

Code on Social Security and allied laws

December 2019

Presenters

Subject matter experts



Tapati Ghose

Saraswathi Kasturirangan

Radhika Viswanathan

Contents

- Legislative intent
- The four new codes
- The Code on Social Security
 - An overview
 - Key definitions
 - Salient features of various legislations
- Highlights of other labour codes



Introduction of new labour codes

Background and legislative intent

New codes intend to amalgamate, simplify, and rationalize the relevant provisions of the subsumed enactments.

Amalgamation of labour laws will:



The four new codes

Basics



Code on Wages, 2019

Subsumes four legislations relating to wage rate, time of payment and bonus

Received presidential assent in August '19, awaiting notification of effective date



Code on Occupational Safety, Health and Working Conditions

Amalgamates 13 labour laws relating to safety and health standards

Introduced in Parliament in July '19 and referred to Standing Committee in October '19



Code on Industrial Relations

Consolidates three enactments relating to Industrial relations

Introduced in Parliament in November '19



Code on Social Security

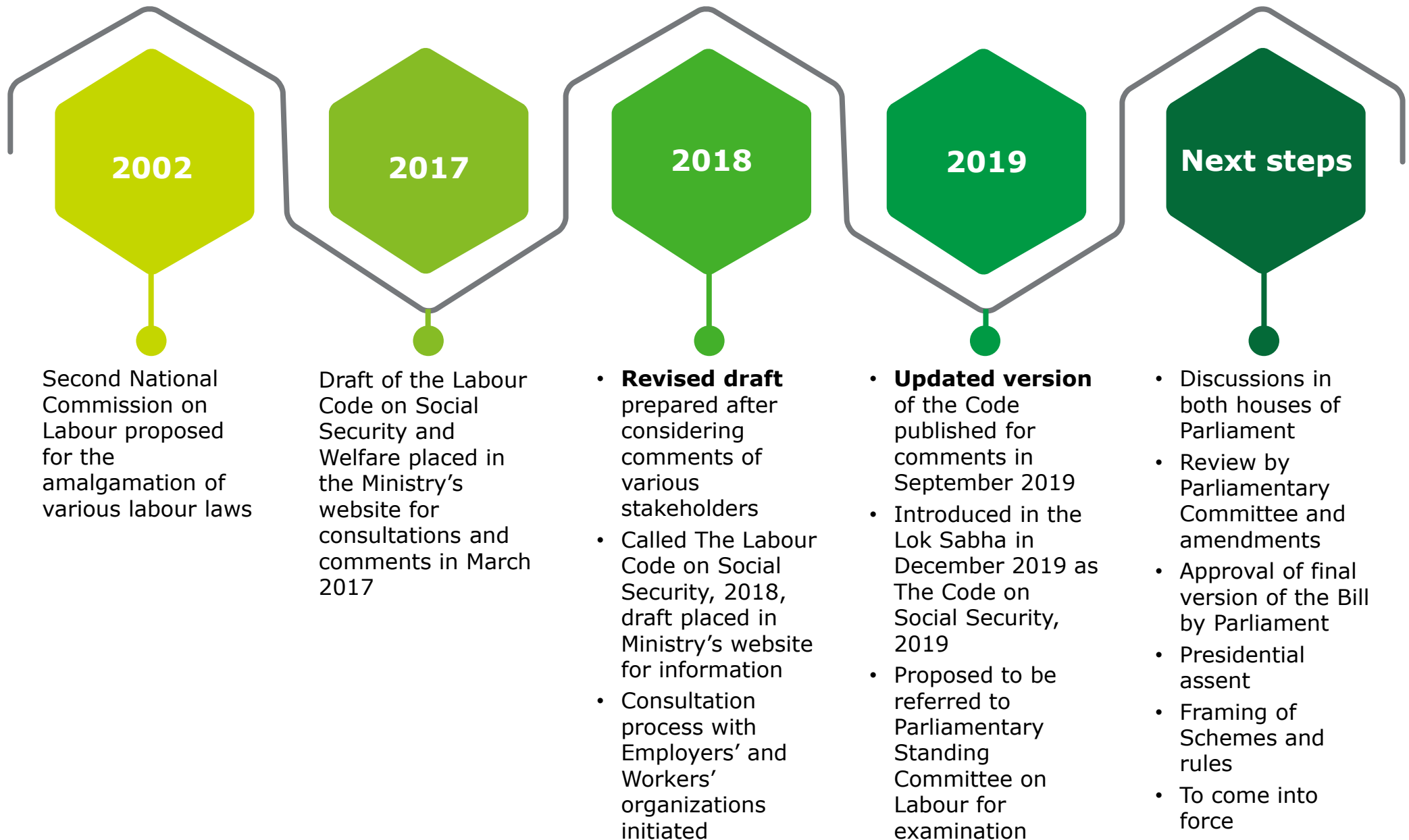
Integrates nine statutes in the social security space

