

Labour Codes – Key Impact Areas Employer

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OBJECTIVE AS ANNOUNCED

- The new labour codes are aimed at facilitating **ease of doing business** in the country and seek to replace 29 cumbersome laws. The objective is to encompass over 500 million organized and unorganized sector workers—90% of the workforce which has been outside labour laws.

NEW WELCOME ISSUES

Labour Codes – Key Impact Areas

- GIG worker means a person who performs a work arrangement and earns from such activity outside the traditional employer- employee relationship.
- Plat form worker means a person engaged in work arrangement outside the traditional employee-employer relationship by using online plat form.
- Unorganised worker means a home-based worker, self-employed worker or a wage worker in unorganised sector and includes a worker who is not covered und PF and ESI.
- Will constitute social security fund and frame a scheme for unorganised workers, gig workers and platform workers
- The scheme is funded by central and state governments, from aggregators, from corporate responsibility fund.

Labour Codes – Key Impact Issues

SOCIAL SECURITY FUND

CONTRIBUTION BY THE AGGREGATOR TO THE FUND

- Aggregator shall contribute one or maximum two percent of the annual turnover as notified by the Central Government.
- Every aggregator shall self-assess and pay provisional contribution for the preceding year not later than 30 June.
- Aggregator after finalization of the audit statement shall make final payment, if any, required to be paid by 31st October.

Direct Cost implications



Labour Codes – Key Impact Areas

Wage Definition

Minimum Wage should not be bifurcated

Higher Salary employees (above double the minimum wage) allowances should not be more than 50% of the gross monthly remuneration.

| COST GOES UP (INCREASE IN THE COST) | COST COMES DOWN (REDUCED COST) |
|---|---|
| P F Contribution | ESI contribution [But more employees will be covered under ESI |
| Gratuity Payment | Maternity |
| Over Time Payment [as present practice is on Basic + DA] | Retrenchment Compensation |
| Leave Encashment [as the present practice is on Basic +DA] | |
| Lay-off compensation | |
| Bonus Payment | |

Labour Codes – Key Impact Areas

- Contractor's workmen should be paid minimum bonus of 8.33%
- Contractor workers who are regularly employed should be given annual increment of minimum 2% on their gross wages every year.
- Inter-State migrant worker lump sum amount towards to and fro fare to native place once a year.
- In case of death due to accident in addition to the compensation Rs. 25,000/- should be paid towards funeral expenses. [non ESI employees & Inter State Migrant workers]
- Also transport charges from place of death to the native place.
- Employees 45 years and above annual medical examination every year before 30th April

Indirect Cost implications



Labour Codes – Key Impact Areas

- 250 or more workers welfare officer [Factory]
- 100 or more worker [including contract labour] canteen facility [Factory and Establishment]
- 50 or more workers separate rest rooms for male, female and transgender and lunch room [Factory]
- [for the above purpose, the contractor's workers are also counted] [old factories space constraint]
- When the incidence of sickness among IPs is excessive ESI corporation can claim payment of extra expenditure incurred as Sickness Benefit.
- If the employer fails to Register or fails to pay contribution within the time and the corporation pays any benefit to the employee, it can recover capitalised value from the employer.

Labour Codes – Key Impact Areas

- Annual leave eligibility – 180 days working or more in a calendar year [existing 240 days]
- Unavailed annual leave to be encashed by the employee at the end of the calendar year
- Holidays / weekly off falling between the annual leave should be excluded.
- If the minimum rate of wages fixed for the day – if he is employed for a period less than the normal working hours of the day, he will be entitled for a full normal working day wage.
- The period of work shall be inclusive of intervals of rest, shall not spread over for more than 12 hours. [existing - rest interval is excluded for computation of working hours]

High Impact Issues



Labour Codes – Key Impact Areas

- Employer means a person who employs, **whether directly or through any person**, or on his behalf or on behalf of any person..... [Thus principal employer will become employer even for contractor's workers.]
- Worker means **any person** employed in any industry to do any manual
- Any person – **includes contract worker**

For the purpose of Trade Union Chapter

Worker means **all persons employed** in trade or industry and

Includes unorganized worker (that is home based worker, self employed worker or a wage worker in the unorganized sector and includes a worker in organized section who is not covered by any of the Act)

