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USHERING IN A NEW FRAMEWORK FOR WAGES: PRESIDENT GIVES ASSENT TO THE CODE ON WAGES 2019

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INTRODUCTION

A significant development in its own right, the Code on Wages, 2019 ("Wages Code") is an attempt by the Government of India to consolidate and simplify the existing multitude of labour laws in the country. The Wages Code will subsume and replace the following 4 labour statutes:

- (i) Payment of Wages Act, 1936 ("PW Act");
- (ii) Minimum Wages Act, 1948 ("MW Act");
- (iii) Payment of Bonus Act, 1965 ("Bonus Act"); and
- (iv) Equal Remuneration Act, 1976 ("ER Act").

A consolidated code was first introduced in the Lok Sabha on 10 August 2017 ("Wages Bill 2017"). Thereafter, the same was referred to the Standing Committee on Labour 2018-19 ("Standing Committee") for examination, pursuant to which the Standing Committee released a report with its recommendations in December 2018. However, due to dissolution of the Parliament, the Wages Bill, 2017 lapsed. Our analysis of the Wages Bill, 2017 can be accessed [here](#). We had previously also discussed the key recommendations of the Standing Committee, which can be accessed [here](#).

After taking into account the report of the Standing Committee, the Code on Wages Bill, 2019 – which primarily consists of 4 chapters pertaining to equal remuneration irrespective of gender, minimum wages, payment of wages and payment of bonus – was again introduced in the Lok Sabha on 2 August 2019. Within a short span of time, the bill was passed by the Parliament and the same received the assent of the President on 8 August 2019. It may be noted that the Wages Code shall come into force on such date as may be appointed by the Central Government by way of a notification in the official gazette.

In this article, we set out and examine the key developments ushered in by the Wages Code.

KEY CHANGES INTRODUCED BY THE WAGES CODE

- i. Extended coverage of the Wages Code: The Wages Code has, in certain respects, extended the coverage of the extant provisions it intends to repeal and replace.
 - Provisions relating to equal remuneration: The ER Act provides that no employer shall pay to any worker remuneration at rates less favourable than those at which remuneration is paid by him to the workers of the *opposite sex*, for performing the same work, or work of a similar nature. Therefore, the ER Act recognises only male and female employees in respect of which discrimination is prohibited. However, the Wages Code prohibits discrimination 'on grounds of gender', allowing a third category of gender i.e. transgenders to also be protected from discrimination in matters of payment of remuneration for carrying out same or similar work.
 - Provisions relating to minimum wages: Unlike the MW Act which is only applicable to the scheduled employments set out therein, the Wages Code extends its coverage to all employments, irrespective of whether they are in the organized or the unorganized sector.
 - Provisions relating to payment of wages: The PW Act is applicable to employees earning not more than INR 24,000 per month. However, this threshold has been done away with by the Wages Code, thus covering all employees irrespective of their monthly remuneration.

Further, the PW Act is only applicable to 'industrial or other establishments'. The statute defines 'industrial or other establishment' to mean establishments relating to motor transport or air transport services, dock, wharf, jetty, inland vessel, mine, quarry, oilfield, plantation, production or manufacture of articles for their use / transport / sale, construction / development / maintenance of buildings etc., and any other establishment which the appropriate government may, having regard to the nature thereof and other relevant circumstances, specify. This means that for the PW Act to be applicable to shops and establishments, the appropriate government must issue a notification to that effect. So far, notifications in this regard have been issued by Maharashtra, Karnataka, Haryana and Tamil Nadu. On the other hand, the Wages Code uses the term 'establishment' which means 'any place where any industry, trade, business, manufacture or occupation is carried on', thus extending the application of the chapter on payment of wages to commercial establishments as well.

- Provisions relating to payment of bonus: Currently, the Bonus Act is applicable to only workers earning wages up to INR 21,000 per month. However, this statutory threshold has not been incorporated in the Wages Code, leaving it up to the discretion of the appropriate government to prescribe the wage ceiling for eligibility of payment of bonus.
- ii. Uniform definitions of 'wages': The Wages Code provides a uniform definition of 'wages', thereby catering to the problem of varied definitions of 'wages' under the extant laws. Section 2(y) of the Wages Code defines 'wages' as all remuneration whether by way of salaries, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, if the terms of employment (express or implied) were fulfilled, be payable to a person employed in respect of his employment, and includes basic pay, dearness allowance and retaining allowance. The definition has now consolidated the exclusions from the definition of 'wages' under various laws and provided that the term 'wages' shall not include bonus, the value of any housing accommodation, contribution towards pension and provident fund by the employer, conveyance allowance and travelling concession, sums paid to the employee to defray special expenses, house rent

allowance, overtime allowance, any commission payable to the employee, gratuity, retrenchment compensation, other retirement benefits and ex-gratia payments (if any).

