

Gauging the Wage Code, 2019: Old Wine in a New Bottle

1. Introduction

The Code on Wages, 2019 (“**Code**”) has been introduced to consolidate the statutes regulating the remuneration regime in India. The process had been initiated several years ago to remove the multiplicity of authorities, definitions and provide a simpler compliance framework without hurting the wages and social security of workers. It seeks to unify the laws regarding payment of wages and bonus for those employed in an industry, manufacturing enterprise, trade or business.

The Code has been passed in the 2 houses of the Parliament and has received presidential assent thereby repealing 4 extant statutes and merging them into one pursuant to section 69. The subsumed statutes are the Payment of Wages Act, 1936 (“**PWA**”), the Minimum Wages Act, 1948 (“**MWA**”), the Payment of Bonus Act, 1965 (“**PBA**”) and the Equal Remuneration Act, 1976 (“**ERA**”). The Code merges 125 repealed provisions of the 4 legislations into 69 sections. This newsletter aims to highlight the key changes introduced, assess wages under the Code and its consequences for employers and employees.

2. Code Highlights

The key highlights of the Code regarding remuneration are described below:

2.1 Application: Under the previous framework there was a wage cap or a headcount threshold for the relevant statute to apply. Only ERA did not have any prescribed limits and applied to all workers. The PWA applied to employees whose monthly wages were at least INR 24,000 (about USD 335)¹ and the appropriate government could extend its application to shops and establishments where the workforce fulfilled the wage threshold. The PBA applied to establishments with 20 or more employees and whose monthly wages were up to INR 21,000 (about USD 293). For the MWA, there was a threshold of scheduled employments.²

The Code, on the other hand, applies to all establishments where any industry, trade, business, manufacturing or occupation is carried out regardless of any monetary threshold or headcount, thereby expanding the scope of application. It now includes employees who were outside the defined fiscal thresholds and, therefore, governed by their employment contracts. The Code specifies exemptions for payment of bonus only for certain types of establishments.³ To be eligible for compulsory bonus, it places a wage eligibility criterion, but this is not specified and will be notified by the state government in due course.

2.2 Definition of Employees and Workers: The definition of “employees” and “workers” has been modified. Under the repealed laws, those employed in managerial, supervisory or

¹ USD 1 = INR 71.47 and rounded off

² Section 2(g) of MWA defined “scheduled employment” to mean any employment notified under the Act. For example, employment in any rice mill, tobacco manufacturing, oil mill, any plantation, etc. As of 2011, there have been a total of 371 industries were notified by the centre, states and Union Territories

³ Examples are employees of Life Insurance Corporation of India, central or state government, and Reserve Bank of India

administrative capacity were excluded from the definition of employees. This meant that these employees fell outside the scope of those statutes. Section 2(k) of the Code now includes persons working in an administrative, managerial and supervisory capacity as employees, while “workers” under Section 2(z) excludes them. It specifies that for a supervisor to be excluded from the category of “worker”, they must earn INR 15,000 (about USD 211) or more. The definition of worker is similar to “workman” under the Industrial Disputes Act, 1947, which just like the Code, excludes supervisors whose monthly earning is INR 10,000 (about USD 140) or more. Effectively, the Code will now apply to managers, supervisors and those performing administrative roles.

2.3 Inspector-cum-Facilitator: The preceding wage regime had inspectors for ensuring compliance with various laws. It required them to conduct inspections, searches and make examinations and inquiries at establishments. The Code replaces them with Facilitators-cum-Inspectors (“**Facilitators**”). In addition to the foregoing responsibilities of the erstwhile Inspectors, the Facilitators will be able to conduct web-based inspections and seek information electronically as well. Additionally, they will have the power to inspect establishments within their allocated jurisdiction at random. The process for conducting inspection will be notified by the appropriate government.⁴

2.4 Consolidation of Registers: The erstwhile regime mandated maintenance of more than 16 different registers by organizations. Under PWA, it was necessary to maintain for payment of wages, fines, deductions and advances. The MWA required employee details, work performed, muster roll, wages paid and their receipts, leaves and notices exhibited on boards in the establishment had to be maintained. The PBA required registers with computation of allocating surplus and bonus paid to employees. For ERA, details of employees had to be maintained. The Code eliminates the need for multiple registers required under the repealed statutes and, instead, registers will have to be maintained in a single format which will be notified. They will contain details of employees, muster roll, wages, fines, deductions, bonus and leaves.

