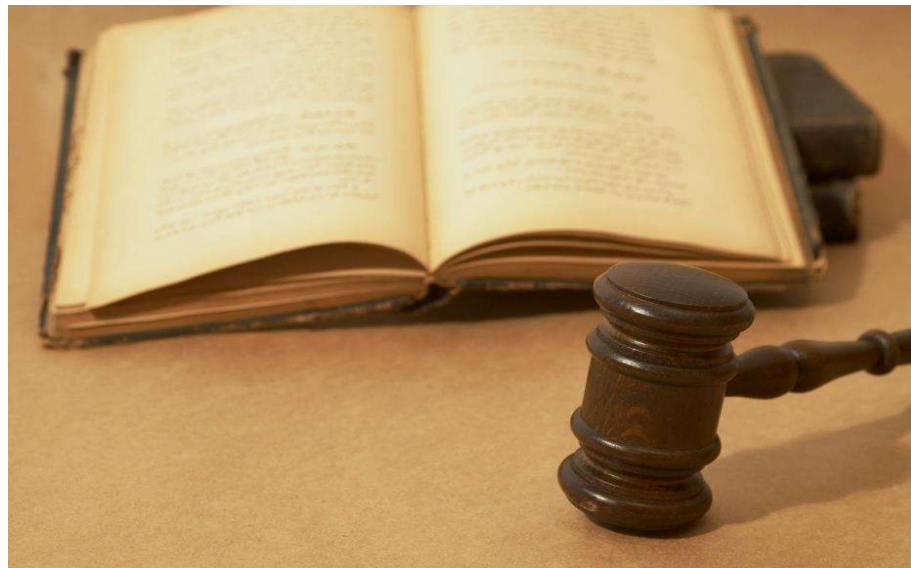


NEW LABOUR AND INDUSTRIAL CODE



Presentation from Ganesh Prasad CAs

Areas Covered

Code on Wages 2019

**The Industrial Relations
Code 2020**

**Code on Social Security
2020**

**THE OCCUPATIONAL SAFETY,
HEALTH AND WORKING
CONDITIONS CODE 2020**

Category I

Labour laws subsumed

- Payment of Wages Act, 1936
- Minimum Wages Act, 1948
- Payment of Bonus Act, 1965
- Equal Remuneration Act, 1976

New Labour code

Code of Wages ,2019 (Section:2 to 69)

**The Equal
Remuneration
Act, 1976 (Sec 3 &4)**

To mandate equal remuneration and to prevent gender discrimination in employment matters.

**The Minimum Wages
Act, 1948 (Sec 5 to 14)**

To enable fixing of minimum rates of wages in certain Employments.

**The Payment of Wages
Act, 1936
(Sec15 to Sec 25)**

To ensure payment of wages to employees are disbursed on time and no undue deductions are made.

**The Payment of Bonus
Act, 1965
(Sec 26 to 41)**

To provide for payment of bonus to persons employed in certain establishments on the basis of profits or production or productivity.

Salient Features:

- Applies to all establishments, employees and employers as defined unless specifically exempt in the code.
- Covers all employees including managerial cadre.
- **Wage definition standardized.**
- State government minimum wage rates to be aligned to national floor wages.
- **Need to meet wage payment dates as prescribed.**
- Recoveries from wages specified with monthly recovery capped at 50%.
- Settlement time of dues in case of resignation/dismissal shortened.
- Time for preferring claims extended.
- Role of inspectors widened to include facilitation function.
- Penalties and prosecution enhanced.

