

New Labour Codes & Practical Implications

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Rationale Behind the Changes

- Evolving forms of employment
- Changing economic systems
- Outdated laws
- Compliance burdens

Important features

- National Floor Wage
- Gender-neutral pay and job opportunities,
- Inspector-cum-Facilitator system
- Faster and predictable dispute resolution
- Single registration, single license & single return
- National OSH Board
- Mandatory safety committees in establishments with 500+ workers
- Higher factory applicability limits

Before & After

	Pre Labour Reforms	Post Labour Reforms
Formalisation of Employment	No mandatory appointment letters	Mandatory appointment letters to all workers.
Social Security Coverage	Limited Social Security Coverage	All workers including gig & platform workers to get social security coverage. All workers will get PF, ESIC, insurance, and other social security benefits

Before & After - Wages

	Pre Labour Reforms	Post Labour Reforms
Minimum Wages	Minimum wages applied only to scheduled industries & employments;	All workers to receive a statutory right minimum wage payment
Timely Wages	No mandatory compliance for employers payment of wages	Mandatory for employers to provide timely wages ,

Before & After

	Pre Labour Reforms	Post Labour Reforms
ESIC coverage	ESIC coverage was limited to notified areas and specific industries; establishments with fewer than 10 employees were generally excluded, and hazardous-process units did not have uniform mandatory ESIC coverage across India	ESIC coverage and benefits are extended Pan-India - mandatory for establishments with even one employee engaged in hazardous processes. Social protection coverage will be expanded to all workers.
Preventive Healthcare	No legal requirement for employers to provide free annual health check-ups to workers	Employers must provide all workers above the age of 40 years with a free annual health check-up.

Before & After

	Pre Labour Reforms	Post Labour Reforms
Women workforce participation	Women's employment in night shifts and certain occupations was restricted	Women are permitted to work at night and in all types of work across all establishments, subject to their consent and required safety measures
Compliance Burden	Multiple registrations, licenses and returns across various labour laws.	Single registration, PAN-India single license and single return

Benefits of Labour Reforms Across Key Sectors

1. Fixed-Term Employees (FTE)
2. Gig & Platform Workers
3. Contract Workers
4. Women Workers
5. Youth Workers
6. MSME Workers
7. IT & ITES Workers
8. Audio-Visual & Digital Media Workers
9. Hazardous Industry Workers.
10. Mine Workers
11. Beedi & Cigar Workers
12. Plantation Workers
13. Textile Workers
14. Dock Workers
15. Export Sector Workers

Code on Wages, 2019

Important definitions

1. Employee

2. Employer

3. Establishment

4. Factory

5. Industrial dispute

6. Minimum wage

7. Wages

8. Worker

Wages

Total 12 definitions in various labour laws – now simplified

All remuneration expressed (or capable of being expressed) in terms of money,

By way of salaries or allowances

Includes

- Basic pay
- Dearness allowance
- Retaining allowance

Does not include

- Bonus, conveyance allowance, contribution to pension or provident fund, house rent allowance, overtime, commission, gratuity, retrenchment compensation

Key features

Pay parity

Minimum wages – floor wage

Payment of wages & security deduction

Statutory bonus

Minimum Wages

To be declared by appropriate government

Time basis (hour, day or month) or piece of work basis

Applicable to all establishments

Floor wages

To be declared by the Central Government

May be different for different geographical areas – based on living standard

Minimum wages by states cannot be lower than floor wages

Cannot be reduced to match lower wages

Payment of Wages & Bonuses

Timely payment of wages

Modes of payment

Fixation of the wage period

Permitted deductions in wages

Eligibility for bonus

Deductions from bonus

The Industrial Relations Code, 2020

Important Definitions

Employer

Lay-off

Employee

Lock-out

Industry

Retrenchment

Industrial establishment or undertaking

Strike

Industrial dispute

Worker

Fixed terms employment

Wages

Closure

Important Changes in Definitions

- The definition of 'worker' has been expanded to include sales promotion employees, working journalists, and supervisory employees earning up to ₹18,000 per month,
- 'Industry' now encompasses any systematic activity carried on by cooperation between employer and worker, regardless of whether capital is invested or profit is intended, thereby bringing non-profit and low-capital activities within its ambit
- The definition of 'strike' has been revised to include “mass casual leave” which comprises of cases where casual leave has been taken by more than fifty percent of the workers on a given day.

Fixed Term Employment

Written contract of employment for fixed period

Hours of work, wages and allowances at par with permanent employee for same work

Eligible for all statutory benefits available to permanent worker

Eligible for gratuity if works for more than a year

Grievance Redressal Committee

Every industrial establishment which has 20 or more workers to constitute a GRC for the resolution of disputes arising out of individual grievances.

