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# New Labour Laws and Compliance Checklist for Registration and Obtaining Licence by a New Entity

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## ABSTRACT

*Till the year 2019, India has been witnessing extensive and comprehensive labour laws. There had been forty central laws pertaining to labour regulations and around one hundred state legislations regulating labour laws. It was the first time in the year 2020 that these comprehensive and extensive labour laws were codified and consolidated into four labour codes. The Government of India introduced flexibility in the new labour codes as compared to the old labour laws by ensuring employees' health and safety in the workplace, insurance, wages etc. The article consolidates all four new labour laws in a precise manner. It also provides salient features pertaining to the new labour codes. The second part of the article is basically a compliance checklist for the registration of a new entity under the four new labour codes.*

**Keywords:** *new labour laws, registration, factory.*

## I. INTRODUCTION

If we talk about earlier regimes governing labour laws in India, it is evident that India had rigorous labour laws in effect.

However, recently the Indian Government consolidated almost 29 labour legislations into 4 labour laws. Although, the implementation of these 4 new labour codes is yet to be done by the Indian Government due to the reason that the rules with regard to these 4 new labour laws are yet to be framed.

The 4 new labour codes can be named as follows:-

- a) The Code on Wages, 2019
- b) Industrial Relations Code, 2020
- c) The Code on Social Security, 2020

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- d) Occupational Safety, Health and Working Conditions Code, 2020

## **II. OVERVIEW OF THE FOUR NEW LABOUR LAWS IN INDIA**

### **(A) Code On Wages, 2019**

The abovementioned code was introduced in the Lok Sabha by Santosh Gangwar (Minister of Labour) on the date i.e., July 23, 2019. The Code on Wages, 2019 aims to regulate provisions as to wages and bonus payments in any industry, business or trade.

The Code on Wages, 2019 replaces four previous labour laws such as 1) the Payment of Wages Act, of 1936, 2) the Minimum Wages Act, of 1948, 3) the Payment of Bonus Act, of 1965, and 4) the Equal Remuneration Act, of 1976.

### **A brief overview of the Code on Wages, 2019**

- a) The code emphasises the timely payment of wages to the employees by the employer.
- b) It focuses on fixing a floor wage by the Central Government by taking into consideration the living standards of a worker in the industry.
- c) The state government shall set a minimum wage for a worker/employee which shall not be less than the floor wage, as decided by the Central Government. Also, while fixing the minimum wages for the employees, the government shall consider the workers' skills accompanied by the difficulty of their work.
- d) The act also talks about fixing a particular number of working hours in a normal working day by the central/state government.
- e) If in case an employee works for more hours than the normal working hours, he shall be entitled to a wage which shall be at least twice the normal rate of wages.
- f) The Act prohibits discrimination for providing wages in a discriminatory manner to a male and female employee if the nature and amount of work done is same or similar in nature.
- g) The act also provides for a penalty of imprisonment of three months to the employer accompanied by a fine up to one lakh, if the employer is liable for paying less than the fixed minimum wages or the employer has contravened any provisions of the code.

### **(B) Industrial Relations Code, 2020**

The Industrial Relations Code, of 2020 subsumes three previous labour laws such as 1) The Industrial Disputes Act, of 1947, 2) The Trade Unions Act, of 1926 and 3) The Industrial

Employment (Standing Orders) Act, of 1947.

### **A brief overview of the Industrial Relations Code, 2020**

- a) The Act explicitly defines the term ‘Trade Unions’.
- b) With respect to the trade union strikes, it is explicitly written in the act that the strikes can only be called by giving 15 days prior notice to the establishment.
- c) The Act talks about the establishment of an Industrial Tribunal and envisages the fact that the civil court shall have no jurisdiction in case of any dispute.
- d) The appeal against the decision of the Industrial Tribunal lies to the higher authorities which shall be appointed by the Government.
- e) The Act also talks about the Grievance redressal mechanism in every industrial establishment. The composition of which shall have an equal number of employers and the equal number of workers.
- f) The Act also deals with the matters such as lay-off, retrenchment and closure of an establishment.

### **(C) The Code On Social Security, 2020**

The Code on Social Security, 2020 was introduced in December 2019, whereinafter the Parliamentary Standing Committee submitted its report on 31<sup>st</sup> July 2020. After this, a fresh bill was introduced i.e., Code on Social Security, 2020.

Code on Social Security, 2020 subsumes various previous labour laws such as 1) The Employee’s Compensation Act, 1923; 2) The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1952; 3) The Employee’s State Insurance Act, 1948; 4) The Employee’s Provident Funds and Miscellaneous Provisions Act, 1952; 5) The Payment of Gratuity Act, 1972; 6) The Maternity Benefit Act, 1972; 7) The Unorganized Workers’ Social Security Act, 2008; 8) The Cine Workers Welfare Fund Act, 1961 and 9) The Building and Other Construction Workers Welfare Cess Act, 1996.