The Code on Wages 2019

Definitions:

- **Wages (Sec 2y)**

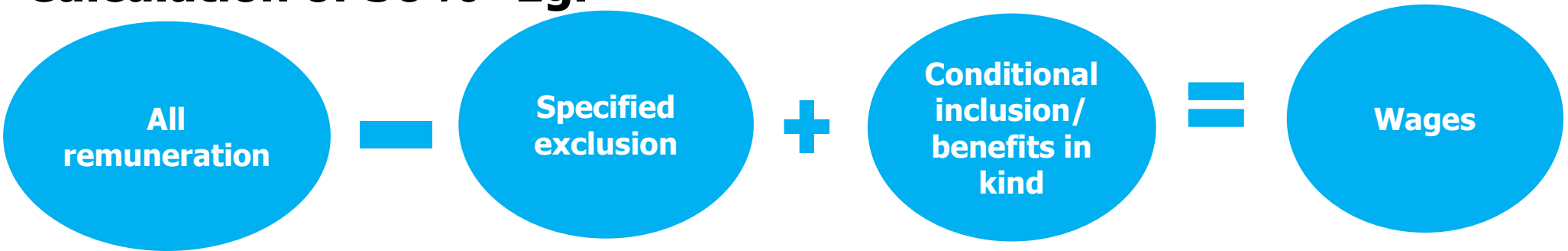
Means all remuneration whether by way of salaries, allowances or otherwise, expressed in terms of money or capable of being so expressed which would if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes,

- a) Basic pay;
- b) Dearness allowance; and
- c) Retaining allowance, if any.

Statutory bonus	Value of house accommodation/supply of water, light, medical attendance or other amenity.	Employer's contribution to Provident fund, pension and interest accrued there on.	Conveyance allowance/ value of travelling concession.
Sum paid to defray special expenses.	House Rent Allowance.	Remuneration payable under award or settlement.	Overtime Allowance.
Commission.	Gratuity payable on termination.	Retrenchment Compensation and Other Retiral Benefits/Ex-gratia.	

- **Exclusions – other than highlighted components - capped at 50% of total remuneration.**
- **Remuneration in kind to be upto 15% of total remuneration.**

Calculation of 50%- Eg.



All remuneration (Rs.)		Specified exclusion (Rs.)		Conditional inclusion (Rs.)	Wages (Rs.)
Basic	8,000	HRA	4,000	Excluded Portion of remuneration exceeds 50% of total remuneration (23,800*50% = 11,900) Rs: 2,900 is added back to remuneration)	Total remuneration-exclusion+inclusions Rs: 11,900 (23,800-14,800+2900)
HRA	4,000	Commission	4,000		
DA	1,000	Conveyance	5,000		
Employer PF	1,800	Employer PF	1800		
Commission	4,000	Total	14,800		
Conveyance	5,000				
Total	23,800				

- **Specified exclusion exceeds 50% of total remuneration. Thus, the excess of 50% is added back to remuneration.**
- **Remuneration in kind does not exceed 15% of total wages and shall be deemed to form part of wages.**

Code of wages 2019

Key definitions

Employer (Sec 2I)

- Means a person who employs whether directly or through any person or on his behalf or on behalf of any person, one or more employees in his establishment and includes occupier and manager in case of a factory. In case of any other establishment, the person who has ultimate control over the affairs of the establishment, a manager or managing director who has been entrusted with the affairs. Also includes a Contractor and Legal Representative of the deceased employer (*The definition is made comprehensive to cover all the four acts merged into one*)

Employee (Sec 2K)

- 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 are express or implied and also includes a person declared to be an employee by the appropriate government, does not include any member of the Armed Forces. (*The definition is made comprehensive to cover all the four acts merged into one*)

Establishment (Sec 2M)

- Means any place where any industry, trade, business, manufacture or occupation is carried on and includes Government establishment

Worker (Sec 2Z)

- Any person other than an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational clerical or supervisory work for hire or reward whether the terms of employees be express or implied. Also includes working journalists and sales promotion employees.

Contractor
(Sec 2f)

- Means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or supplies contract labour for any work of the establishment as mere human resource and includes a sub-contractor

Contract Labour
(Sec 2g)

- Means a worker who shall be deemed to be employed in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer and includes **inter-state migrant worker** but does not include a worker who is regularly employed and gets periodical increment in the pay, social security coverage and other welfare benefits.

Fixation of
Minimum Wages
(Sec 6)

- Means the wage fixed under section 6. The definition of minimum wages has been made comprehensive by incorporating hourly/daily/monthly wages category and also as wage for time work and piece work.