Tabled in the Lok Sabha last week

Code on Social Security

An overview

Code on Social Security Evolution



Code on Social Security

Scheme of arrangement

1

Subsumes nine central labour enactments relating to provident fund, employees' state insurance, compensation, gratuity, maternity benefit etc.

2

Comprises of 163 sections encased in 14 chapters besides six schedules.
Effective date to be notified – multiple dates for different provisions.

3

Definitions provided in Chapter I – applicable across all chapters and provisions.
Chapter II details the constitution of various governing organizations and their functions.

4

Chapters III to IX deal with provisions relating to Provident Fund, ESI, Gratuity, Maternity Benefit, Compensation, Social Security for Building and Construction Workers and Unorganized workers.

5

Specific provisions for finance and accounts, Payment of Dues, Claim and Audit, Inspector cum Facilitator, Offences and Penalties, Miscellaneous provisions etc.

6

Applies to all establishments, employees and employers as defined and to the extent specifically called out in the Code.

Changes in key definitions

Existing laws on social security

Definition of wage

Provident Fund

Includes – Basic, DA, Retaining Allowance and cash value of food concession

Excludes – HRA, overtime allowance, bonus, commission or any other similar allowance. Test of universality specified by the Supreme Court in February 2019

ESI

Includes – All remuneration paid in cash

Excludes – Perquisites, Employer PF / ESI contributions, LTA, sum paid to defray special expenses and gratuity

Maternity Benefit Act

Includes – Basic salary, dearness allowance, HRA, other cash allowances, incentive bonus, value of food grains and other articles

Excludes – Other than incentive bonus, overtime wages, employer contribution to PF and gratuity

Gratuity

Includes – Basic salary and Dearness Allowance

Excludes – Bonus, Commission, HRA, overtime wages and any other allowances

Employee Compensation Act

Includes – Any privilege or benefit which is capable of being estimated in money

Excludes – Travelling allowance or value of any travelling concession, employer PF contributions and sum paid to workman to cover special expenses

Code on Social Security

Definition of wage

Meaning and inclusions	Specified exclusions	Conditional inclusions	Value of remuneration in kind
<p>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 –</p> <ul style="list-style-type: none">• Basic pay;• Dearness allowance; and• Retaining allowance, if any.	<ul style="list-style-type: none">• <i>Statutory bonus payable but not forming part of remuneration;</i>• <i>Value of house accommodation and utilities (such as light, water, medical attendance, etc.);</i>• <i>Employer contribution to provident fund / pension together with accretions;</i>• <i>Conveyance allowance or value of travelling concession;</i>• <i>Sum paid to defray special expenses due to nature of work;</i>• <i>House rent allowance;</i>• <i>Remuneration payable under any award settlement;</i>• <i>Any overtime allowance;</i>• <i>Any commission payable;</i>• Any gratuity payable on termination;• Any retrenchment comp/ benefit payable or ex gratia payment made	<p>Where the aggregate of specified exclusions as highlighted:</p> <ul style="list-style-type: none">• 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 <p>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</p>	<p>Where an employee is given remuneration in kind</p> <ul style="list-style-type: none">• 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 <p>Shall be deemed to form part of wages of such employee.</p>

- Whether performance bonus / bonus forming part of employment contract are wages?
- How to value benefit in kind such as stock awards, car etc.?
- Why is the proviso on equal remuneration to all genders retained as in Wage Code?

