



INTRODUCTION TO LABOUR CODES:

What is in it for Start Ups? February 2021

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OVERVIEW

Purpose of Codification

New Codes

Timeline: Labour Codes 2020

Key Highlights: The Industrial Relations Code 2020

Key Highlights: The Social Security Code 2020

Key Highlights: The Code on Occupational Safety, Health and Working Conditions 2020

Conclusion

PURPOSE OF CODIFICATION OF LABOUR LAWS

- Transform old & archaic labour laws.
- Simplification of laws by harmonizing definitions and rationalizing authorities.
- Ensure ease of compliance & ability to do business in India.
- To match the pace of emerging economic situation.
- Rationalize penalties & increase implementation.
- Ensure wider coverage and social/labour welfare.



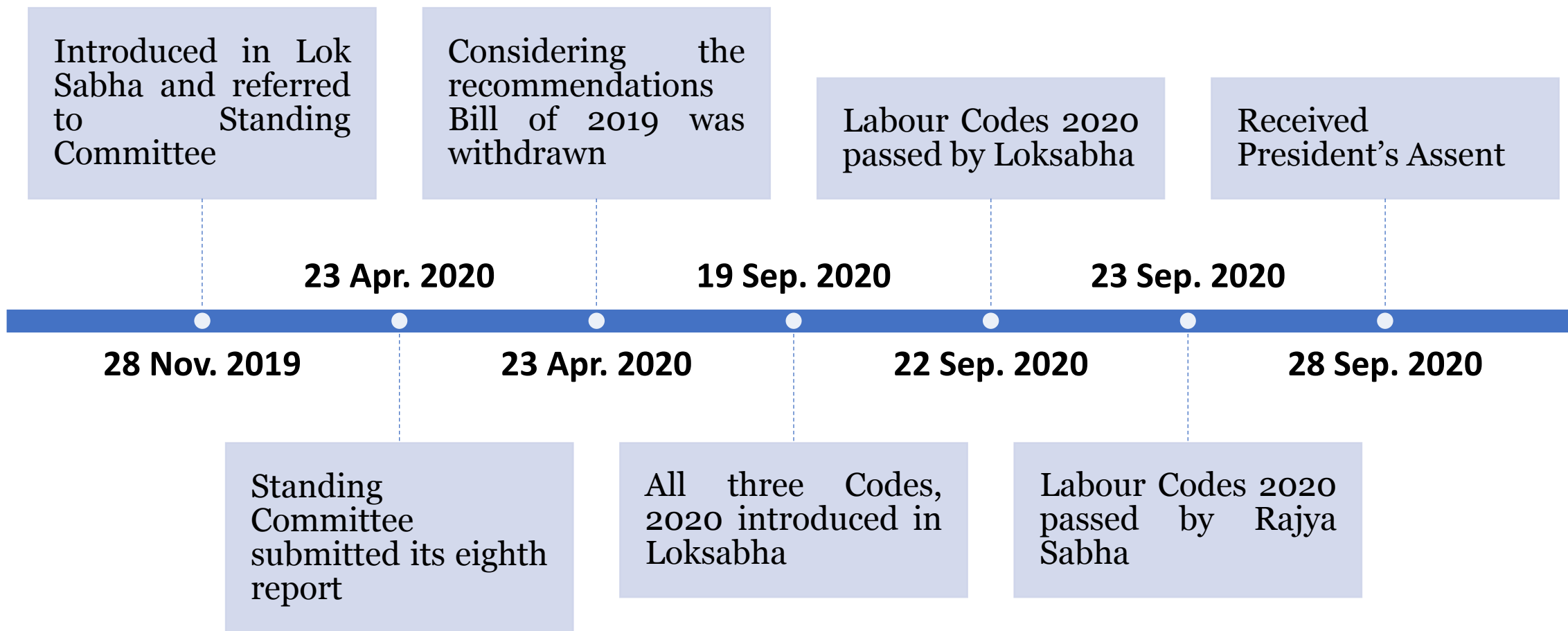


NEW LABOUR CODES



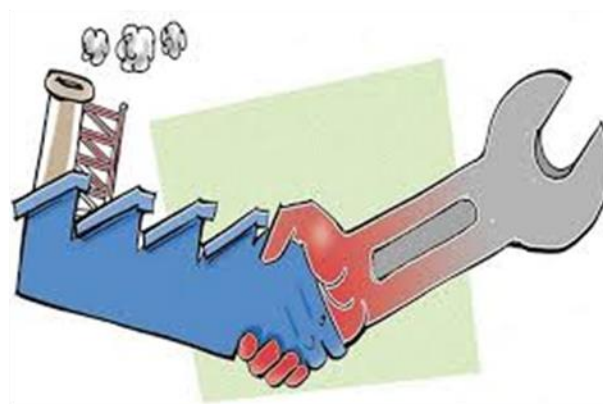


TIMELINE FOR THE THREE LABOUR CODES





THE INDUSTRIAL RELATIONS CODE 2020



BACKGROUND:THE INDUSTRIAL RELATIONS CODE, 2020 (IR Code)

- IR Code has replaced the core industrial legislation comprising of:
 - the Trade Union Act, 1926;
 - the Industrial Employment (Standing Orders) Act, 1946;
 - the Industrial Disputes Act, 1947.
- IR Code comprises of 14 chapters, 104 sections and 3 schedules.



KEY HIGHLIGHTS: IR CODE

Seeks to consolidate and amend laws relating to trade unions, conditions of employment in industrial establishments or undertaking, investigation and settlement of industrial disputes.

Definition: Worker, Strike, Industry and Retrenchment.

Concept of “ Fixed-term employee” and “Re-skilling fund” has been introduced.

Standing Orders apply to Industrial Establishments with more than 300 employees only.

Concept of Negotiating Trade Union and Negotiating Trade Councils has been introduced to streamline negotiations with the employer.

An industrial disputes can be voluntarily referred to arbitration by the employer as well as the workers.

IMPORTANT DEFINITIONS

- **WORKER**

- Worker has been expanded to include:

- working journalists;
- sales promotion employee; and
- persons employed in supervisory capacity and earning less than INR 18,000/- per month

- **STRIKE**

- Now includes concerted casual leave on a given day by 50% or more workers.

INDUSTRY

Means any systematic activity carried on by cooperation between an employer and a worker for the production, supply or distribution of good or services with a view to satisfy human wants other than merely spiritual or religious wants.

Profit immaterial, but certain establishments including organisations which are wholly or substantially engaged in any charitable, social or philanthropic service excluded.