2.5 Penalties: Under MWA, the offences related to non-payment of minimum wages by employers and failure to provide time off during the week. There was a nominal fine up to INR 500 (about USD 7) and imprisonment up to 6 months for the employer.⁵ The PWA penalised non-payment of wages within the prescribed time and unauthorized deductions from wages. The penalty for the employer was monetary fine up to INR 7,500 (about USD 105). Like MWA, PBA too imposed both penal and fiscal sanctions i.e., imprisonment up to 6 months or a fine of INR 1,000 (about USD 14) for non-compliance with its provisions. Specifically, there was a fine up to INR 10,000 (about USD 142) and imprisonment up to 1 month for failure to maintain employees’ documents. Refusal to furnish documents to an inspector was also an offence punishable with a fine up to INR 500 (about USD 7). Under the Code, multiple types of fines have been imposed on an employer. For example,

- non-payment of prescribed wages is fined up to INR 50,000 (about USD 698);
- an employer who repeats the offence can be penalized with imprisonment up to 3 months or fine up to INR 100,000 (about USD 1,396) or both;
- non-maintenance of records attracts a fine up to INR 10,000 (about USD 140);

⁴ Section 50 and 51 of the Code

⁵ Section 2(l) of the Code includes occupier, contractor, manager as “employer” as only a legal person cannot be behind bars

- contravention of any other provision of the Code can be penalized with a fine up to INR 20,000 (about USD 279); a repeat offender can be punished with imprisonment for 1 month or a fine up to INR 40,000 (about USD 563) or both.

Just like the repealed laws, conviction for a previous offense under the Code is a pre-requisite for someone to be classified as a “repeat offender.” Pursuant to section 54(3), the employer can rectify the contraventions before they are penalised unlike the earlier regime which was silent on this. The Code has also introduced compounding⁶ of offences which are punishable with imprisonment. Thus, it has revamped penalties by increasing the amount fined while providing an opportunity to comply with it.

2.6 Other Notable Changes: Under the old framework, the limitation period for raising claims varied from 6 months to 2 years. This has been increased to 3 years and has been made uniform for filing claims regarding minimum wages, bonus, equal remuneration and other related matters.⁷ The limit has been increased to allow workers a uniform and increased time period for raising claims under the Code. Section 45 sets out a single authority to hear and decide on claims thereby eliminating the multiple authorities under the previous laws. This authority is yet to be named and will be notified in due time.

3. Assessment of Wages

An important highlight of the Code is introduction of a single definition of wages thereby eliminating the multiplicity of definitions, the concept of national floor wage and rationalizing the method and procedure for fixation of minimum wages.

3.1 Definition: Each repealed statute contained its own definition of “wage.” Under the MWA it was remuneration payable upon fulfilment of employment terms. It excluded any value for accommodation, services or amenities notified by the government, contributions to provident fund, pension and gratuity, travel allowance and special expenses to any employee due to nature of employment. The definitions in the other three statutes were similar to MWA. Additionally, PWA and PBA included award or settlement,⁸ overtime, bonus and termination pay. Further, PBA excluded retrenchment compensation and commission payable to an employee.

Under the new framework, section 2(y) defines wages. It includes salary, allowance, or any other component expressed in monetary terms. It excludes 8 components – contributions to provident fund, pension and gratuity, bonus, overtime, travel allowance, special expenses to any employee due to nature of employment and any value for accommodation, services or amenities that may be notified by the government. By dispensing with multiple definitions, employers will have to adhere to a single definition while factoring in components for computation. However, on closer scrutiny, the components approximately tally with the earlier ones and there seems to be no material differential impact but calculation of wages is now unified.