Labour Codes – Key Impact Areas

- Industrial Dispute includes Individual dispute

Process of leading the individual disputes to the Industrial Tribunal

- Employer employing 20 or more to Constitute Grievance Redressal Committee (GRC).
- GRC will have equal number of members of employer and employees.
- Chairperson of GRC will be from employer and workmen on **rotation basis every year**.
- GRC shall decide the individual dispute within 30 days
- More than half of the worker member of GRC shall support the decision
- Worker aggrieved by GRC decision may approach Conciliation Officer within 60 days.
- Failure in conciliation leads to Industrial Tribunal

Principal Employer shall be the chairman of GRC of Contract Labour

Labour Codes – Key Impact Areas

- Where there is only one Registered Trade Union with 30 percent membership, the employer shall recognize such union as sole negotiating union. 3 years period.
- An employee who retired or retrenched shall not be considered as outsider for the purpose of holding office of a Trade Union.
- In multi union situation employer to constitute a negotiating council [verification of membership to be done by the employer]
- Bonus Calculation - Trade Union or the employees, **requiring any clarification relating to any item in the balance sheet or the profit and loss account**, then the authority **by order, direct the corporation or the company**, to furnish to the Trade Union or the employees such clarification and the **the company, shall comply with such direction.**

Labour Codes – Key Impact Areas

- In the matters for negotiation by Trade Union these issues are also included
 - i. Orders passed by the employer under standing orders
 - ii. Promotion and transfer policy and disciplinary procedure
 - iii. Classification of grades and categories of workers
 - iv. Hours of work, number of working days in a week,
 - v. Leave with wages and holidays.

- The Industrial Tribunal may **grant interim relief** in cases relating to an industrial dispute involving **discharge or dismissal or otherwise termination**, to the worker during the pendency of the industrial dispute.

Labour Codes – Key Impact Areas

- Employees from other states **working directly on the rolls of the company** with less than Rs.18000/- monthly wage are also Inter-State Migrant workers.
- Wage Code, OHS Code and Social Security Code defined '**Establishment**' as
A place where an industry, trade, business, manufacture or occupation is carried on in which 10 or more workmen are employed.
I R Code defined Industrial Establishment.
- Thus every type of organization is covered under the definition and the code is applicable.
- Women employee has to give **her consent** to work after 7 PM and before 6 AM
- In the existing non-core activity list of Contract Labour (R&A) Act **Any other activity which is incidental to the core activity** is there and the code has dropped the same.

Other Impact Issues



Labour Codes – Key Impact Areas

- Accident Report to be sent to Labour Department in addition to Factories Department
- Details of accident and dangerous occurrences in the establishment for the **last 5 years** to be displayed on the notice board.
- Sitting arrangements for all employees obliged to work in a standing position.
- Maintain register – **work performed** along with other details
- No worker shall be required to work overtime ... without prior consent of the worker for such work.
- Appointment Order to contain LIN number, Date of Birth, Aadhar Number, Bank Account Details, UAN, ESI Number, Nature of duties etc.,

Labour Codes – Key Impact Areas

- Government to declare additional minimum wage for certain category of workers taking into account nature and conditions of work.
- Undisbursed wage and bonus to be deposited with the Labour commissioner
In case of death : on expiry of 3 months
In other cases : 6 months.
- Where the employee has been removed or dismissed or retrenched or resigned Wages payable to him shall be paid **within two working days**. [not full and final settlement it is wages only]
- Deductions for absence of the employee from place or places of work shall not be for **larger proportion** than the period for which he was absent.

Labour Codes – Key Impact Areas

- When there is a dispute on the Bonus Percentage, minimum bonus should be paid pending the dispute for higher bonus.
- No employer shall make any discrimination on the ground of sex **while recruiting** any employee for the same work or work of similar nature, except where employment of women in such work is prohibited or restricted

Other Impact Issues – WIN-WIN



Labour Codes – Key Impact Areas

Fixed Term Employment

- Hours of work, wages, allowances and other benefits shall not be less than that of a permanent worker doing same work or work of similar nature.

Same work or work of similar nature

- Means in respect of which the **skill, effort, experience and responsibility** required are the same, when performed under similar working conditions

For the purpose of equal wages 'wage' shall mean

Basic Pay - Dearness Allowance - Retaining allowance if any

Conveyance allowance - House rent allowance

Remuneration payable under settlement or award - Over time allowance

Labour Codes – Key Impact Areas

- Superannuation age can be fixed in the contract or conditions of service
- Compulsory insurance to cover liability for payment towards gratuity
- Employment injury includes accident occurring outside territorial limits of India
- Accident is presumed to have arisen in the course of employment in the absence of evidence to the contrary
- PF and ESI proceedings for determination of due amounts from employer limitation is Five years.
- Appeal in the Tribunal is allowed against the PF dues determined by EPFO on deposit of 25% of the amount determined.
- Construction cost determination under BOCW Cess will be calculated at uniform rate of construction cost specified by public works department.