Code on Social Security

Computation of wages

Example

Particulars	Amount	
Basic salary	40	Benefits in kind Value of housing accommodation (<i>In lieu of HRA</i>): 20
Fuel reimbursement	10	
Statutory bonus	10	
House Rent Allowance	20	
Special allowance	20	
Total	100	

Wages for the different chapters under the Code

- Wages as per the current PF regulations (Basic (including spl. Allowance) + DA + Retention allowance): INR 60
- Wages as per Payment of Gratuity Act before factoring 15 day criterion (last drawn basic + DA): INR 40
- Wages as per Maternity Benefit Act: (Basic + cash allowances): INR 100
- Wages as per the Code:
 - for a structure with HRA: INR 60 (40+20)
 - for a structure with housing accommodation: 15% to be applied on total wages i.e. 100 or wages as defined i.e. 60?

Code on Social Security

Key definitions and implications

Employer

Means a person who employs directly or through any person or on behalf of any person one or more employees in his establishment
Includes a **Contractor** and legal representative of the deceased employer.

Employee *exclusion specified

Any person (other than an apprentice) employed on wages by the establishment to do any skilled, semi-skilled, unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied and also includes a person declared to be an employee by the appropriate government

*For the purposes of Provident Fund and Employees State Insurance employees drawing equal to or less than wage ceiling only will be included - option for voluntary membership?

Under current provisions:

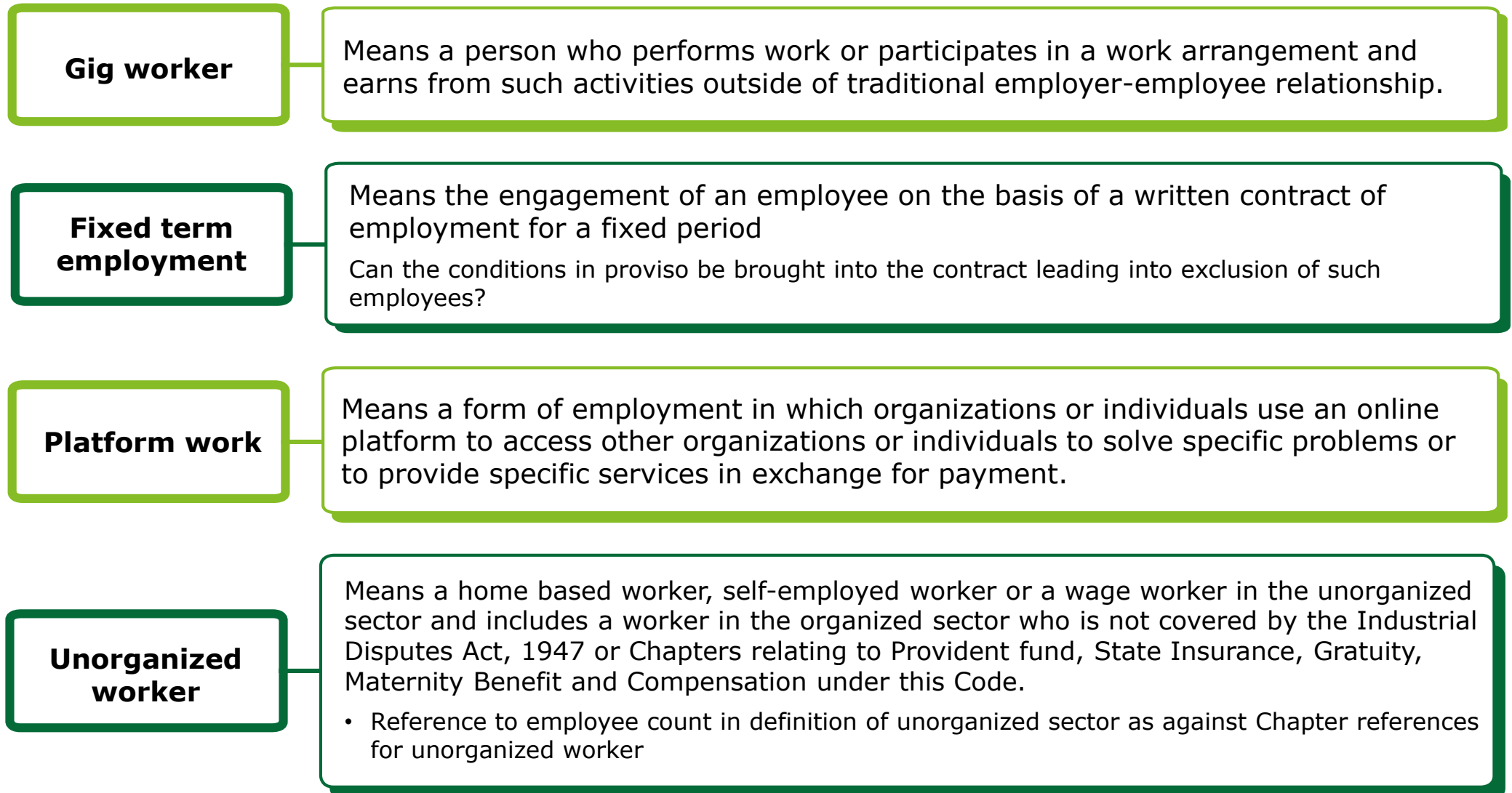
PF: Employer does not include contractor; Employee: skill levels / category of work (other than manual) not listed. Phrase "work in or in connection with" included. Excluded employee as per scheme eligible to become a member