### **A brief overview of the Code on Social Security, 2020**

- a) The Act talks about the formation of various statutory bodies such as the Social Security Organisation, Employee’s State Insurance Corporation etc.
- b) The Act also talks about the establishment of an Employees’ State Insurance Fund which shall benefit in the following ways:

- i) The funds shall be used for the medical treatment of an insured person.
  - ii) The funds shall be used for establishing and maintaining hospitals and other subsidiary issues of the insured person.
  - iii) The funds shall be used to meet the audit cost and expenditure that occurred in improving the health and safety of the insured persons.
- c) The Act further talks about the Social Security for unorganised and gig workers which includes notifying suitable schemes such as provident funds, education schemes for children, old age homes etc.
  - d) The Act also talks about mandatory provisions with respect to maternity benefits payable to a woman for twenty-six weeks and twelve weeks in case of a woman having two or more children.

#### **(D) Occupational Safety, Health And Working Conditions Code 2020**

The Ministry of Labour and Employment introduced the Code in the Lok Sabha with the other three codes on September 19, 2020. The OSH Code subsumed the Factories Act, of 1948 and the Contract Labour ( Regulation and Abolition) Act, of 1970.

#### **A brief overview of the OSH Code, 2020**

- a) The Code widens the definition of a factory which included 20 workers at work, but now it has also expanded it to 40 workers working on the premise.
- b) The Code fixes the work limit for workers as eight hours per day.
- c) The Code encourages woman's employment both in day and night in all kinds of establishments.
- d) The Code also ensures that no charge shall be taken from employees for conducting medical examinations to ensure their workplace safety.
- e) The Code also envisages the constitution of the National Occupational Safety and Health Advisory Board (National Advisory Board) by the Central Government, which shall be empowered to advise the Central Government.

### **III. STATUTORY COMPLIANCE CHECKLIST FOR REGISTRATION AND LICENSES OF A NEWLY ESTABLISHED ENTITY UNDER NEW LABOUR CODES**

The new labour codes especially the CODE ON SOCIAL SECURITY, 2020 and the OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020 talk

specifically about the registration process and necessary procedure which needs to be followed by a factory/establishment during its process of registration.

- The Section 3/Chapter II of the Occupational Safety, Health and Working Conditions Code, 2020 talks about the registration of an establishment.

Firstly, we need to understand what amounts to a factory or an establishment given under the definition of the OSH Code, 2020.

Section 2(v) of the code defines the term “establishment” and Section 2 (w) defines the term “factory”. By analysing the definition it is clear that an entity can be called an establishment if-

- a) It is an industry which is involved in any trade, business, or manufacturing and has employed more than 10 workers; OR
- b) If it is involved in motor transport undertaking, the establishment of a newspaper, video production of audio/video, construction work or plantation, and has employed more than 10 workers; OR
- c) If it is a factory; OR
- d) Mine/ Port.

Provided, the above threshold of the number of workers is not applicable in case of an establishment involved in hazardous activities.

Further, if we look into the definition of a “factory”, it is clear that any premise wherein either it has 20 or more workers employed and working for 12 months or it has 40 or more workers employed and working for 12 months.

However, the units of armed forces, railways, hotels, transport, restaurant, and any eating place can't be termed as a factory under the definition provided.

With respect to the Registration criteria as mentioned under Section 3, it is evident that:

- a) Any employer after the commencement of the OSH code can apply for the application (electronically) with respect to the registration within 60 days to the Registering officer (appointed by the appropriate government).
- b) The Application shall be deemed to be submitted if the requisite fees and required forms (the same shall be prescribed by the appropriate government) have been submitted by the employer.

- c) As per the Draft Rules of OSH Code, 2020 the employer needs to submit his Permanent Account Number (PAN) allotted under the Income Tax Act, 1961 while submitting the application for registration.
- d) Now, in case the registering officer fails to issue the Certification of registration within seven days, the establishment shall be deemed to be registered immediately after the expiry of seven days.
- e) In case there is any change in the title of ownership/management the shall be intimated by the employer to the registering officer within 30 days electronically.
- f) If the employer obtains the registration-
  - i) By misrepresentation, then in that case he shall be prosecuted under section 94 (i.e., penalty ranging between 2-3 lakhs).
  - ii) By fraudulently, then in that case the registering officer after giving an opportunity of being heard to the employer revoke the registration within 60 days.
- f) Lastly, if the employer has not registered its establishment OR has not preferred an appeal with respect to the cancellation of registration under section 4 of the code, then in that case the employer cannot employ any employee in his establishment.
  - Further, other establishments such as mines, and establishments hiring beedi workers, may require a licence under Section 79 of the Code to function.
- a) So, an application for obtaining a licence shall be sent to the Chief Inspector-Cum-Facilitator or the State Government in electronic mode.
- b) The State Government or the Chief Inspector-Cum-Facilitator shall notify the applicant with regard to the status of its application (whether the licence is granted or not) within 30 days.
- c) If the State Government or the Chief Inspector-Cum-Facilitator fails to communicate the same to the applicant, then in that case the license shall be deemed to be granted after the expiry of 30 days period.
  - The Act also envisages for obtaining a “common licence” under Section 119 of the Code. A common licence can be obtained by any person desiring to obtain one with respect to a factory, industries employing beedi & cigar workers or employing contractual labours. With respect to any combination, the common licence can be obtained by following the same procedure as mentioned above.

Section 3 of the CODE ON SOCIAL SECURITY, 2020 also talks about the procedure for registration of an establishment. The procedure mentioned under this act is similar to the procedure explained above in OSH Code, 2020. The only difference in the procedure written in CODE ON SOCIAL SECURITY, 2020 is that there is no time limit mentioned in the code which shall be adhered to by the applicant while applying for registration.

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