

THE FOUR LABOUR CODES – DECODED

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The Four Labor Codes – Key issues

MULTIPLICITY OF STATUTES

VARYING DEFINITIONS

FRAGMENTED APPLICATION OF LAWS

HENCE THE LABOR REFORMS

The Four Labor Codes – Key issues

- ▶ SIMPLIFICATION
- ▶ UNIFORM DEFINITIONS
- ▶ EXPANDED COVERAGE – INFORMAL GIG PLATFORM AND FIXED TERM
- ▶ FLEXIBILITY FOR BUSINESSES; LAYOFFS, RETRENCHMENT THRESHOLDS, SINGLE LICENCE FOR CONTRACTORS ACROSS ALL STATES OR MULTI=STATES
- ▶ GLOBAL ALIGNMENT
- ▶ ENHANCED WORKERS PROTECTION – SURELY.

The Four Labor Codes – Key issues

▶ CODE OF WAGES ACT

COVERS ALL EMPLOYEES IN BOTH FORMAL AND INFORMAL SECTOR

LIMITATION FOR CLAIMS FOR UNPAID WAGES ETC. NOW THREE YEARS

DEFINITION OF WAGES

FIXATION OF WAGES

BONUS ELIGIBILITY = LIMIT TO BE. NOTIFIED BY APPROPRIATE GOVT

GENDER DISCRIMINATION, ACCOUNTING YEAR, REGISTERS TO BE MAINTAINED (ONLY TWO CONSOLIDATED REGISTERS), RETURNS TO BE FILED, (A SINGLE UNIFIED RETURN TO BE FILED PERIODICALLY.

The Four Labor Codes – Key issues

▶ SOCIAL SECURITY CODE 2020

GIG AND PLAT FORM WORKERS – AGGREGATORS TO CONTRIBUTED 1-2 PERCENT OF ANNUAL TURNOVER TO A SOCIAL SECURITY FUND,

EPF INQUIRY LIMITS ; INQUIRIES INTO DUES CANNOT BE INITIATED AFTER THE EXPIRY OF FIVE YEARS – REDUCED TAX TERRORISM.

REGISTRATION; MANDATORY ONLY IF ESTABLISHMENT IS NOT ALREADY REGISTERED UNDER ANY OTHER LABOR LAW.

DEFERMENT POWER – 3 MONTHS, ADHAAR USAGE; FOR UNORGANISED /GIG WORKERS,

RECORDS - EMPLOYEES, HAZARDOUS DANGEROUS APPRENTICES, WAGES AND FACILITIES PROVIDED, DANGEROUS OCCURENCES, ACCIDENTS, MANDATORY NOTICES ETC.

The Four Labor Codes – Key issues

INDUSTRIAL RELATIONS CODE

WORKMENT EARLIER – EMPLOYEE NOW DEFINED, COVERAGE INCLUDING SUPERVISORY. MANAGERIAL, RETRENCHMENT – GOVT PERMISSION NOT REQUIRED BY UNITS USP TO 300 WORKERS, 14 DAYS STRIKE NOTICE FOR STRIKES IN ALL ESTABLISHMENT (EARLIER PSUS ONLY) NO FLASH STRIKES, UNION RECOGNITION WITH 51 PERCENT SUPPORT IS RECOGNISED AS THE SOLE NEGOTIATING AGENT (NO MULTIPLE UNIONS), WORKER RESKILLING FUND, COMPOUNDING OF OFFENCE FIRST TIME 50 PERCENT .. (COURTS TO BE AVOIDED), DISPUTE RESOLUTION (TRIBUNAL) NO LABOR COURTS NOW. TRIBUNAL 1 JUDICIAL AND 1 ADMINISTRATIVE MEMBER.

