

CODE ON SOCIAL SECURITY 2020



Presentation from Ganesh Prasad CAs

Category III

Labour code subsumed

- Employees' Provident Funds and Miscellaneous Provisions Act, 1952
- Employees' State Insurance Act, 1948
- Employees' Compensation Act, 1923
- Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959
- Maternity Benefit Act, 1961
- Payment of Gratuity Act, 1972
- Cine-workers Welfare Fund Act, 1981
- Building and Other Construction Workers' Welfare Cess Act, 1996
- Unorganised Workers Social Security Act, 2008

New Labour code

CODE ON SOCIAL SECURITY, 2020

(Section 3 to 104)

Salient Feature:

- Coverage broadened to include Gig/Platform workers, fixed term employees, and those in the unorganized sectors with the organized sectors
- Existing schemes valid for the period of one year after effective date to the extent the same is not contradictory to the provisions of the code
- Monetary threshold to be brought in through schemes/notification
- Period of limitation introduced
- No specific references to international workers-expected to be introduced under the schemes
- Stringent penalties and prosecution provisions are provided.

Definitions:

Factory (Sec2(32))

- Sec 2 (32) means any premises including the precincts thereof—
- whereon **ten or more employees are working**, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (b) whereon **twenty or more employees are working**, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on.

Employer (Sec 2(27))

- 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 (Sec 2(26))

- 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.

Completed year of services (Sec 2(17))

- Means continuous service for Twelve months

Platform work (Sec 2(60))

- Means a form of employment in which organizations or individuals use an online platform to access other organizations or individuals to solve specific problems or to provide specific services in exchange for payment.

Home-based worker (Sec 2(36))

- Means a person engaged in, the production of goods or services for an employer in his home or other premises of his choice other than the workplace of the employer, for remuneration, irrespective of whether or not the employer provides the equipment, materials or other inputs.

Gig worker (Sec 2(35))

- Means a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship.

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Employees' Provident Fund Act (Section:14 to 23)



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.

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Employees State Insurance (Sec 24 to 52)

- 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 2020 Gratuity (Sec 53)

- 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 as may be notified.

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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.)

Offences and Penalties: (Sec 56)

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence committed for the first time, punishable under this Chapter, being an offence—

(i) punishable with fine only; or

(ii) punishable with imprisonment for a term which is not more than one year and also with fine, may, on an application made, either before or after the institution of any prosecution, be compounded by the Central Government for the purposes of offences relating to PF and ESI.

For other offences in the other laws of this code the Government can levy,

(i) Fine which is half of the maximum fine provided for that offence; and

(ii) in the case of an offence punishable with imprisonment for a term which is not more than one year and also with fine, the three-fourth of the maximum fine provided for that offence.

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Conclusion

- i) The enactment of the Code on Social Security, 2020 has made understanding of the scope and ambit of social security laws easier by consolidating the pre existing laws.
- ii) The Code also defined the various terms like gig workers and platform workers which were not previously defined.
- iii) The Code will help in increasing employment opportunities by engaging workers on temporary basis and also providing them with the social security.