New labor codes

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welcome to brighter
Re-engineering India’s labour markets

- Urgent need to rationalise, simplify and update labour laws in India
- Recognised by National Commission of Labour in 2002
- In 2019, the Ministry of Labour and Employment introduced four Bills to consolidate 29 central laws.
The Four Labour Codes

**Code on Wages, 2019**
**Status**
- Passed by Parliament
- Presidential assent received
- Central Rules – Draft published
- Expected implementation 2022
**Summary**
- Subsumes four Labour Acts related to wages and allied areas
- Rationalizes procedures and compliances with respect to wages and allied areas

**Code on Social Security 2020**
**Status**
- Passed by Parliament
- Presidential assent received
- Central Rules – Draft published
- Expected implementation 2022
**Summary**
- Subsumes nine Labour Acts related to social security and its applicability and delivery
- Effects changes to compliances and procedures with respect to social security

**Occupational Safety, Health and Working Conditions Code 2020**
**Status**
- Passed by Parliament
- Presidential assent received
- Central Rules – Draft published
- Expected implementation 2022
**Summary**
- Subsumes thirteen Labour Acts related to OS, H and WC and their delivery
- Standardizes regulation related to work conditions across employers

**Industrial Relations Code 2020**
**Status**
- Passed by Parliament
- Presidential assent received
- Central Rules – Draft published
- Expected implementation 2022
**Summary**
- Subsumes three Labour Acts related to IR and their conduct
- Rationalises procedures and compliances with respect to IR and ER
The Wage Code, 2019

Subsumes the following Acts
- The Minimum Wage Act, 1948
- The Payment of Wages Act, 1936
- The Payment of Bonus Act, 1965
- The Equal Remuneration Act, 1976

Key compliance impact
- Complications around definition of wages and fixing of bonus
- Costs of compliance

Key changes

- Applicable to all employees and employers
- Integrates wage definition for all Code purposes. Excludes components but if allowances are > 50% of compensation, amount in excess of 50% will be deemed wage
- Employees to be paid wage by seventh day of succeeding month
- F&F payment to be made within two days (of what)
- Regime of fines for non compliance established with inspector and inspection eco-system
- Bonus limit not set as yet;
- Recognition of contractor as employer
- Maintenance of records and penalties
- Decriminalized penal system
- OT set at twice of normal wage; Rules around working hours
- National Minimum Wage (floor) introduced with state wise discretion
- Time limit to raise a claim time period – 3 yrs

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Code On Wages, 2019

What constitutes Wages?

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

Exclusions

• Statutory bonus
• Value of house accommodation and utilities
• Employer contribution to provident fund / pension together with interest thereof
• Conveyance allowance or value of travelling concession
• House rent allowance
• Remuneration payable under any award settlement
• Overtime allowance
• Commissions payable
• Gratuity payable on termination
• Retrenchment compensation/retirement benefit payable or ex gratia payment made

The allowances angle

Where the excluded components (among those highlighted) exceed 50% or such other notified percentage of all remuneration, the amount that exceeds such 50% (or other percent, so notified) shall be deemed as remuneration and shall be added to wage

Remuneration in kind to be up to 15% of total remuneration
The intersection of the Code on Wages and the Social Security Code will impact employers and employees the most

- Wage definition will be applied to all statutory benefits
  - Impact of the new wage definition is expected to increase uncertainties surrounding, costs of and contributions to gratuity and leave encashment schemes
  - Impact on certain segments of employees in case of PF (whose basic is close to or lesser than INR 15,000); this could impact take-home pay

Nine Acts get subsumed

- The Employees’ Provident Fund and Miscellaneous Provisions Act, 1951
- The Payment of Gratuity Act, 1972
- The Employees’ State Insurance Act, 1948
- The Maternity Benefit Act, 1961
- The Employee’s Compensation Act, 1923
- The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959
- The Unorganised Workers’ Social Security Act, 2008
- The Building and Other Construction Workers’ Welfare Cess Act, 1996

While details of the Schemes are awaited critical changes are:

- Introduction of a new category of employees (Gig workers, platform workers, fixed term employees and unorganized workers) – that will be brought under coverage of various social security schemes
- Fixed term employees to be paid gratuity without completion of five years of service
- Limitation of liabilities for inquiry and assessment of past dues pegged at five years
- Coverage – ESI
Summarizing - Combined impact of Wage and Social Security Codes

Potential increase in costs (and contributions) to Gratuity, Leave and PF borne out of changes in definition of wages

Potential changes to wage structures of employees

Limitation of assessed liabilities to five years; The absence of limits in the current regulation makes these liabilities open ended

Ancillary impact

- Greater need for controls in compliance by employers as integration of regulators occurs in the long run
- Non compliance will get expensive

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Occupational safety, Health and Working Conditions Code, 2020

Subsumes the following Acts

- The Factories Act, 1948
- The Dock Workers (Safety, Health and Welfare) Act, 1986
- The Mines Act, 1952
- The Building and other Workers (Regulation of Employment and Conditions of Service) Act 1996
- The Plantations Labour Act, 1951
- The Inter State Migrant Workmen (Regulation of employment and conditions of service) Act, 1979
- The Contract Labour (Regulation and Abolition) Act, 1970
- The Working Journalist (Fixation of rates of wages) Act, 1958
- The Motor Transport Workers Act, 1961
- The Sales Promotion Employees (Condition of Service) Act, 1976
- The Cine Workers and Cinema Theatre Workers Act, 1981
- The Beedi and Cigar Workers Act, 1966

Key proposals

- Single registration for employers with more than ten employees across the country for all labour regulations
- Mandatory medical health check up (annual) based on age of employee for class of establishments
- Definition of Interstate migrant worker widened; now includes voluntary migrants but wage capped at INR 18k per month
Industrial Relations Code, 2020

Subsumes the following Acts

• The Trade Union Act, 1928
• The Industrial Employment (Standing Orders) Act, 1946
• The Industrial Disputes Act, 1947

Key proposals

Definition of Industry recast to define all industries. Employee definition standardised.

Fourteen days notice to be given for strikes and lockouts.

Number of min employees required to effect retrenchment where Govt permission is required – 300.

Norms established for recognition of Trade Union - 50% of workers enrolled in Union.
Mercer View on the Codes

• The Labour Codes kick off the much needed exercise of rationalisation of ageing labour laws in India

• We expect the rationalisation and simplification of the regulations will help employers render compliance at lower longer term costs

• We also expect widening of the net of compliance due to integration of laws and regulators

• In the near term, we expect implementation issues and higher short term costs due to factors that we have discussed

• When seen from a Social Security lens, we expect the Codes to deliver stimulus to the social security landscape and deliver better outcomes.

• This will ensure improvement in the adequacy, sustainability and integrity factors resulting in long term value to employers and employees.
Our approach – in summary
Logical, sequential steps in the process

Phase 1
Planning-Project Plan

Phase 1: Code on Wages and Social Security Code
Review of existing compensation structure, policies and practices and recommending a new structure aligned to the code

Phase 1: Code on Wages and Social Security Code
Regulatory requirements under local law and regulations*

Phase 1: Occupational Safety and Industrial Relations Code
Review existing policies and recommending changes as per new code

Phase 1: Implementation roadmap and governance framework
Help in building a governance framework

Phase 2: Implementation
Design change communication plan

Phase 2: Implementation
Develop Employee FAQ's, Employer Handbook, Sessions with Leadership

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Deliverables

New compensation structure options aligned to new wage definition

Financial implications on retirement benefits (using actuarial principles)

6 months handholding (query based) – post central final rules are notified

Regulatory checklist for labour codes, as applicable

Communication plan & collaterals