The Four Labor Codes – Key issues

- ▶ **OCCUPATIONAL SAFETY HEALTH AND WORKING CONDITIONS CODE**
- ▶ **NIGHT SHIFTS AND WOKEN, APPOINTMENT LETTERS, CONTRAC LABOUR LICENCES (5 YEARS AGAINST ONE YEAR) FOR WORKING IN MULTIPLE STATES, WELFARE RESPONSIBILITY ON PRINCIPAL EMPLOYER INCLUDING CONTRACT LABOR, WELFARE OFFICER MANDATOR WHEN A FACTORY EMPLOYS 250 OR MORE WORKERS, SAFETY COMMITTEE/SAFETY OFFICER, (NUMBER REDUCED FROM EARLIER 1000)OVER TIME, INPSECTORS' ROLE**

The Four Labor Codes – Key issues

KEY ISSUES FOR PROFESSIONALS

GRATUITY ISSUE, PROVIDENT FUND (12 PERCENT FOR BOTH) WITH THE MANDATORY WAGE CEILING STAYING AT 15000/- PER MONTH). WAGES DEFINITION. MEDICAL LEAVE FOR WOMEN, WORKING HOURS, ANNUAL FREE HEALTH CHECKUPS, FLOOR WAGE FIXATION AND REVISION BY BOARD, GRATUITY TO FIXED TERM EMPLOYEES, INTERSTATE MIGRANT WORKERS (JOURNEY ALLOWANCE EVERY 12 MONTHS AFTER COMPLETING 180 DAYS),

CONTRACT LABOR RECRUITMENT, GRIEVANCE REDRESSAL COMMITTEE, STANDING ORDERS, RESKILLING FUND, REEMPLOYMENT OF RETRENCHED WORKERS,

The Four Labor Codes – Key issues

MINIMUM WAGES FIXATION BY THE GOVERNMENT- ALL EMPLOYEES, AUTHORISED DEDUCTIONS,
PENALTIES AND PROSECUTION

REGISTRATION THRESHOLDS

ESTABLISHMENTS WITH 10 OR MORE WORKERS MUST REGISTER,

FACTORIES ACT (UNDER OSH CODE) 20 OR 40

CONTRACTOR LABOR (OSH CODE) 50 CONTRACT WORKERS,

INDUSTRIAL DISPUTE/STANDING ORDERS (IR CODE), TO 300 PLUS

ESI – MANDATORY FOR 10 PLUS EMPLOYEES –

HAZARDOUS WORK: EVEN ONE EMPLOYEE

CORE ACTIVITIES _ CONTRACT LABOR PROHIBITED

WAGE DEFINITION – CHANGED.

The Four Labor Codes – Key issues

- ▶ STRIKES AND LOCKOUTS
- ▶ MANDATORY 14 DAYS NOTICE FOR ALL INDUSTRIAL ESTABLISHMENTS

CERTAIN KEY ISSUES WE MUST FOCUS

- ▶ **The Code on Wages, 2019**
- ▶ Payment of Wages: Applicable to employees earning wages up to INR 24,000 per month • Minimum Wages: Individuals in nonmanagerial roles in scheduled employments •
- ▶ **Applicable to all employees and employers, irrespective of wage threshold**

THE SOCIAL SECURITY CODE – KEY ISSUES

- ▶ **The Social Security Code, 2020**
- ▶ Employees' Provident Fund: 20 or more Employees •
- ▶ Employees' State Insurance Corporation, Gratuity & Maternity Benefit: 10 or more Employees •
- ▶ **Employee threshold: Remains same for EPF, ESI, gratuity and maternity benefits •**
- ▶ **New inclusions: Unorganised sector workers, gig workers and platform workers**

Industrial Relations Code, 2020

- ▶ Applicable to Industrial Establishments and Trade Unions •
- ▶ Applicable to Industrial establishments and Trade Unions • **Employer includes contractors and legal representatives of deceased employer**

Occupational Safety, Health & Working Conditions Code, 2020

- ▶ Applicable to all workers (except in supervisory role, managerial role) of industrial establishments •
- ▶ **Applicable to all establishments**