Other exclusions to be prescribed by the Government

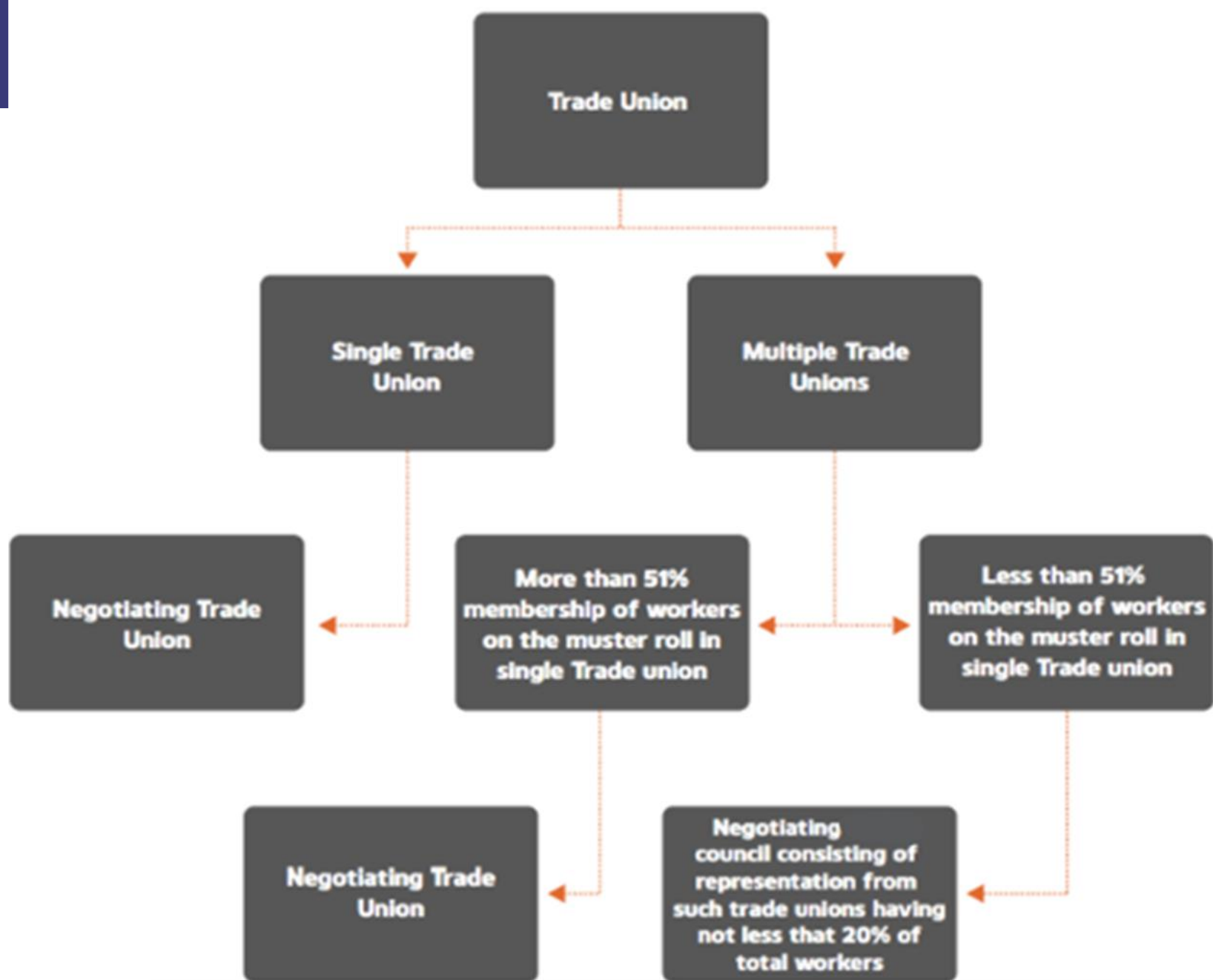
IMPORTANT TERMS

FIXED TERM EMPLOYMENT

- Means engagement of a worker based on a written contract of employment for a fixed period.
- Hours of work, wages, allowances and other benefits of a fixed term employee should be at par with that of a permanent worker.
- He is eligible for gratuity if he or she renders service under the contract for a period of 1 year.

TRADE UNIONS

- New concept of negotiating union or negotiating council introduced.
- IR Code also provides the power to Central/State Government to recognize the trade union, as it may deem fit.



LAY-OFF, RETRENCHMENT AND CLOSURE

IR Code 2020

- Industrial establishments which have 300 or more workers required to take prior permission of the appropriate Government before lay-off, retrenchment and closure.
- Employer is required to contribute to re-skilling fund for every retrenched worker, in the event of retrenchment.

INDUSTRIAL DISPUTES ACT, 1947

- The threshold to take prior permission of the government for lay-off, retrenchment and closure was not less than 100 workmen.
- Re-skilling fund was not a concept in the Industrial Disputes Act, 1947.

