



**DGST GROUP DISCUSSION ON  
KEY ISSUES OF  
“THE CODE OF SOCIAL  
SECURITY, 2020”**

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# Preamble:

- An Act to **amend and consolidate** the laws relating to social security with the goal to extend social security to **all employees and workers** either in the **organised or unorganised** or any other sectors and for matters connected therewith or incidental thereto.
- The following enactments are repealed, namely:
  - The Employee's Compensation Act, 1923;
  - The Employees' State Insurance Act, 1948;
  - The Employees' Provident Funds and Miscellaneous Provisions Act, 1952;
  - The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959;
  - The Maternity Benefit Act, 1961;
  - The Payment of Gratuity Act, 1972;
  - The Cine-Workers Welfare Fund Act, 1981;
  - The Building and Other Construction Workers' Welfare Cess Act, 1996;
  - The Unorganised Workers' Social Security Act, 2008.



# Employee's Provident Fund:

- i. All establishments having 20 or more workers come under the purview of EPF.
- ii. Mandatory Aadhaar based registration.**
- iii. The employer **must contribute 10% of the employee's wages** towards the Provident Fund scheme. (Section 16)
- iv. The employee's Provident Fund contribution **must be equal** to the employer's contribution. If an employee opts to contribute more than 10% of wages, the employer is **not required** to contribute beyond its prescribed share. (Section 16)
- v. The central government **may defer or reduce** the employer's or employee's contributions (under PF and ESI) for a period of **up to three months** in the case of a **pandemic, endemic, or national disaster**. (Section 144).



# Employees' State Insurance (ESI):

- i. The provisions apply to every establishment **employing 10 or more persons**, *except seasonal factories (Section 2(74)). The provisions **also apply** to establishments engaged in hazardous or life-threatening activities, **even if** only one employee is employed. (Section 2(z) – hazardous of The Occupational, Safety, Health and Working Conditions Code, 2020 and life-threatening activities – Section 2(v) to be notified by the Central Government). Further, **Gig workers, plantation workers, unorganised sectors will come under ESI.***
- ii. The employer **must pay both** the employer's and the employee's contributions in respect of every employee. (Section 31)
- iii. In the case of **female employees**, the definition of family also covers dependent parents, including father-in-law and mother-in-law, whose income from all sources does not exceed the limit prescribed by the Central Government. (Section 2(33))
- iv. Different type of benefits to which an insured person is entitled are (Section 32):**
  - Sickness benefit (Section 2(77)): Periodical payment to insured person in case of sickness known as sickness benefit.

# Employees' State Insurance (ESI):



- Maternity benefit (Section 2(43)): Periodical payments to an insured person being a woman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement, premature birth of child or miscarriage.
- Disablement benefit: Periodical payments to insured person suffering from disablement as a result of employment injury sustained by him.
- Dependent's benefit: Periodical payments to dependents of an employee who died as a result of employment injury.
- Medical Benefit: For medical treatment of the insured person and insured person's family for which contribution are paid or payable or in which insured person is qualified to claim sickness benefit or maternity benefit.
- Funeral expenses: Payment of funeral expense to a family member or a person who actually incurs the expenditure on the funeral of the deceased insured person.

# Gratuity:



- i. Gratuity must be paid to an employee on termination of his employment after completing **at least five years** of continuous service (*Section 54*). The termination must be due to superannuation (*Section 2(82)*), retirement (*Section 2(70)*) or resignation, death or disablement (*Fourth Schedule*) due to accident or disease, or any other event notified by the Central Government. (Section 53 (1)).
- ii. **Working journalists** will be eligible for gratuity after three years, down from five years. (**Section 53(1) – First Proviso**)
- iii. Fixed-term employees will be paid on the basis of their tenure of employment with one organisation.
- iv. The employer **shall pay the amount of gratuity within 30 days** from the date it becomes payable. (Section 56 (3))
- v. All employees who have completed one year of service are required to make a nomination within the time and in the manner prescribed by the appropriate Government. (Section 55)

# Maternity Benefit/ Women Welfare:



- i. A woman employee is eligible for maternity benefit if she has worked for **at least 80 days in the preceding 12 months** (Section 60(2)).
- ii. Employers **must grant 26 weeks** of maternity benefit to eligible women employees working in their establishment (Section 60(3)).
- iii. An employer shall not dismiss or discharge a woman employee who absents herself from work in accordance with law on account of maternity leave.
- iv. Every woman is entitled to medical bonus of **up to INR 3,500** where pre-natal confinement and post-natal care is not provided by employer or such amount as may be notified by the Central Government, with no threshold on the upper limit on this amount (Section 64).
- v. Employers **must provide a crèche facility** in every establishment **employing 50 or more employees**. An establishment may also avail common crèche facility of the Central Government, State Government, municipality or private entity or provided by non-Governmental organization or by any other organization or group of establishments who may pool their resources for setting up of common crèche.