IMPACT- HOW CODES IPACT INDUSTRY

- ▶ **The Code on Wages, 2019**
- ▶ Widened coverage: No wage threshold for employees, definition of employer includes 'contractor' and 'legal representative of deceased employer', etc.
- ▶ 2 New definition of 'wages': Applicable to all employees; specified exclusions and conditional inclusions specified, cap on benefits in kind
- ▶ 3 Timeline for full and final settlement: Two days from the date of removal/resignation/retrenchment/dismissal
- ▶ 4 Stringent penal implications: Introduced for non-maintenance of registers and records under the Code of Wages, 2019

IMPACT- HOW CODES IPACT INDUSTRY

- ▶ **The Code on Wages, 2019**
- ▶ 5 Payment of wages and deductions: Payment vide cheque, online mode; no unauthorised deductions allowed from the wages

IMPACT- HOW CODES IPACT INDUSTRY

▶ **The Social Security Code, 2020**

- ▶ 1 Voluntary coverage: Opt in/opt out of social security schemes
- ▶ 2 Introduction of new category of beneficiaries: **Platform workers, gig workers, fixed-term employees, etc.**
- ▶ 3 Introduction of the concept of holding the 'officer in charge': Who will be held responsible for any default in relation to payment of gratuity and contribution towards ESI
- ▶ 4 Increase in quantum of gratuity payment: New category of employees introduced i.e. 'Fixed term workers' rendering services for less than 5 years;
- ▶

IMPACT- HOW CODES IPACT INDUSTRY

- ▶ – Working period of 3 years for journalists introduced;
- ▶ – Gratuity payable to the contract labourers as well, in line with eligibility criteria are set out in the Code

IMPACT- HOW CODES IPACT INDUSTRY

- ▶ **Occupational Safety, Health and Working Conditions Code, 2020**
- ▶ **1 Concept of core and non-core workers: Employment of contract labour in core activities of any establishment is prohibited (with certain exceptions)**
- ▶ **2 Canteen and crèche facility: Mandated for specified establishments**
- ▶ **3 Special provisions for women: Consent of female employees required for working before 6 am and after 7pm along with other safety measures**
- ▶ **4 Concept of leave rules and leave encashments introduced**
- ▶ **5 Free annual health check-ups: Mandated for specified employees of specified establishments**

IMPACT- HOW CODES IPACT INDUSTRY

▶ **Industrial Relations Code, 2020**

- ▶ 1 Concept of fixed-term employment: Introduced with benefits not be less than of a permanent worker
- ▶ 2 Conditions for strikes and lockouts prescribed: No strikes and lock outs without giving proper notice in compliance with the norms laid down in the code
- ▶ 3 Standing orders: Required in establishments where 300 or more workers are employed
- ▶ 4 Retrenchment, lay-off and closure provisions: Not to be applicable if workers are

KEY LEGAL CONCEPTS HAVING FINANCIAL REPERCUSSIONS

- ▶ **CONTRACT LABOR PERSPECTIVE – MAY BE HUGE COST**
- ▶ Evaluate restructuring current manpower with fixed-term employment in those industrial establishments where contractual manpower is already engaged
- ▶ 2 Revisiting of contractual aspects relating to: – Working hours – Nature of work for different types of workers/employees engaged
- ▶ 3 Policy framework for newer concepts, such as gig workers and platform workers, and obligations as an aggregator considering the applicable provisions under the Labour Codes
- ▶ 4 Obligations on establishment to pay contractor before wages payment due dates. **Also, obligation towards bonus, gratuity, other benefits due to contract employees where contractor defaults**

KEY LEGAL CONCEPTS HAVING FINANCIAL REPERCUSSIONS

- ▶ **Social Security Schemes for gig and platform workers**
- ▶ The Central Government has been empowered to notify social security schemes for gig workers, platform workers and members of their families.
- ▶ Amounts due under such social security schemes shall have priority over other debts of the employer.
- ▶ The Code proposes to set up a **National Social Security Board (NSSB)** which shall perform the functions like, recommendation to the Central Government for framing suitable social security schemes for different sections of unorganised workers, gig workers and platform workers.