OTHER IMPORTANT HIGHLIGHTS: GRIEVANCE REDRESSAL

- IR Code revoked Labour Courts and provides for adjudication of industrial disputes only by Industrial Tribunals.
- IR Code provides that every industrial establishment employing more than 20 employees must have one or more grievance redressal committees for resolution of disputes arising out of individual grievances.
- Industrial disputes may be referred to arbitration on mutual consent.

PENALTIES

IR Code 2020

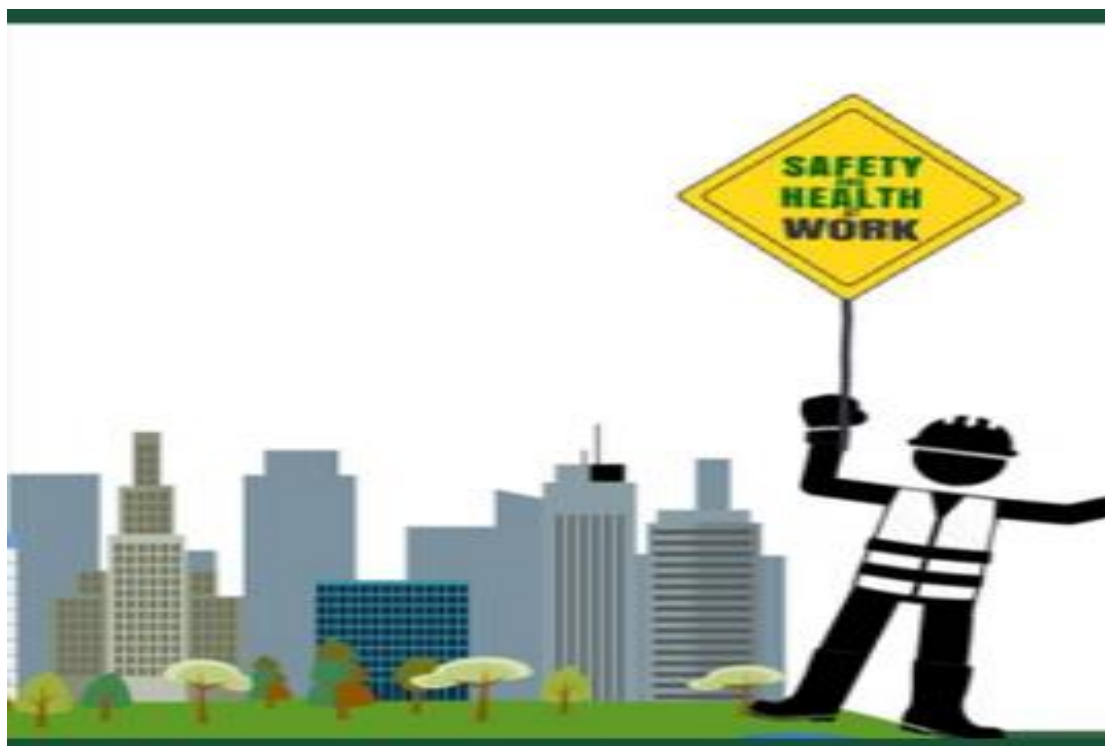
- **Provides for compounding of offences.**
- Failure on the part of larger establishments (with 300 or more workers) to comply with lay-off, retrenchment or closure requirements: penalty is fine of INR 1,00,000 and may extend to INR 10,00,000.
- Failure on the part of smaller establishments/ commercial establishments, to comply with lay-off, retrenchment or closure requirements: penalty is fine of INR 50,000 and may extend till INR 2,00,000.
- Unfair labour practice: maximum penalty is fine of INR 2,00,000
- Failure to comply with standing orders: maximum penalty is fine of INR 2,00,000.