ESI: Separate definitions for principal and immediate (contract) employer – employed on the work of or connected to the work of, reference to place work is performed.

No specific definition under Payment of Gratuity Act.

Code on Social Security

Key definitions and implications (contd.)



Salient features of various legislations

Code on Social Security

Employees Provident Fund



Applies to all establishments with 20 or more employees; restrictive definition of employee – covers only those with salary below threshold wage ceiling to be notified.

International Workers not mentioned in the Code, Status of exemptions provided under PF Act not indicated, optional membership for other employees?

Contribution to be done at 10% (12% for notified establishments) by employer and employee including for contract employees – similar to current provisions

Maximum of 1% of wages towards EDLI, administration charges not to exceed 0.25% of EDLI



Schemes for PF, pension and Insurance to be framed – to cover aspects such as eligibility of employees to join the fund, time and manner of contributions, recovery, administration charges, forms to be used, etc.

Rate of contribution aligned to current provisions – **differential rates can be notified for any class of employee**; contributions paid for employees employed by / through contractor can be recovered either by deduction from amount payable to contractor or as debt

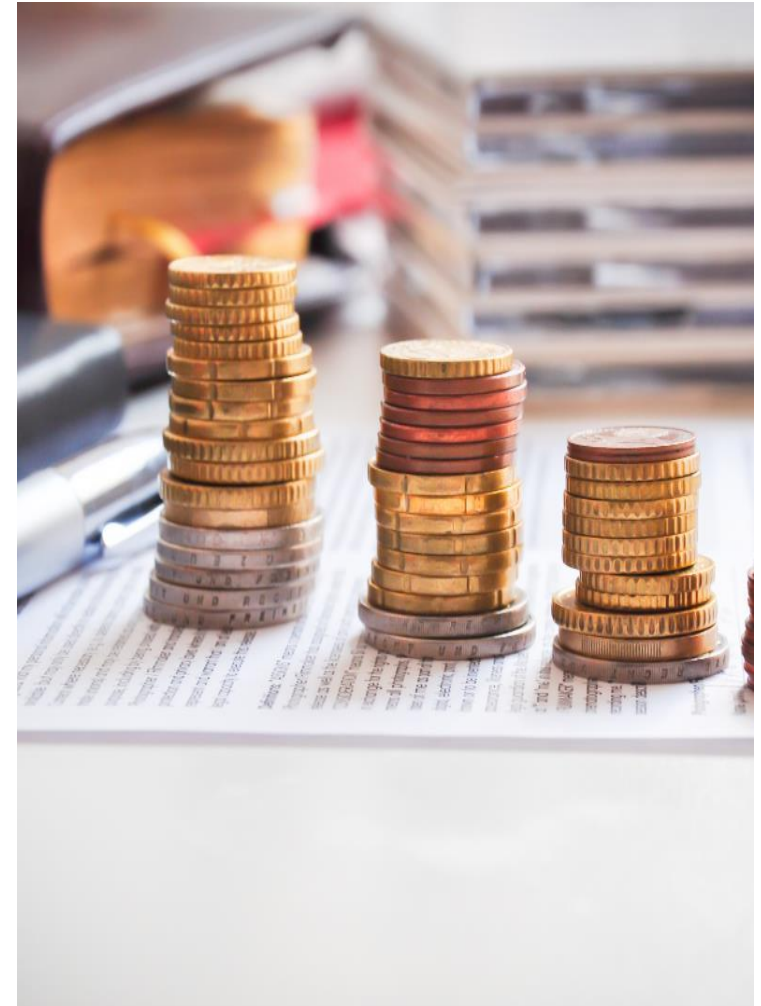


Period of limitation (five years) for initiation of enquiry and two years for completion of the same.

Code on Social Security

Employees State Insurance

- Applies to every establishment with 10 or more employees – no threshold for establishments carrying out hazardous or life threatening occupation;
- Provides sickness, pregnancy related, disablement, dependents, medical treatment related benefits as also for funeral expenses;
- Mandates that all employees of covered establishments need to be insured – onus on employer;
- Recovery of expenses met by the Corporation on account of failure to insure from defaulting employer;
- Contributions due on the last day of the wage period – rates to be notified;
- Primary responsibility for payment of contributions on employer – recovery provided for;
- Presumption of accident arising out of employment;
- Schemes for gig, platform and unorganized workers to be framed for providing eligible benefits.



Code on Social Security Gratuity



Provisions under Payment of Gratuity Act (PoGA) carried into the Code



Individuals on fixed term employment included for gratuity on pro-rata basis irrespective of period of service



Establishments exempt under PoGA to continue to remain exempt



Widening of wage definition (as against last drawn basis under PoGA) – enhanced gratuity entitlements – need to provide for the past – cost burden

Gratuity

