

# OBITER DICTUM



## NEW LABOUR CODES PASSED BY THE PARLIAMENT

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### SALIENT FEATURES AND KEY CHANGES

The Labour Codes all contain enabling provisions, which essentially mean that they will come into force once the Central Government notifies the same in the Official Gazette.

This newsletter aims to promulgate the key changes, and the new compliances that are to be kept in mind once the Labour Codes are enforced and notified.

As recently as in September 2020, the Parliament managed to clear the long pending Labour Codes to eventually phase out and replace the existing Labour regulating laws. This was done in an endeavor to ensure a higher degree of protection to the workers, while also bringing about efforts to bridge the gap between legislation and enforcement, and a sense of transparency in the working affairs of the workers. The three new Labour Codes; **Industrial Relations Code, 2020, Social Security Code, 2020, and, Occupational Safety Health & Working Condition Code 2020, ("Labour Codes")** have brought changes in the Labour Codes broadly relating to compliance changes, such as change in threshold limits, and applicability. The enforcement of the legislation is largely left to the formulation of Rules.

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# INDUSTRIAL RELATIONS CODE, 2020

The Industrial Relations Code, 2020 ("IRC") covers three major central legislations:

1. The Industrial Disputes Act, 1947
2. The Trade Unions Act, 1926
3. Industrial Employment (Standing Orders) Act, 1946

The primary objectives of the aforesaid legislations are protection and compensation afforded to workers during lock-out and retrenchment, better working conditions and enabling an analogous working structure for establishment under the same genre. Keeping in mind these intrinsic parameters, the Industrial Relations Code, 2020 was conceptualized to give birth to one consolidated legislation to govern these instrumental aspects of labour law.

- **Definition of "Employee" has been added** to ensure that there is no discrimination in the applicability of labour laws to the employee. The concept of **Fixed Term Employee** is introduced providing for larger coverage.
- **Definition of Industrial Dispute has been modified to include** the dispute arising out of discharge, dismissal, retrenchment or termination of such worker.
- **Prohibition of all industrial establishments from strikes and lock-outs unless a 14-day advance notice is provided**, as opposed to the scope of this prohibition being limited to public utility services (like railways or airlines) under the Industrial Disputes Act, 1947.
- There is a paradigm shift in the grievance redressal mechanisms under the IRC -  
**Works Committee** (for 100 or more workers employed) and a **Grievance Redressal Committee** (for 20 or more workers employed)
- Conciliation Officer** (appointed for specific industries) or be decided by **voluntary arbitration** (if there is reference to arbitration in an arbitration agreement)
- National Tribunal and the National Industrial Tribunal.**
  - The cases pending before the Labour Courts and the National Tribunal (constituted under the Industrial Disputes Act, 1947) will stand transferred to the newly constituted National Tribunal and the National Industrial Tribunal, respectively.
  - **Where there is more than one trade union in an establishment**, the status of sole negotiating union will be given to the one that has 51% of the employees as its members.
  - In the event of **only one registered trade union**, the employer is required to recognize such trade union as the sole negotiating union of the workers.
  - The **threshold for applicability of the Industrial Disputes (Standing Orders) Act, 1946** under the Industrial Relations Code, 2020 is raised to 300 and has granted the 'appropriate Government' the power to exempt any industrial establishment or class thereof from all or any of the provisions under the Code.

*The intrinsic parameters in the Industrial Disputes Act, 1947, the Trade Unions Act, 1926 and the Industrial Employment (Standing Orders) Act, 1946, the Industrial Relations Code, 2020 will be carried forward to one consolidated legislation called the Industrial Relations Code, 2020, to govern these instrumental aspects of labour law*



# CODE ON SOCIAL SECURITY, 2020

The Code on Social Security, 2020 ("CSS") consolidates the following nine Central Labour Legislations, into one document:

1. The Employees' Compensation Act, 1923
2. The Employees' State Insurance Act, 1948
3. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952
4. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959
5. The Maternity Benefit Act, 1961
6. The Payment of Gratuity Act, 1972
7. The Cine Workers Welfare Fund Act, 1961
8. The Building and Other Construction Workers Welfare Cess Act, 1996
9. The Unorganized Workers' Social Security Act, 2008

The rationale behind consolidating the aforesaid nine legislations into the newly cleared CSS was to **streamline the number of authorities for various departments, and promoting technology for enforcement, while ensuring basic concepts of welfare and benefits are preserved**. The nine existing aforesaid legislations cover a large work-force. However, the CSS' introduction to new definitions and concepts bring under its belt an even larger pool of workers.