INDUSTRIAL DISPUTES ACT, 1947

- Failure to comply with Chapter V-B provisions lay-off: maximum penalty is 1-month imprisonment or fine of INR 1,000 or both.
- Failure to comply with Chapter V-B provisions of closure of undertaking: maximum penalty is 6 months' imprisonment or fine of INR 5,000 or both.
- Unfair labour practice: maximum penalty is 6 months' imprisonment or fine of INR 1,000 or both
- Failure to comply with standing orders: maximum penalty is fine of INR 100
- Penalty in other cases: maximum fine of INR 100



THE CODE ON OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS, 2020



THE CODE ON OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS, 2020 ('OSH Code')

The OSH Code seeks to subsume following labour law legislations:

- The Factories Act, 1948;
- The Contract Labour (Regulation and Abolition) Act, 1970;
- The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979;
- The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996;
- The Mines Act, 1952;
- The Dock Workers (Safety, Health and Welfare) Act, 1986;
- The Plantations Labour Act, 1951;
- The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955;
- The Working Journalists (Fixation of Rates of Wages) Act, 1958;
- The Motor Transport Workers Act, 1961;
- The Sales Promotion Employees (Condition of Service) Act, 1976;
- The Beedi and Cigar Workers (Conditions of Employment) Act, 1966; and
- The Cine Workers and Cinema Theatre Workers Act, 1981

APPLICABILITY THRESHOLD AND REGISTRATION

- OSH Code applied to:
 - place where any industry, trade, business, manufacture or occupation is carried on and employing **10 or more workers**;
 - a factory, motor transport undertaking, newspaper establishment, audio-video production, building and other construction work or plantation employing **10 or more workers**; and
 - a mine or a dock.
- Provisions with respect to contract labour are applicable to establishments or contractor employing more than **50 contract workers**.
- **Registration:** Single registration can now be done for an establishments having ten or more employees instead of multiple registrations.
- OSH Code introduces the concept of deemed registration of an employer.
- Establishments covered required to register within 60 days (of the commencement of the OSH Code) electronically.

APPLICABILITY THRESHOLD FOR VARIOUS PROVISIONS

Revised thresholds for applicability of following provisions:

Provisions	Threshold
Appointment of safety officers	Building and construction related establishments-250 Mines-100 or more workers Factories-500 or more workers
Welfare provisions	Canteen: 100 or more workers including contract labour Separate shelters / restrooms for male, female and transgender workers: 50 or more workers
Appointment of welfare officers	250 or more workers
Inter-state migrant workers	10 or more inter-State migrant workers

KEY HIGHLIGHTS: OSH Code

Employers are required to conduct free annual health check-up for their employees.

Occupier: Expressly excludes independent director, hence providing clarity.

Issuance of appointment letter to every employee on their appointment in the establishment.

Core activity of an establishment: is any activity for which the establishment is set up and includes any activity which is essential or necessary to such activity.

Employers or Contractors are responsible to provide welfare facilities to inter-state migrant workers.

Provides for prior consent of woman for overtime and night shift.

Establishes National Occupational Safety and Health Advisory Board.

KEY HIGHLIGHTS ON INTER-STATE MIGRANT WORKERS



- OSH Code widens the ambit of migrant workers to include ‘any person’ recruited by an employer in one state for employment in his establishment situated in another state.
- Migrant workers are eligible to get journey allowance.
- Toll free helpline may be provided by the appropriate Government.
- No suit or other proceeding for the recovery of debt relating to an inter-state migrant worker after the completion of his employment.
- Option to avail benefits of public distribution system either in his native state or the destination state where he is employed.

KEY HIGHLIGHTS ON CONTRACT WORKERS

- **Intimation of work order:** Contractor to intimate the appropriate government about any work order received by him from an establishment for deployment of contract labour .
- **Primary responsibility for welfare facilities on principal employer.**
- **Mode of payment:** Mandates contractors to make disbursement of wages through bank transfer or otherwise through electronic mode and inform the principal employer about the same.
- **Issue of experience certificate:** An experience certificate to the contract workers by the contractor or the principal employer giving details of the work performed by such contract labour to be issued.