Composition –

- The GRC must comprise equal representation of employers and workers with adequate representation of women
- a maximum of 10 members.

Retrenchment, Lay-off & Closure

Provisions similar to Industrial Disputes Act

Central Government – power to prescribe retrenchment compensation

The threshold for obtaining prior permission of the Government increased to 300 or more workers at a Central level

Standing Orders

Provisions applicable to all industrial establishments, including commercial establishments, with 300 or more workers.

The appropriate Governments have the power to exempt establishments/ classes of establishments.

Existing certified standing orders will be deemed to be certified under the IR code, to the extent not contrary with the Code,

allows an employer to simply adopt the model standing orders and intimate this information to the certifying officer.

Model Standing Orders in service sectors now explicitly allow work from home subject to mutual agreement between employee and employer

Employers will need to review their standing orders to ensure compliance with the sector-specific model standing orders that are to be finalized by the Central Government.

Strikes & Lock-outs

No strike (from worker side) or lock-outs (from employer side) in any industrial establishment (including in the private sector) in breach of contract

- (i) without providing a notice within 60 days of striking/ locking-out; (ii) within 14 days of giving such notice; or (iii) before expiry of the date of strike/ lock-out specified in such notice.

No strikes or lock-outs - during the pendency of any conciliation proceedings & 7 days after its conclusion

No strikes/ lock-outs during: (i) the pendency of any arbitration proceedings or other proceedings before a tribunal/ national tribunal under the IR Code and 60 days after its conclusion, and (ii) any period when an award or settlement is in force, pertaining to the matters contained in such award/ settlement

Trade unions

The concept of mandatory 'recognition' of a trade union is introduced

The concepts of a negotiating union and negotiating council introduced - to negotiate with the employer on prescribed matters.

- If there is only 1 registered trade union - the employer must recognise this union as the sole negotiating union;
- If there is more than 1 registered trade union - the union with 51% or more workers on the muster roll of the establishment, will be recognised as the sole negotiating union; and
- If there is more than 1 registered trade union but none of them have at least 51% worker support, the employer must constitute a negotiating council, comprising of representatives of trade unions which have atleast 20% workers support – thus, there must be 1 representative for each 20% of the workers, and for the remainder after considering the membership on the 20%

Dispute Resolution Mechanism

Streamlined Dispute Resolution Mechanism

Time-bound adjudication of disputes

Industrial tribunals will now have 2 members (judicial and administrative member). Two members Industrial Tribunal will help in speedy disposal of labour disputes.

Direct Access Mechanism to Approach the Tribunal

The concerned party may make application directly to the tribunal in the matters not settled by the conciliation officer within 90 days from the date of receipt of failure of conciliation by the party.

Disputes no longer require discretionary reference by government officials, which was a time-consuming process. This reduces delays in the resolution of the industrial disputes and litigations.

The Code on Social Security, 2020

Applicability Thresholds

Benefit/ obligation	Threshold
Provident Fund	Every establishment with 20 or more employees are employed
Employee State Insurance	Every establishment with 10 or more employees are employed Establishments carrying on hazardous or life-threatening occupations one employee
Gratuity	<ol style="list-style-type: none">1. Every factory, mine, oilfield, plantation, port & railway company2. Every shop or establishment with 10 or more employees employed in a 12 months period preceding any day3. Any other notified establishments

Applicability Thresholds

Benefit/ obligation	Threshold
Maternity Benefits	<ol style="list-style-type: none">1. Every factory, mine or plantation2. Every shop or establishment with 10 or more employees employed in a 12 months period preceding any day3. Any other notified establishments
Social Security & Cess for Building & Other Construction Workers	Every establishment which falls under the building and other construction work

Provident Fund & Pension Schemes

Earlier provident fund schemes not entirely modified / repealed - Effectively, the provident fund regime continues

EPF act repealed only to the extent of pension - Transition period of 1 year for pension schemes

extends the coverage of the Employees' Provident Fund (EPF) with the provisions applying to all establishments that have 20 or more employees, regardless of the type of industry.

More workplaces and workers will be covered under the Provident Fund system, allowing a larger number of employees to receive social security benefits like retirement savings. Since applicability issue is resolved, it shall reduce litigation.

ESIC Coverage

ESIC coverage has now been extended across India by removing this restriction.

Voluntary ESIC membership is also allowed for establishments with fewer than 10 employees, if both the employer and employees agree to join. ESIC benefits can also be extended to plantation workers if the employer chooses to opt in.

For hazardous or life-threatening occupations, - ESIC coverage is now mandatory even for a single worker engaged in such work.