- The concept of a **"career worker"** (a Government portal) has been introduced to connect persons seeking employment with those recruiting, by providing information about vacancies and giving vocational guidance.
- **"Platform Workers"** and **"Gig Workers"** are also new forms of workers defined in the CSS. The former is a type worker who is engaged in work with an employer, and has a working arrangement which varies from the conventional employer-employee relationship, and where an online platform is used for provision of specific services. The latter are those type of workers who are in an independent arrangement such as freelancers, project based workers, etc.
- Earlier Employees Provident Fund was applicable only on those establishments included in the Schedule. **With the CSS, all establishments having 20 or more workers come under the purview of EPF.**
- **Penalty for not depositing the EPF contribution has been enhanced to INR 1,00,000 and imprisonment of 1 -3 years.**
- In an endeavor to bridge the gap between organized and unorganized sector, the CSS **provides for registration of every unorganized worker, gig worker or platform worker based on a self-declaration provided either electronically or otherwise along with AADHAR number** in a form and manner that will be prescribed by the Government.
- If the employer and majority of the employees agree, then voluntary registration is encouraged under the CSS and Employee State Insurance schemes will be applicable.
- Further, the Government can extend ESI without a threshold, and this even extends to gig workers and the unorganized sectors.

*The primary objectives of the Code on Social Security, 2020 are two-fold; for the workers, this Code covers a wider array of workers compared to the existing legislation, and for the Central Government, it can maintain accurate records of its labour work-force and have a clearer view of their composition*

# OCCUPATIONAL SAFETY HEALTH & WORKING CONDITION CODE 2020

The Occupational Safety Health & Working Condition Code, 2020("OSHWC") was cleared by the Parliament with the intention of subsuming the following 13 Central Labour Legislations-

1. The Factories Act, 1948
2. The Contract Labour (Regulation and Abolition) Act, 1970
3. The Mines Act, 1952
4. The Dock Workers (Safety, Health and Welfare) Act, 1986
5. The Building & Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1979
6. The Plantations Labour Act, 1951
7. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
8. The Working Journalist and other Newspaper Employees (Conditions of Service and Miscellaneous Provisions) Act, 1955
9. The Working Journalist (Fixation of rates of wages) Act, 1961
10. The Cine Workers and Cinema Theatre Workers Act, 1961
11. The Motor Transport Workers Act, 1961
12. The Sales Promotion Employees (Conditions of Service) Act, 1976
13. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966

**The OSHWC Code is a big step towards simplifying India's complex regulatory framework that was prescribed in the aforesaid 13 legislations.**

- The OSHWC Code does away with the mandate of having multiple registration and **enables a single registration for establishments coming into force after this Code, and already existing establishments.**

- This Code requires a **time-bound notification to the Inspector-cum-Facilitator, in cases where any death, contraction of any Scheduled disease, or when any dangerous occurrences happen.**

- A requirement for the maintenance of a register containing details regarding number of work performed and number of hours worked by the employees, wages paid in receipt, leaves, and employment of adolescents is mandated.

- Conducting of random third party audits and submit reports to the concerned employer and Inspector-cum-Facilitator, for periodical checks on enforcement is encouraged.

- The OSHWC Code also **simplifies the scheme of licensing contractors and prohibits a contractor from supplying work through contract labour, except with a license issued under this Code.** This license would be a common license in respect of factory, industrial

premises for beedi and cigar work as well as for engaging contract workers.

- Under the Code, an offence which leads to the death of an employee will be punishable with imprisonment of up to two years or a fine up to INR 5 lakhs or both.

- The work hours for different classes of establishment and employees would be as per the rules prescribed by Central or State Government.

- In relation to overtime work, an employee would be paid twice the rate of daily wages. No employee can work for more than 6 days a week. However, an exception has been provided for motor transport workers.

*The Occupational Safety Health & Working Condition Code, 2020 was introduced to impart a greater degree of flexibility so as to adapt to technology and to accommodate revisions in health, safety, welfare and working conditions of workers.*