3.2 Introduction of Floor Wage: Labour law falls in the concurrent list of the Schedule VII of the Indian Constitution, which means that both centre and state can make laws on it. Currently, state governments set the minimum wage in the respective states. Under section 9 of the Code, the

⁶ Compounding is a volitional admission of an offence

⁷ Section 45(6) of the Code

⁸ This means any remuneration payable by virtue of any award or settlement between parties or order of court

central government will fix a floor wage which will consider minimum living standards of workers and remain valid for 5 years. Different floor wages can be set for different geographical areas and states will set their respective minimum which cannot be lower than the floor wage.⁹ If the existing minimum wage is higher than the floor wage, it cannot be reduced. Floor wage will be the national wage standard set by the central government only factoring the living standards of workers, while minimum wage will be set by the state governments incorporating a wider set of components. This concept has been introduced to ensure states do not deliberately set extremely low minimum wages to attract businesses and to protect the interest of workers.

3.3 Minimum Wages: In the repealed regime, the Central Government had not set any uniform minimum or floor wage. This resulted in wide disparity of the sums across the country. Keeping in mind the territorial differences that arise when it comes to cost of living, skill of workers and type of employment, a single wage was untenable. According to the Code, minimum wage consists of basic wages along with cost of living and cash value of concessions (if any). When fixing it, the appropriate government will factor in the skill of the worker, difficulty of the work and the geographical area.

As discussed, the minimum wage must be higher than the floor wage and it cannot be lowered. As an illustration, the basic daily minimum wage for an unskilled worker in the aluminium industry in Bihar is say INR 268 or about USD 4;¹⁰ and, the floor wage set subsequently is INR 300 or about USD 4. Bihar will have to revise its minimum wage in the industry equivalent to or more than INR 300. Subsequently after 5 years, the central government reduces the daily floor wage from INR 300 to INR 200 or about USD 3. As discussed at paragraph 3.2, the state will not be able to lower the set minimum wage which will have to remain INR 300 even though the floor wage is INR 200. The purpose of revising wages every 5 years is to factor the changing economic circumstances. The Code provides that the central government may obtain the advice of the Central Advisory Board¹¹ and consult with the state governments before setting or revising a floor wage, but the recommendations will not be binding.

3.4 Conflict with Existing Laws: Since the Code provides for a single definition of “wages” other central or state laws will have to rely on it. For instance, Shops and Establishments Acts of several states such as Karnataka, Haryana and West Bengal rely on the PWA definition while others provide their own. States such as Gujarat and Telangana define the term in their respective statutes. Gujarat includes *inter alia* remuneration for house rent allowance, award or settlement and overtime. Telangana includes overtime, bonus and payment made on termination. The Code excludes house rent allowance, overtime, bonus and payment of remuneration from its components. Its objective, as stated in the preamble, is to consolidate laws on wages. However, due to the conflict with state legislations, it seems this objective may not be achieved as multiple definitions continue to exist.

4. Conclusion

⁹ Section 9(2) of the Code

¹⁰ Standing Order dated February 27, 2019, published in Bihar Gazette

¹¹ Section 42 of the Code allows for constitution Advisory Boards at the state and central level. They will have representation from employees, employers, trade unions and independent individuals. The boards will advise on fixation of minimum wages related and other matters related to the Code

The Code reduces the multiple compliances associated with maintaining registers, filings, and enables e-filing with the concerned regulator. However, in the process of consolidation, the Code is likely to impact employer organizations that were earlier excluded from the purview of the repealed laws. The Code provides uniform applicability criteria as opposed to the different thresholds under the erstwhile laws. At the same time, it enlarges the scope of covered employees to include white-collar employees who will now in addition to their contractual terms, also be entitled to certain statutory protection in matters connected with payment of wages and bonus. The net effect will require all employer organizations, commercial and manufacturing establishments alike, to implement uniform remuneration and incentive practices that are aligned with the Code's requirements. Apart from these overarching changes that will mandate employers to revisit their existing employment policies and processes, the Code does not substantially change the fundamental principles and regulations under the subsumed laws. While it will be interesting to witness how the Code's rules play out and whether they bring about significant changes, currently, the Code at best is old wine in new bottle.

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