# Employees Compensation:



- i. Every employer must pay compensation if an employee suffers injury or death due to an accident **arising out of and in the course of his employment.** (Section 74).
- ii. An accident occurring to an employee while **travelling between place of residence and the workplace and vice-versa** will be treated as having arisen out of and in the course of his employment. (Section 74(4)).
- iii. In case of an employee's death, or where the dependents are minors, the employer **must deposit the compensation** with the competent authority [appointed under Section 91]. (Section 81).

# Building and other Construction

## Workers (BOCW):



- i. Under this Code, building and other construction work **does not include any building or other construction work related to a factory, mine or a work employing less than ten workers in the preceding twelve months, or construction carried out for the personal residential use of an individual or a group of individuals where the total cost does not exceed Rs 50 lakh** (or such higher amount as may be notified) and the number of workers employed is within the limit notified by the appropriate Government. (Section 2(6)). The cost of construction shall not include the cost of land (Explanation to Section 100(1)).
- ii. Employers must pay a cess ranging **from 1% to 2%** of the total construction cost for building and other construction work, to fund social security and welfare benefits for construction workers. (Section 100)
- iii. The employer **must within 60 days** (or any other period notified by the Central Government) after completing each building or other construction work, **pay the cess due based on self-assessment** of construction cost, after adjusting any advance cess already paid, in a manner prescribed by the Central Government. (Section 103)
- iv. Employers must also ensure that **construction workers are registered** with the Building Workers' Welfare Board. (Section 106)

# Social Security for Unorganized, Gig and Platform Workers:



- i. The Social Security Code introduces the concept of gig and platform workers for the first time.
- ii. Section 109 (1) states:

“The **Central Government** shall frame and notify, from time to time, suitable welfare schemes for unorganized workers on matters relating to—(i) life and disability cover; (ii) health and maternity benefits; (iii) old age protection; (iv) education; and (v) any other benefit as may be determined by the Central Government.”

While Section 109 (2) states,

“The **State Government** shall frame and notify, from time to time, suitable welfare schemes for unorganized workers, including schemes relating to— (i) provident fund; (ii) employment injury benefit; (iii) housing; (iv) educational schemes for children; (v) skill up- gradation of workers; (vi) funeral assistance; and (vii) old age homes”.

# Social Security for Unorganized, Gig and Platform Workers:



- iii. The term "**gig worker**" (Section 2(35)) refers to an individual who performs labour or participates in a work arrangement and receives money from such activities outside of the usual employer- employee relationship.
- iv. The term "**platform worker**" refers to someone who is engaged in or carrying out platform work, which is a work arrangement distinct from the traditional employer-employee relationship in which organisations or individuals **use an online platform** to connect with other organisations or individuals to solve specific problems or provide specific services, or to engage in any other activities as specified by the Central Government, in exchange for payment.
- v. This is **first time in India** that application based assignments performed by workers are recognised as employee-employer relationship.

# Social Security for Unorganized, Gig and Platform Workers:



vi. **National Social Security Board** (Section 2(49)) in addition to the unorganised workers, it will also administer schemes for the welfare of gig workers and platform workers. The Board will comprise of five representatives of aggregators appointed by the Central Government, five representatives of gig workers and platform workers appointed by the Central Government, Director General of the ESIC and five State Governments representatives.

The number of representatives of Central Government officials in the Board from 5 to 10 members and in the State Boards from 7 to 10 members for unorganised workers.

The **Social security funds** for unorganised workers, gig workers and platform workers will be set up by the Central Government. The State Governments will also set up and administer separate social security funds for unorganised workers. The Code also makes provisions for the registration of unorganised workers, gig workers and platform workers.

# Social Security for Unorganized, Gig and Platform Workers:



- The welfare schemes for the gig and platform workers will be funded through a **combination of contributions** from the **Central Government, State Governments, and Aggregators**. It mentions **nine** categories including ride-sharing services, food and grocery delivery services, content and media services, and e-marketplaces.
- It is to be noted that **any** contribution from the aggregator may be at a rate notified by the Government **between 1-2%** of the **annual turnover** of the aggregators and **must not exceed 5%** of the amount paid or payable by an aggregator to gig workers and platform workers. (Section 114(4) and Seventh Schedule).
- The annual turnover of an aggregator **shall not** include any tax, levy and cess paid or payable to the **Central** Government.
- Expand sources for funds from corporate social responsibility (**CSR**) and constitute a “special purpose vehicle” (**SPV**) for the purpose of implementation of schemes for unorganised workers. (Section 114(3)).