Earlier, accidents that occurred while an employee was travelling between home and the workplace were not treated as work-related, and employees or their families were not eligible for compensation. Now, any accident that happens while commuting to or from work will be considered as having occurred “in the course of employment.” Affected employees or their families can receive compensation or ESIC benefits in such cases.

Maternity Benefits

- More or less similar to existing provisions - to provide creche facilities in establishments having 50 or more employees,
- allows employers to avail a common creche facility.
- a common creche facility of the Central Government, State Government, municipality, private entity or of a non-governmental organisation or of any other organisation.
- A group of establishments can now, under the SS Code, pool their resources for setting up of a common creche in a manner agreeable to the establishments concerned.

Gig & Platform Workers

- Recognition of gig and platform workers re- extending social security protections beyond conventional employment relationships.
- Central Government power to launch schemes for gig & platform workers on life and disability cover, accident insurance, health and maternity benefits, old age protection, crèche, and other benefits. Under such scheme, a Gig and Platform Workers' Social Security Fund will also need to be set up and administered by the Central Government.
- The rate of contributions by aggregators to such Fund (which will be separately notified by the Central Government), will be between 1% to 2% of their annual turnover, capped at 5% of amounts paid by the aggregator to gig and platform workers.

Inspector – Cum - Facilitators

Inspector cum facilitator in place of inspector and randomized web-based inspection system aims to reduce the traditional “inspector raj,”

Inspectors will now function as facilitators, helping employers comply with laws, rules, and regulations

Duties of Employer

Responsibilities of Employer ranging from providing a working environment that is safe and without risk to the health of the employees, to providing adequate welfare facilities such as separate shelter-rooms, rest-rooms, etc., based on certain applicability thresholds

(e.g., canteen facilities to be provided in establishments with 100 or more workers, suitable restrooms for male, female and transgender persons in establishments with 50 or more workers).

The prescribed welfare facilities are required to be provided in all establishments, including commercial establishments.

Duties of Employees

Specific responsibilities on employees as well,

These duties include

- taking reasonable care for the health and safety of themselves and other persons who may be affected by their act/ omission,
- cooperating with the employer to meet its statutory obligations under the OSH Code,
- reporting obligations – i.e., reporting any unhealthy or unsafe working conditions to the employer, bringing to the employer's attention events in the workplace that may cause serious bodily injury or death or are an imminent danger to health of the employees.

corresponding penalty (of up to INR 10,000) leviable on the employee for contravention.

The Occupational Safety, Health & Working Conditions Code, 2020

Duties of Employer

Registration of establishment

Ensure workplace free from hazards causing injury or occupational disease

Comply with safety standards

Provide free annual health examination or test

Issue Appointment Letter to each employee

Provide safe working environment without risk to health of employees

Common Licensing & Registration

all establishments – whether factories, mines, commercial establishments– to obtain a single registration under the OSH Code.

Registrations already obtained under any central law will be deemed to be a registration under the OSH Code once details are provided to the registering officer within the prescribed timeline.

This registration is separate from the other registration required under the SS Code

Employers may obtain a common license in respect of combination of certain activities.

Existing licenses obtained under previous Central law will continue to be valid until their expiry.

Common Licensing & Registration

Allows contractors, who supply manpower to obtain a 'work-specific license' for project-based work orders and a 'national license' for undertaking work in more than one state.

Concept of deemed approval of registration applications and cancellation intimations, if not processed by the authorities within prescribed timelines,

The OSH Code does not repeal local shops and establishments legislations. They will continue to remain in force, and will need to be read harmoniously with the Codes.

Employment of Women during Night Hours

Women employees can be employed for all types of work in any establishment during night shifts, so long as she consents to such work and subject to compliance with conditions on safety, holidays and working hours.

Contract Labour

Single unified threshold of 50 or more contract labour for applicability of contract labour related provisions – both in respect of a principal employer and a contractor.

prohibits engagement of contract labour by principal employers in core activities of establishments.

Exceptions - normal functioning is ordinarily done through a contractor; the activities do not require full time workers for majority working hours; or there is a sudden increase in volume of work which needs to be accomplished in specified time.

Contract Labour

primary responsibility of the principal employer to provide welfare facilities to contract labour

silent on any statutory recourse to recoup related costs.

If a contractor is not duly licensed under the OSH Code, liability also attaches to the principal employer who may be punishable with fines under the OSH Code

Working Hours, Overtime & Leaves

8 hours upper limit on daily working hours

48 hour weekly limit on working hours

Overtime hours limit to be notified

Worker consent mandatory for overtime

Annual 18 days leave entitlement

Carry forward of upto 30 days of unused leaves, option to encash any days in excess of 30 days – at the end of the calendar year

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