Impact of the new Wage Definition

Pay Components		Existing Laws (INR)	Social Security Code(INR)
Cost To Company		6,00,000	6,00,000
Basic Pay (40% of CTC)	A	2,40,000	2,40,000
House Rent Allowance	B	1,20,000	1,20,000
Leave Travel Concessions	C	50,000	50,000
Fuel reimbursement	D	60,000	60,000
PF Contributions	E	28,800	36,000
Statutory Bonus	F	50,000	50,000
Special allowance	G	51,200	44,000
Total wages to be considered		2,40,000	284,000 +Adj for exclusion as per definition

Understanding the impact for an employee with 7 years of service

Monthly Wages	240,000/12	50% of total remuneration i.e. 300,000/12
Monthly wages for gratuity purpose	20,000	25,000
Formulae for gratuity	Last drawn pay / 26 * 15 * no of years of service	Last drawn pay / 26 * 15 * no of years of service
	80,769	100,961

*It is assumed that last drawn salary and average salary for 12 months is same.

Code on Social Security

Other subsumed legislations – maternity benefit, employees' compensation, building and other construction workers, unorganized workers, etc.

- Provisions predominantly aligned with those in the erstwhile statutes;
- Change in definitions – to apply consistently to all chapters of the Social Security Code;
- Provisions relating to Employees' State Insurance mutually exclusive to those providing for maternity benefit, employees' compensation;
- Specific provision for creation of social security boards for unorganized workers;
- Inclusion of gig / platform workers widens coverage of social security;
- Provides for funding of notified schemes for unorganized workers through Corporate Social Responsibility Fund besides other funding mechanisms (partly by Central / State Governments, contributions collected etc.)

Code on Social Security

Offences and penalties

Offence	Fine	Imprisonment
Failure by an employer, to pay employees contributions deducted by him from the employees' wages	INR 100,000 and	Imprisonment between one to three years
Failure by an employer, to pay any contribution liable to be paid under the Code	First instance INR 50,000 and Second and subsequent instances: INR 300,000	Imprisonment upto six months Second or subsequent instance: Between two to five years
Deducts employers contribution, reduces wages, penalizes woman employee, fails to pay gratuity, maternity benefit, cess, fails to produce records, doesn't comply with any provisions	First instance: upto INR 50,000 & /or Second and subsequent instances: INR 300,000 for failure to pay charges, cess, gratuity, maternity benefit or compensation and	First instance: Upto One year Second and subsequent instances: Between two to five years
Fails to submit returns, obstructs executive officer, fails to pay compensation, send a statement of fatal accident	First instance: upto INR 50,000;	
Dishonestly makes a false return, report, statement or information to be submitted		Imprisonment upto six months