# Social Security for Unorganized, Gig and Platform Workers:



- Every unorganised worker, gig worker or platform worker shall be required to be registered **on e-shram portal** and he should have attained **16 years of age**. Further, the registration must be **Aadhar based**. (Section 113)



# Miscellaneous Provisions:

## Limitation of 5 Years for Provident Fund & Employee State Insurance Proceedings: Section 125

- No proceedings can be initiated **after 5 years** from the date of the cause of action regarding the applicability of PF/ESI provisions or non-payment of PF/ESI dues.
- All inquiries under this code should be concluded **within 2 years** from the date of commencement of the Code, including any pending inquiries.
- Date of cause of action means the date on which the liability is accrued. For example-damages and interests are calculated based on the date of the late payment of PF/ ESI dues. The cause of action for such damage and interest payments is the date on which there is a default in payment.



# Miscellaneous Provisions:

## Joint Liability of Transferor and Transferee (Section 145):

- When an employer **transfers all or part** of an establishment, both the transferor and transferee are **jointly and severally liable** for any dues under the this Code that arose before the transfer.
- The transferee's liability is **capped at the value of assets received** in the transfer.

Example: If Company A transfer's part of its business to Company B and has unpaid dues under this Code as of the transfer date, both A and B are responsible for those dues, but B's liability is limited to the value of the assets it received.



# Miscellaneous Provisions:

## Increased Penalties for Non- Compliance:

- i. Failure to pay contributions deducted from employee's wages: Penalty amount increased from **INR 10,000** to **INR 1,00,000** and Imprisonment of 1 year **increased to 3 years** under new code. (Section 133)
- ii. Subsequent failure to pay contribution will attract Imprisonment of 2 to 5 years and fine of INR 3,00,000 (section 134)



# Miscellaneous Provisions:

## Compounding of Offences – Section 138:

- Offence punishable **with fine only**: Can be compounded by paying 50% of the maximum fine.
- Offence punishable **with imprisonment up to 1 year and fine**: Can be compounded by paying 75% of the maximum fine.

*Once an offence is compounded, no further prosecution will be initiated for that offence.*



# Glossary – Section 2:

- i. (33): "**family**" means all or any of the following relatives of an employee or an unorganised worker, as the case may be, namely:— (a) a spouse; (b) a minor legitimate or adopted child dependent upon the employee or an unorganised worker, as the case may be; (c) a child who is wholly dependent on the earnings of the employee or an unorganised worker, as the case may be, and who is— (i) receiving education, till he attains the age of twenty-one years; and (ii) an unmarried daughter; (d) a child who is infirm by reason of any physical or mental abnormality or injury and is wholly dependent on the earnings of the employee or an unorganised worker, as the case may be, so long as the infirmity continues; (e) dependent parents (including father-in-law and mother-in-law of a woman employee), whose income from all sources does not exceed such income as may be prescribed by the Central Government; (f) in case the employee or an unorganised worker, as the case may be, is unmarried and his parents are not alive, a minor brother or sister wholly dependent upon the earnings of the Insured Person;
- ii. (34) "**fixed term employment**" means the engagement of an employee on the basis of a written contract of employment for a fixed period: Provided that— (a) his hours of work, wages, allowances and other benefits shall not be less than that of a permanent employee doing the same work or work of a similar nature; and (b) he shall be eligible for all benefits, under any law for the time being in force, available to a permanent employee proportionately according to the period of service rendered by him even if his period of employment does not extend to the required qualifying period of employment;
- iii. (43): "**Maternity benefit**", in respect of Chapter VI, means the payment referred to in sub-section (1) of section 60;
- iv. (74): "**seasonal factory** " means a factory which is exclusively engaged in one or more of the following manufacturing processes, namely, cotton ginning, cotton or jute pressing, decortication of ground-nuts, the manufacture of indigo, lac, sugar (including gur) or any manufacturing process which is incidental to or connected with any of the aforesaid processes and includes a factory which is engaged for a period not exceeding seven months in a year in a manufacturing process as the Central Government may, by notification, specify;
- v. (77): **Sickness**: means a condition which requires medical treatment and attendance and necessitates abstention from work on medical ground;

A BIG THANKYOU

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