- iii. Fixation of floor wage: Under the MW Act, the respective state governments are responsible for fixing and notifying the basic rate of wages for the workers employed in the scheduled establishments. This resulted in a disparity in the basic rates of wages across states in India. As per the Wages Code, the Central Government shall fix a 'floor wage' taking account the minimum living standards of a worker. However, the Central Government may prescribe different floor wages for different geographical areas ("Floor Wage"). The respective state governments may fix a different minimum wage for areas falling under their jurisdiction, provided such wage should at least match the Floor Wage.

In case the existing minimum rates of wages fixed by the appropriate government are higher than the Floor Wage that would be prescribed by the Central Government, such minimum rates will continue to apply and shall not be reduced.

Further, the criteria for fixing the minimum wage rate is not elaborated under the MW Act. However, the Wages Code has provided certain guidelines to the appropriate governments for the purpose of fixing / revising the minimum wage rate, which include the skill required, the arduousness of the work assigned to the worker, the cost of living of the worker, and the geographical location of the place of work.

- iv. Inspector-cum-facilitator: The extant laws provide for labour 'inspectors' to carry out inquiry and investigation into alleged contraventions of the stipulated provisions. However, the Wages Code introduces the concept of a 'inspector-cum-facilitator' who shall not only carry out inspections, but also provide employers and workers with information on how to improve their compliance with the law. While the inspector-cum-facilitator retains the labour inspector's power to examine the workplace, search and seize copies of relevant documents, the Wages Code, in a significant relaxation, provides that before initiation of prosecution for any non-compliance, the inspector-cum-facilitator would provide an opportunity to the employer to comply with the provisions of the Wages Code. It is only in the event the employer fails to comply with the directions of the inspector-cum-facilitator within the specified time period will the inspector-cum-facilitator initiate prosecution against the employer.
- v. Compounding of offences: The Wages Code has introduced a provision for compounding of offences which are not punishable with imprisonment. Such compounding may be allowed by the prescribed officer for a sum of 50% of the maximum fine provided for the relevant offence. However, such an opportunity is unavailable to an employer for the second time or thereafter within a period of 5 years from the date of either (i) commission of a similar offence which was earlier compounded; or (ii) commission of a similar offence for which such person was earlier convicted.
- vi. Increase in penalties: The Wages Code has enhanced the penalties for contravention of various provisions thereof. Under the extant laws, the maximum fine which could be imposed by the labour authorities for the contravention of the relevant provisions ranges from INR 500 to INR 20,000. However, the Wages Code provides that for any failure to pay the sums due to the employee, the employer shall be punishable with fine which may extend to INR 50,000, while for any failure to comply with other provisions of the Wages Code, the employer shall be punishable with fine which may extend to INR 20,000.

vii. Miscellaneous provisions: Some other important changes in the extant law on wages are briefly discussed below:

- The Wages Code has introduced conviction for sexual harassment as a ground for disqualification for payment of bonus.
- The Wages Code promotes digitalisation by allowing the appropriate government to make it mandatory for every employer to make payment of wages only by cheque or by crediting the wages in the employee's bank account.
- The Wages Code provides for consolidation of compliance requirements for maintaining registers. It mandates every employer to maintain a single register (preferably electronic) containing the details of persons employed, wages and other details prescribed by the appropriate government.
- The Wages Code increases the period of limitation for filing of claims in relation to payment of any sums due to 3 years, as against the varying period between 6 months to 2 years under the extant laws.

COMMENTS

The debate and deliberation around consolidation of the law on wages in India has been doing the rounds for some time now. With the passage of law by the Parliament and the assent accorded to it by the President, the uncertainty in this regard has been finally put to rest.

Several provisions of the Wages Code merit attention. The unorganised sector comprises of a significant portion of the workforce in the country and was previously not covered under the MW Act. The Wages Code brings this sector within the ambit of the law on minimum wages. Further, with the removal of the wage ceiling for the application of the law relating to payment of wages and the extension of the application of the law to all kinds of establishments, the terms and conditions of a significant number of employees will now be governed by the Wages Code, as opposed to the present scenario where these are largely governed by the employment contract.

The introduction of the concept of inspector-cum-facilitator and the specific incorporation of the provision relating to rendering advice to employers and workers to ensure compliance with the law may be seen as the Central Government's attempt to play a facilitative role rather than an antagonistic one in matters of compliance. This, coupled with the provisions relating to compounding of offences, may help prevent arduous litigations.

- *Anshul Prakash (Partner), Deeksha Malik (Associate) and Kruthi N Murthy (Associate)*

For any queries please contact: editors@khaitanco.com

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Mumbai

One Indiabulls Centre, 13th Floor
Tower 1 841, Senapati Bapat Marg
Mumbai 400 013, India

T: +91 22 6636 5000
E: mumbai@khaitanco.com

New Delhi

Ashoka Estate, 12th Floor
24 Barakhamba Road
New Delhi 110 001, India

T: +91 11 4151 5454
E: delhi@khaitanco.com

Bengaluru

Simal, 2nd Floor
7/1, Ulsoor Road
Bengaluru 560 042, India

T: +91 80 4339 7000
E: bengaluru@khaitanco.com

Kolkata

Emerald House
1 B Old Post Office Street
Kolkata 700 001, India

T: +91 33 2248 7000
E: kolkata@khaitanco.com