- Fine of INR 200,000 and imprisonment upto two years for second or subsequent offence except where specifically provided
- Option of compounding subject to conditions

Code on Social Security

In a nutshell

Broad based applicability – coverage for gig, platform and unorganized workers, thresholds for specified chapters

Impact of the wage definition on contribution / entitlement

Limitation period of five years for initiation and two years for concluding enquiries

Provision for filing single return electronically or otherwise by the employer

Significant increase in penalties and prosecution – No compounding for repeat offences

Aadhaar linked identification of employee / beneficiary

Other labour codes

Highlights

Code on Wages, 2019

Overview

Legislations subsumed

01

Code on Wages Act, 2019 subsumes four legislations viz.

- The Payment of Wages Act, 1936;
- The Minimum Wages Act, 1948;
- The Payment of Bonus Act, 1965; and
- The Equal Remuneration Act, 1976.

Individual chapters for each of the first three legislations and inclusion of provisions relating to Equal Remuneration in the first chapter.

Applicability and current status

02

- The Code applies to all establishments, employees and employers unless specifically exempt in the Code.
- Code received Presidential assent in August 2019 - awaiting notification of effective date.
- Draft Central Rules placed for stakeholder suggestions and comments during November 2019.
- Final version of the Rules to be released.

Differentiators

03

- Consistency in provisions across all sections of the Code;
- Definition of wages revamped and made uniform for all chapters
 - Includes all remuneration payable to a person;
 - Exclusions specifically listed – to be limited to 50% of total wages;
 - Benefits in kind to be part of wages
- Managerial employees included;
- Contractor identified as employer
- Concept of floor wages introduced in addition to minimum rate of wages;
- Early settlement of claims envisaged.

Code on Occupational Safety, Health & Working Conditions

Overview

Legislations subsumed ✂

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 workmen (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