KEY LEGAL CONCEPTS HAVING FINANCIAL REPERCUSSIONS

- ▶ **Recovery of ESI dues from employer:**
- ▶ Where employer fails to pay ESI contribution for an employee as per legal requirement, the ESI authorities can provide the ESI related benefits to such employees directly, recovering the capitalised value of the benefits from the employer in a prescribed manner. Section 42
- ▶ Limitation of 5 years for PF & ESI proceedings: No proceeding can be initiated after 5 years from the date of cause of action in respect of applicability of PF/ESI provisions or non-payment of PF/ESI dues. Sec 125
- ▶

KEY LEGAL CONCEPTS HAVING FINANCIAL REPERCUSSIONS

- ▶ **Joint-liability of transferor-transferee sec 145**
- ▶ in case of transfer of establishment: Where an employer transfers his establishment in whole or in part, the employer and the transferee shall be jointly and severally liable to pay any due amount in respect of any liabilities under the SS Code. **The liability referenced here shall be in respect of the period prior to the date of transfer.**
- ▶ The liability of the transferee shall be limited to the value of the assets obtained by him by such transfer.
- ▶ For example, A transfers a part of its business to B and A has unpaid dues under SS Code as on the date of transfer. In such case, both A and B shall be liable jointly and individually for such unpaid dues accrued until date of transfer. **However, B's liability in respect of such pre-transfer dues shall be limited to the value of the assets transferred to B.**

KEY LEGAL CONCEPTS HAVING FINANCIAL REPERCUSSIONS

- ▶ **Contract labour:**
- ▶ "Contract labour" under OSH Code includes workers engaged through a contractor in connection with work of an establishment. **It includes migrant workers and part-time employees of contractors but does not include workers: - who are regularly employed by a contractor for any activity of the contractor's establishment and - whose employment (including permanent employment) is governed by mutually accepted conditions of employment and - who gets periodical increments, social security coverage and other welfare benefits as per applicable laws.**
- ▶ In view of such exclusion, certain individuals who were earlier considered as contract labour under the Contract Labour (Regulation and Abolition) Act, 1970 (for example: permanent employees of a contractor receiving increment, social security coverage from contractor and providing on-site services to a client) **will not be considered as contract labour under the OSH Code**
- ▶

KEY LEGAL CONCEPTS HAVING FINANCIAL REPERCUSSIONS

- ▶ **The definition of contract labour has been made narrower, excluding certain employees of third party vendors, reducing liability of principal employer towards such individuals.**
- ▶ Application of contract labour related provisions: The provisions of the OSH Code pertaining to engagement of contract labours will be applicable to establishments which employ at least 50 contract labourers in the preceding 12 months. Additionally, manpower supply contractors who employ at least 50 contract labour in the preceding 12 months will also be covered under relevant provisions.

KEY LEGAL CONCEPTS HAVING FINANCIAL REPERCUSSIONS

- ▶ **Core activity of an establishment:**
- ▶ The OSH Code has defined the core activity of an establishment as activities for which an establishment is set up, including any activity essential or necessary to such activity.
- ▶ The OSH Code specifically excludes certain activities from the ambit of core activities. Engagement of contract labour in core activities is specifically prohibited under the OSH Code, except where: i. the activity is ordinarily done through a contractor in course of normal functioning of the employer's establishment, ii. the activities are such that they do not require full time workers for the major portion of the working hours in a day or for longer periods, as the case may be, **iii. there is a sudden increase in the volume of work in the core activity that needs to be accomplished in a specified time.**

KEY LEGAL CONCEPTS HAVING FINANCIAL REPERCUSSIONS

- ▶ Inter-state migrant workers: The definition of 'inter-state migrant worker' includes workers **who come on their own** from their home state to obtain employment in an establishment located in another state (besides from those recruited by contractors for work in a state different from their home state), or subsequently changes establishment within the destination state. This can include such IT/ITeS employees earning wages less than INR 18000 per month, or such higher amount prescribed by the Central Government.