The Code on Wages 2019- Minimum Wages (Section:5 to 14)

Particulars	Under the Code on Wages	Comments
Applicability	All employments – Not restricted to Scheduled Employment.	Wider coverage – all entities would get impacted. Concept of scheduled employment done away with.
Wages	Wide definition with specific exclusions - HRA covered under exclusions.	The minimum wages act prevalent currently includes HRA.
Rest day / Normal working hours	Rest day for every period of seven days Rules to specify the hours of work which would constitute a normal work day.	Draft rules indicated 8 hours of work plus aggregate rest period of one hour.
Overtime wages	Applicable beyond normal working hours at twice normal wages.	If any employee works on any day in excess of hours consisting a normal working day , the overtime rate shall not be less than twice the normal rate of wages.
Criteria for determining minimum wages	Skill sets, Geography or both Arduousness of work, working environment.	Change from existing act which focuses on fixing minimum wages employment wise – lesser number of categories
National Floor Wages	Concept of Floor wages brought under the Code itself. Central Govt. to fix National Minimum Wage (or Floor Wage).	Minimum wages cannot fall below the floor rate.
Revision of minimum wages	Minimum wages be revised at-max within 5-year intervals.	Provision is similar under the current Act.

The Code on Wages 2019

Payment of Wages (Section 15 to 25)

Changes of provisions in Payment of Wages Act

Applicability

- No wages threshold as against INR 24,000 in the current Act.
- All establishments covered as against specified industries/ factories under the current Act.

Meaning of wages

- Conveyance allowance/ travelling concession, HRA, remuneration payable under any award or settlement or order of Court/Tribunal, any overtime allowance will be included as Wages for this chapter - specific exception to be excluded.

Quantum of deductions

- Permissible deductions are specified – aggregate deductions cannot exceed 50% - includes PF and Pension contributions, tax withholdings, advances, fines.

Timelines for wage payment

- Daily wage period – At the end of the shift.
- Weekly wage period – On last working day of the week.
- Fortnightly wage period – by end of the second day after expiry of fortnight.
- Monthly wage period – by seventh day of the succeeding month.

Wage period

- Cannot exceed a month – challenge in managing new joinee payrolls.

Final settlement

- Extremely short timeline of 2 working days introduced – no defined timelines in the current Act.

The Code on Wages 2019

Payment of Bonus (Section 26 to 41)

Applicable to establishments employing 20 or more persons.

Provisions relating to minimum and maximum rate of bonus remains the same as 8.33% and 20% respectively.

Wage threshold for eligibility of employees/ computation of bonus – to be notified by the appropriate Government.

Principal employers liable to pay statutory bonus in case of any default by the contractor subject to conditions.

The Code on Wages, 2019

Offences and Penalties (Sec 52 to 56)

Payment of wages less than the prescribed amount under the Code

- First instance – Fine upto Rs. 50,000 Second and Similar is committed within 5 Years – Imprisonment up to three months and/or fine upto Rs. 1,00,000 or both can be imposed.

Contravention of any other provision or rules under the Code

- First instance – Fine upto Rs. 20,000 and if Similar Offences is committed within 5 years commission – Imprisonment upto one month and/or fine upto Rs. 40,000 or both can be imposed.

Non-maintenance or improper maintenance of records

- Fine upto Rs. 10,000.

Non-compliance of the provision of the Code after the timelines under the directions from Facilitator Cum Inspector

- Prosecution proceedings may be initiated after providing opportunity of being heard; No opportunity will be provided for repetition of violation within five years from the date on which first violation was committed.

Conclusion:

- ❑ With Wage Code intending to cover 50 crore+ employees and ensure “Right to Sustenance” for every worker by increasing the legislative protection of minimum wage; its a welcome move making India a more formal economy and fulfilling India's aim to become a \$ 5 Trillion economy.
- ❑ The HR, Legal, Finance and business users must familiarize themselves with the code and evaluate potential impact on their operations and make use of time in hand before states start rolling out their rules.