               |        | 1,61,538            | 2,92,717                   |

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Work force categorization
Workforce categorization
We believe that the workforce can be bucketed in the following categories based on the provisions of the labour codes

- **Contract employees** – contracted through manpower agency, sub-contract employees
- **Fixed term employees** – interns, trainees, employees hired for a fixed period, employees on assignment from group companies
- **Gig workers, platform workers** – consultants, retainers
- **Foreign nationals** on local payroll including expatriates
- **Regular employees** – domestic employees with wages more than INR 15,000 pm, less than INR 15,000 pm, workers for leave encashment purposes, women employees

Review of processes/documentation relating to the workforce engagement required to ensure right categorisation and related compliances
Polling question 2

What do you believe could be the impact of the change in the definition of wages?

• Significant financial impact
• Minimal financial impact
• No impact
• Not assessed
• Don’t know/not applicable
Offences and penalties
Offences and penalties

General non-compliance
- For non-compliance such as non-maintenance/improper maintenance of records, failure to submit draft standing orders within prescribed time, non-compliance/contravention of any other provision or rules – fine from Rs. 10,000 to Rs. 10,00,000

Second offence
- For second or subsequent default - Fine up to Rs. 20,00,000 or imprisonment up to 6 months or both

Non compoundable
- Failure to pay/deposit contribution deducted from employees’ wages – fine of INR 100,000 in addition to imprisonment for a term ranging between 1 to 3 years

Officer in default
- Factory-occupier, mines-owner/agent/manager
- Establishment – the person who has ultimate control over the affairs of the establishment
- Employer in other cases
Way forward
Focus areas
The areas that are critical for establishments transition smoothly from the existing laws to the New legislation with optimal efficiency

Understand “wage” and quantify financial impact
- Understand the impact of the definition of “wages”
- Analyzing the salary structure, identify inclusions and exclusions to determine wages
- Quantify the financial impact on account of the changed definition of wages
- Identify the impact on coverage of employees

Aligning compensation structure
- Basis the impact of the definition of “wage”, the organisation align the compensation structure to optimise the impact
- Determine the impact of revising the salary structure and conclude on the financial impact, the take home pay of the employees, the retiral and possible tax implications

Aligning HR policies
- Align the impacted policies– e.g. Maternity benefit, Gratuity, PF etc.
- Align working hours, leave policy, overtime policy, rest days and related HR policies, timelines for wage settlement
- Align appointment letters
- Align retrenchment policy, medical examination facility etc.

Work force categorization
- Defining the employee across different cadres –
  - on-roll regular employees; contracted / third party employees;
  - fixed term employees; gig workers.
  - Consultants/ retainers; other non-traditional employer-employee arrangements
- Engaging of contract work in core-non-core activities and identifying compliances relating to the same

Being compliant
- Identify and understand the change in compliance requirements, timelines,
- Map the current compliance processes
- Identify areas of changes and realign the internal processes to meet the compliance requirements under the codes

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Why commence the journey now?
Understanding of the implications, better preparedness, smoother transition

Where it stands?
- All four labour codes have received the presidential assent and are Acts today
- Draft rules have been issued for all the four codes – were open for feedback only for a limited window upto mid-December in respect of 3 codes
- Government on track to implement the codes from April 2021

Keep pace with changes
- State rules on concurrent topics such as working hours, leave encashment, minimum wages etc. to draw reference from central rules; course corrections with minimal disruption

Why now?
- Stringent penalty prescribed for non-compliance with no window available to defer the implementation

1 April 2021: new codes expected to be enforced
- Definition of wages and other key provisions of the codes not expected to change; enabling impact analysis and revisiting of salary structure
- Payroll processes changes are triggered from the provisions of the code
- Industry at large is looking to gear up for the implementation of the codes
Polling question 3

What do you believe is the key area of focus for your company, basis the discussions we have just concluded?

- Review of salary structure and impact analysis
- Review of compliances and timelines
- Review of policies and processes
- All the above
- Don’t know/not applicable
Question and answers
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