KEY LEGAL CONCEPTS HAVING FINANCIAL REPERCUSSIONS

- ▶ **Annual leave: -**
- ▶ Employer to provide workers working for at least 180 days in a calendar year, **annual leave with wages @ 1 day for every 20 days of work.** - Prefixed or suffixed holidays between a period of leave availed by a worker shall be excluded for purpose of calculation of leave availed by a worker. - Up to 30 days of accrued but un-availed leaves of a worker can be carried over to the succeeding calendar year. - **Where a worker has applied for leave and refused, such workers shall be entitled to carry forward the refused leave without any limit.**
- ▶ **Annual leave encashment:**
- ▶ Separating workers, including those separating due to voluntary resignation, are entitled to leave encashment at the time of separation. In such case, leave encashment is payable within 2 days from the date of discharge/ resignation and 2 months where separation is due to death or superannuation. Workers are entitled to on-demand leave encashment at the end of each calendar year if they have accrued leaves. They are also entitled to encashment of any leaves accrued in excess of 30 days.

KEY LEGAL CONCEPTS HAVING FINANCIAL REPERCUSSIONS

- ▶ **Employment of women in night shift:**
- ▶ Women shall be entitled to be employed in all establishments for all types of work, including for work done between 7 PM and 6 AM subject to their consent and compliance with such conditions relating to safety, holidays and working hours or any other conditions as may be prescribed for engagement of women workers during such hours.
- ▶ In addition to the above, an employer needs to comply with conditions prescribed for employment of women in night shifts under respective State Shops and Commercial Establishment Acts.

KEY LEGAL CONCEPTS HAVING FINANCIAL REPERCUSSIONS

- ▶ **Obligations related to interstate migrant workers:**
- ▶ **If the employer employs 10 or more inter-state migrant workers in the preceding 12 months**, the employer will need to provide a lump-sum journey allowance to inter-state migrant workers for to and fro journey to the worker's native place to the place of the workers' employment. **The minimum service for entitlement to such a journey allowance, periodicity, and class or travel, etc shall be as prescribed by the appropriate State Government under the OSH Code**

KEY LEGAL CONCEPTS HAVING FINANCIAL REPERCUSSIONS

- ▶ **Certain rights of employees:**
- ▶ Employees in an establishment will have the right to obtain from the employer information relating to an employee's health and safety at work. Employees can also make a representation to the employer in a prescribed manner regarding inadequate provision for protection of the employee's safety or health in connection with the activities at the employer's workplace, which can also be escalated to the Inspector-cum facilitator.

KEY LEGAL CONCEPTS HAVING FINANCIAL REPERCUSSIONS

- ▶ **Notice of certain dangerous occurrences and diseases:**
- ▶ In case of any dangerous occurrence in an establishment (whether or not causing bodily injury, or disability), the employer is required to send a notice to appropriate government in a prescribed manner. If a worker in any establishment contracts a notifiable disease (as specified under Third Schedule to the OSH Code), the employer will also need to send a notice to appropriate authorities as may be prescribed.

KEY LEGAL CONCEPTS HAVING FINANCIAL REPERCUSSIONS

- ▶ **Welfare facilities in the establishment:**
- ▶ Employer to be responsible for provision and maintenance of adequate welfare facilities in the establishment, as prescribed by the Central Government. This may include facilities such as provision of sitting arrangement for all employees, facilities of canteen etc. The obligations would be clear after the Central Government issues notification.