PENALTIES

Extant Regime

- General penalty: maximum penalty is 2 years imprisonment or fine of INR 1,00,000 or both.
- Failure to comply with provisions regulating engagement of 3 months imprisonment or fine of INR 1,000 or both.

OSH Code

- **Provides for compounding of offences.**
- General penalty: maximum penalty is fine of INR 3,00,000.
- Failure to comply with provisions regulating engagement of women workers, contract workers etc.: maximum penalty of INR 1,00,000.
- Failure to comply with duties relating to hazardous processes: maximum penalty of 2 years imprisonment and fine of INR 5,00,000.

THE CODE ON SOCIAL SECURITY, 2020



THE CODE ON SOCIAL SECURITY, 2020 ('SS Code')

- SS Code proposes to replace the following nine legislations relating to social security:
 - The Employees' 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; and
 - The Unorganised Workers' Social Security Act, 2008.

APPLICABILITY THRESHOLDS

PROVISIONS	THRESHOLD (no of people employed)
Employees' Provident Funds	20
Employees' State Insurance	10
Gratuity	10
Maternity Benefit	10

HIGHLIGHTS: SS CODE

SS Code extend benefit of social security to workers engaged in unorganised which includes workers operating in an arrangement outside of traditional employer-employee relationship and inter-state migrant workers.

Change in definition of 'wages', it now includes a proviso which provides that if the excluded components of wages exceed 50% of all remuneration paid, then the amount in excess of this 50% will be deemed to be 'wages'.

Provision for voluntary opting in and opting out of EPF and ESI framework.

Establishments can avail common crèche facility by third party or may pool resources for setting up a common crèche.

Limitation period of 5 years introduced for initiation of inquiries w.r.t. EPF and ESIC contributions.

Filing of returns electronically or otherwise before the authorized officer.

Introducing career centres and provision for compulsory notification of vacancies.

OTHER IMPORTANT CHANGES

- **Broad Applicability – Gig, Platform and Unorganised Workers covered**

- **Gig workers** refer to workers outside of the traditional employer-employee relationship (e.g., freelancers).
- **Platform workers** are workers who access other organisations or individuals using online platforms and earn money by providing them with specific services.
- **Unorganised workers** include home-based, self-employed workers or wage worker in un-organised sector and also includes a worker in the organised sector who is not covered by the Industrial Disputes Act, 1947.

- **Establishment of Social Security Fund:** formed by the Central Government for social security and welfare of un-organised, gig and platform workers.
- **Inspections:** SS Code seeks to promote web-based inspection.
- **Gratuity:** Fixed term employment are also eligible for gratuity on pro-rata basis irrespective of period of service.

ENHANCED PENALTIES UNDER SS CODE

EXTANT REGIME

- **Failure to make contributions:** maximum penalty is 3 years' imprisonment and fine of INR 10,000.
- **Failure to pay gratuity:** maximum penalty is 1-year imprisonment or fine of INR 20,000 or both.
- **Dismissing or discharging a woman / failure to provide maternity benefit:** maximum penalty is 1-year imprisonment and fine of INR 5,000

PROVISIONS UNDER THE SS CODE

- **Provides for compounding of offences.**
- **Failure to make contributions:** maximum penalty is 3 years imprisonment and fine of INR 1,00,000/-.
- **Failure to pay gratuity:** maximum penalty is 1-year imprisonment or fine of INR 50,000 or both.
- **Failure to pay compensation in case of injury or occupational disease:** maximum penalty is fine of INR 50,000.
- **Dismissing, discharging or otherwise penalizing a' woman / failure to provide maternity benefit:** maximum penalty is 6 months' imprisonment or fine of INR 50,000 or both.

CONCLUSION

- The Government has taken a step to strike a balance between ease of doing business and welfare of the workforce.
- Rules for better implementation of these codes will be soon issued by appropriate government.
 - **This is just the beginning!!!**



*Thank
you*



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*Courtesy Google images