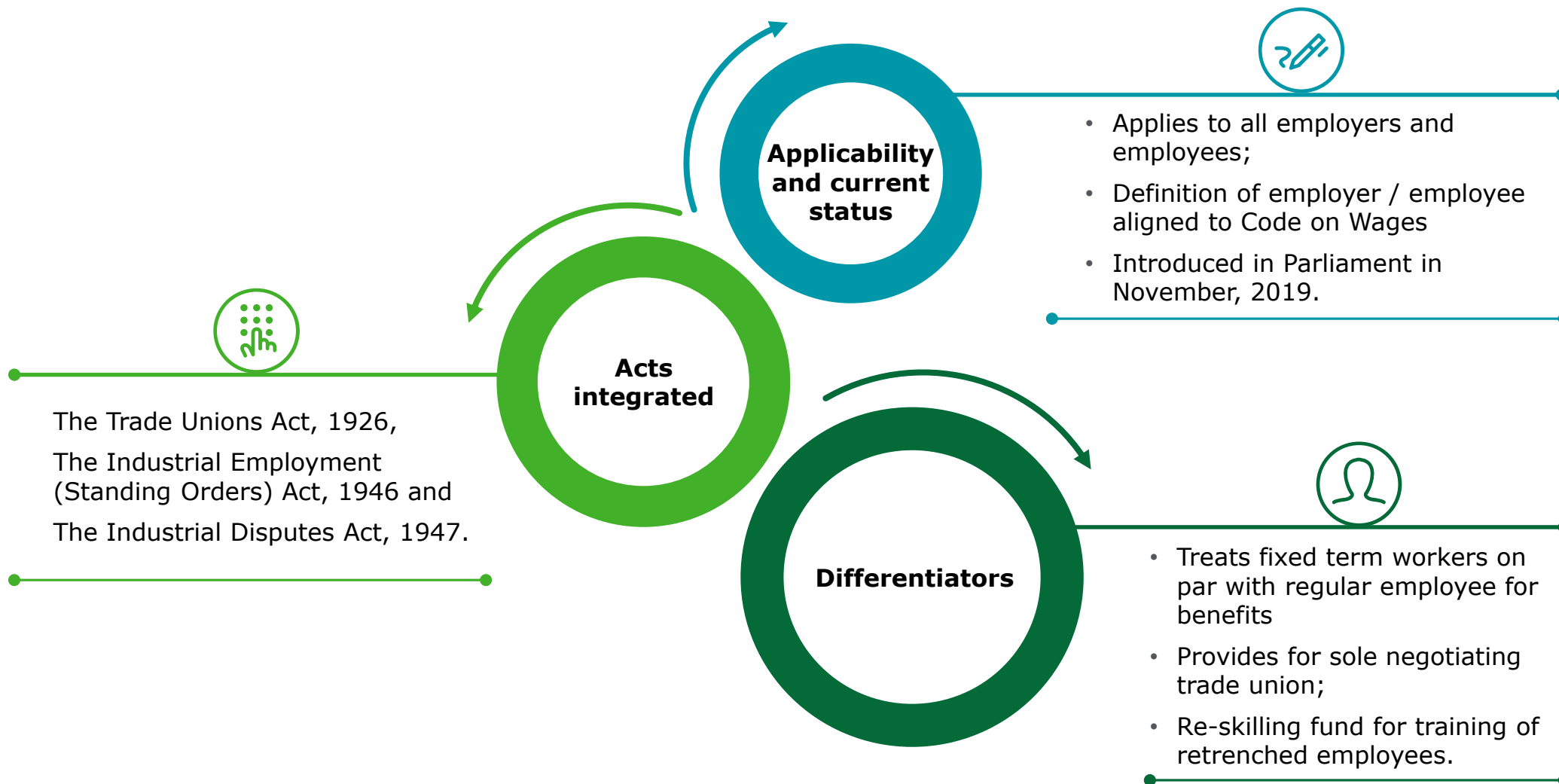
Applicability and current status ☰

- Applicable to all establishments having 10 or more employees and mines and docks;
- Consolidates procedural aspects and provides uniformity in threshold;
- Introduced in Parliament in July 2019;
- Referred to Parliamentary Standing Committee on Labour and Employment in October, 2019 for examination.

Key features ⚙

- Employees include workers and all other persons employed in a managerial, administrative, or supervisory role (with monthly wage of at least INR 15,000);
- Mandatory registration and licensing process for establishments covered by the Code;
- Work hours, working conditions and welfare facilities to be notified;
- Entitled to one day of leave for every 20 days of work per year.
- Bar on civil courts from hearing matters under the Code

Code on Industrial Relations Overview



Stay updated

Navigate change with confidence

Download tax@hand

Sign up today for global, personalized tax news, and information resource designed for tax professionals.



Access the webpage

www.taxathand.com



Browse on the go

[Get it on Google play](#)

[Download on the App Store](#)



Delve into industry-specific updates, explore the interplay of tax-technology in business, learn about the global tax landscape, and much more. On the **Deloitte Tax Thoughtwares** page.



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see www.deloitte.com/about for a more detailed description of DTTL and its member firms.

This material has been prepared by Deloitte Touche Tohmatsu India LLP ("DTTILLP"), a member of Deloitte Touche Tohmatsu Limited, on a specific request from you and contains proprietary and confidential information. This material may contain information sourced from publicly available information or other third party sources. DTTILLP does not independently verify any such sources and is not responsible for any loss whatsoever caused due to reliance placed on information sourced from such sources. The information contained in this material is intended solely for you. Any disclosure, copying or further distribution of this material or its contents is strictly prohibited.

Nothing in this material creates any contractual relationship between DTTILLP and you. Any mutually binding legal obligations or rights may only be created between you and DTTILLP upon execution of a legally binding contract. By using this material and any information contained in it, the user accepts this entire notice and terms of use.

©2019 Deloitte Touche Tohmatsu India LLP. Member of Deloitte Touche Tohmatsu Limited

Deloitte Touche Tohmatsu India Private Limited (U74140MH199 5PTC093339), a private company limited by shares, was converted into Deloitte Touche Tohmatsu India LLP, a limited liability partnership (LLP Identification No. AAE-8458), with effect from October 1, 2015.