Industrial Relations Code, 2020

- ▶ **Grievance Redressal Committee (GRC):**
- ▶ **Employers in every industrial establishment with 20 or more workers** will need to set up one or more GRCs for resolution of disputes arising out of individual grievances.
- ▶ The GRC shall consist of an equal number of members representing the employer and the workers.
- ▶ The total number of members of GRC shall not exceed 10, with chairperson of the GRC being selected from the representatives of the employer and the workers alternatively, **on a rotational basis every year**

KEY LEGAL CONCEPTS HAVING FINANCIAL REPERCUSSIONS

- ▶ The IR Code also provides for adequate representation of women in the GRC which should not be less than proportion of women workers to total number of workers in the industrial establishment.
- ▶ For example, if the ratio of total number of women workers to total number of workers in an establishment is 2:3, at least the same ratio (2:3) of women representation to be maintained in the constitution of GRC.
- ▶ Applications in respect of individual disputes may be filed before the GRC within 1 year of the date of cause of action leading to such dispute. The GRC may complete its proceedings within 30 days from receipt of such application
- ▶

KEY LEGAL CONCEPTS HAVING FINANCIAL REPERCUSSIONS

- ▶ **Negotiating Union**
- ▶ Employers having **registered trade union** of workers will have a negotiating union or negotiating council for negotiating with the employer on certain matters which may be prescribed by the **appropriate government**.
- ▶ In case there is a single registered trade union, such trade union will be recognised as a negotiating union, subject to applicable qualifications. In case there are multiple trade unions in an industrial establishment, **the trade union having support of at least 51 percent or more workers of the industrial establishment shall be recognised as the sole negotiating union of the workers.**

KEY LEGAL CONCEPTS HAVING FINANCIAL REPERCUSSIONS

- ▶ Negotiating Council:
- ▶ If there are more than one trade union of workers registered and functioning in an industrial establishment, and no such trade union has support of at least 51 percent of workers of the industrial establishment, **the employer shall constitute a negotiating council**, for negotiating with the employer on the matters which may be prescribed by the appropriate government.
- ▶ **The negotiating council shall consist of the representatives of registered trade unions which have the support of at least 20 percent of the total workers of the industrial establishment.**

KEY LEGAL CONCEPTS HAVING FINANCIAL REPERCUSSIONS

- ▶ **Worker Reskilling Fund:**
- ▶ The appropriate government may notify and set up a worker re-skilling fund. In case of any retrenchment of a worker by an employer, the employer will need to contribute equivalent to 15 days' last drawn wages of the retrenched worker to the worker re-skilling fund within 45 days of retrenchment.

KEY LEGAL CONCEPTS HAVING FINANCIAL REPERCUSSIONS

- ▶ **Disciplinary inquiry timeline:**
- ▶ Where any worker is suspended by the employer pending investigation or inquiry into complaints of misconduct against him, such investigation or inquiry shall be completed ordinarily within 90 days from the date of suspension. The employer will need to pay subsistence allowance to the suspended workers, as may be provided under the applicable standing orders.

KEY LEGAL CONCEPTS HAVING FINANCIAL REPERCUSSIONS

- ▶ **Standing Orders:**
- ▶ Industrial establishments employing at least 300 workers in the preceding 12 months will need to draft standing orders (based on the model standing orders (“MSO”) applicable to the employer as notified by the Central Government) **or it can adopt the MSO as it is**. This needs to be completed within:
 - ▶ 6 months from the date of commencement of IR Code or;
 - ▶ ii) 6 months from the date of application of standing order related provisions under Chapter IV of IR Code to the employer’s establishment owing to employment of at least 300 workers, whichever is later.

GRATITUDE TO RESEARCH COMMITTEE

A BIG THANK YOU FROM DGST GROUP

**A BIG THANK YOU TO THE RESEARCH TEAM OF DGST GROUP
HEADED BY KUMAR JEE BHATT – OUR KEY AND SENIOR MEMBER
WITHOUT WHOSE EFFORT TODAY'S EVENT WAS NOT POSSIBLE.**

A BIG THANK YOU TO THE ENTIRE RESEARCH TEAM WHO DID A WONDERFUL JOB