Labour Codes – Key Impact Areas

- The concept of Public Utility Service has been dropped and 14 days notice is mandatory for Strike or Lockout in all industrial establishments.
- Conciliation officer should not hold preceding relating to a dispute after 2 years from the date on which such dispute arose.
- On failure of conciliation proceedings either party can go directly to Industrial Tribunal (no government intervention)
- An employee shall be disqualified from receiving bonus , if he is dismissed for
 - Fraud or Riotous or violent behavior or
 - Theft, misappropriation or sabotage of property of the establishment or
 - Conviction for sexual harassment.

Labour Codes – Key Impact Areas

- Lay-off, Retrenchment and Closure

Industrial establishments employing less than 300 workers are not required to take permission from the Government.

- Standing Orders will be applicable to Industrial Establishments employing 300 or more workers.
- Common Creche facility is permitted
- 125 hours Over Time work is allowed in a quarter.
- Factory under construction is excluded from the Building and Other construction works and hence no cess is payable.

Labour Codes – Key Impact Areas

- Seasonal Factory – factory which is engaged for a period not exceeding seven months in a year in a manufacturing process.
- The employer within 15 days from the date of receipt of the recommendations of the Safety Committee shall take action to implement the recommendations.
- Factory under construction is excluded from the Building and Other construction works (BOCW Cess Act) and hence no cess is payable.

Other Impact Issues – Contract Labour



Labour Codes – Key Impact Areas

- The Occupier or the Factory Manager of a Factory shall only be called as Principal Employer.
- The Principal Employer is responsible to provide facilities and amenities such as Toilet, Washroom, Drinking Water, bathing facilities if required, changing room, first aid box, Canteen and Creche
- Contract Labour Chapter is applicable to the Principal Employer only if 50 or more contract labour are employed

Labour Codes – Key Impact Areas

- Manpower supply contractor employing 50 or more contract labour is covered under this chapter.
- Manpower contractor employing below 50 shall submit half-yearly return.
- Contractor supplying manpower more than one state may obtain license on Shram Suvidha Portal – valid for 5 years.
- Contractor to provide Bank Guarantee or Deposit @ Rs. 1000/- per person.

CONFLIT RESOLUTION – LEGAL SYSTEM



Labour Codes – Key Impact Areas

- The codes have removed Labour Courts
- Industrial Tribunal will continue in changed format – Two Member Bench
- One Judicial Member and One Administrative Member

CODE ON WAGES

[Minimum Wages, Payment of Wages, Bonus and Equal Remuneration]

- All decisions will be made by the concerned Government Officer
- Appeal can be made to the officer one rank higher than the officer who decided the matter

Legal forums jurisdiction removed

Labour Codes – Key Impact Areas

INDUSTRIAL RELATIONS CODE

- The matters like workmen discharge, dismissal, retrenchment, strike, lockout, closure etc., will be heard by two member bench of the Industrial Tribunal
- The decision should be consensus decision of the both the members
- If the members differ in the opinion the Government shall refer to Judicial Member of other Tribunal

The Leadership

Resource Inputs Pvt Ltd
SV Ramachandra Rao

S.V. Ramachandra Rao, Promoter & Managing Director

Backed with 50 years of experience in the field of Human Resource Management, Labour Law and Industrial Relations is providing leadership to the companies promoted by him for the last over 24 years.

He had his post graduate degree in Social Work with Personnel Management and Industrial Relations Specialization, Degree in Law from Berhempur University and Post Graduate Diploma in Labour and Administrative Laws from Annamalai University and worked with highly reputed Manufacturing and Service Sector organizations for over 25 years in senior management positions in the field of HR, legal and general management.

Currently Convener of HR & IR Panel Telangana Confederation of Indian Industry (CII), Chairman Employers Federation of Southern India AP & TS Branch, Co-Chair HR and IR Committee FTCCI and Member Employee Provident Fund Regional Board and consultant to many reputed companies.

4 Labour Codes – Key issues

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THANK YOU

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