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### CONSOLIDATING THE LAW ON CONTRACT LABOUR, FACTORY AND CONSTRUCTION WORKERS AND MORE: THE OSH CODE 2019 REACHES PARLIAMENT

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In a move to consolidate the law relating to occupational safety and health, welfare facilities and working conditions in relation to employees and workers, the [Code on Occupational Safety, Health and Working Conditions, 2019](#) (OSH Code) was introduced in the Lok Sabha on 23 July 2019. The proposed legislation seeks to replace 13 extant statutes, which are –

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

While the journey of the OSH Code through the two houses of Parliament is yet to be seen, we set out and examine some of the important changes put forth by the proposed law.

### General Provisions

- Application of the OSH Code: The OSH Code shall apply to all establishments, meaning (a) a place where any industry, trade, business, manufacture or occupation is carried on and employing 10 or more workers, (b) a factory, motor transport undertaking, newspaper establishment, audio-video production, building and other construction work or plantation employing 10 or more workers, and (c) a mine or a dock. It may be noted that presently, the threshold for the applicability of the relevant laws varies from one or more employee to 20 or more employees.
- Deemed registration: In a move that may cut down red tape, the OSH Code introduces the concept of deemed registration of an employer. Therefore, where the registering officer fails to register an employer within the time prescribed by the appropriate government, the establishment shall be deemed to have been registered immediately on the expiration of the prescribed period.
- No inclusion of contract workers in the definition of 'employee' and 'worker': It may be noted that the OSH Code does not include contract workers within the scope of 'worker' and 'employee'. This is an important departure from the Factories Act, the Beedi Workers Act and the Plantations Labour Act, wherein the provisions are applicable to both the employer's workers and those of the contractors. The exclusion has, to an extent, removed ambiguity in the interpretation of provisions which typically apply to an employer-employee relationship.
- Duties of employers: The OSH Code lays down certain additional duties of employers across establishments, irrespective of the nature of such establishments. Among these is the duty of the employer to issue a letter of appointment to every employee containing such information as may be prescribed by the appropriate government. It may be noted that at present, this duty is expressly provided in the Sales Employees Act. Under the framework of the said statute, the employer of an establishment engaged in pharmaceutical or other notified industry is required to make certain provisions in the appointment letter such as probation, scale of wages, basic pay and allowances and other conditions of service.

Further, under the OSH Code, every employer is required to ensure the disposal of hazardous and toxic waste including disposal of e-waste and that the workplace is free from hazards which cause or are likely to cause injury or occupational disease to the employees. The employer is also prevented from levying charge on any employee in respect of anything done for maintenance of safety and health at workplace including conduct of medical examination.

- Duties of employees: The Factories Act recognises the 'right' of a worker engaged in a hazardous process, to bring to the notice of the concerned occupier / agent / manager / any other person who is in charge of the factory or the process, the likelihood of imminent danger to their lives or health due to any accident. The OSH Code makes it a 'duty' of the employee to comply with the safety and health requirements specified by the employer and report any unsafe/unhealthy situation coming to his / her attention to the employer (or the owner / agent / manager in case of a mine).
- Provisions relating to working hours, overtime etc.: Under certain statutes such as the Factories Act and the Plantations Labour Act, working hours, weekly hours, spread-over, rest intervals etc. have been statutorily fixed. However, the OSH Code leaves it to the appropriate government to prescribe specific requirements in relation to the above.

An important provision in relation to overtime as introduced by the OSH Code, is the requirement of obtaining prior written consent of the worker before requiring him / her to work overtime.

- Revised threshold for appointment of safety officers: The OSH Code has retained the threshold for the applicability of the provision relating to appointment of safety officers in building and construction related establishments (500 or more workers) and mines (100 or more workers). However, in case of factories, this threshold has been significantly reduced from 1,000 or more workers to 500 or more workers.
- Revised thresholds for applicability of welfare provisions: The OSH Code has revised the thresholds for the applicability of various provisions concerning welfare of workers. Therefore, as against the extant laws wherein these thresholds differ, the OSH Code provides a uniform threshold for provision of canteen (100 or more workers including contract labour), separate shelters / restrooms for male, female and transgender workers (more than 50 workers), welfare officers (250 or more workers) and creche (50 or more workers).
- Provisions concerning annual leave: Most of the current labour laws prescribe a certain number of days a worker should work with the employer in order to avail annual leave. In certain statutes such as the Factories Act, the Motor Workers Act and the Mines Act, this period of service is 240 days in a calendar year. The OSH Code, on the other hand, provides that every worker shall be entitled to one day of leave for every 20 days of his work provided that he has worked for 180 days or more in the relevant calendar year.
- Employment of women in night shifts: Section 66 of the Factories Act provides that no woman shall be required or allowed to work in any factory except between the hours of 6 am and 7 pm. However, the state government may, in respect of any factory or class of factories, vary the limit such that no variation shall authorize the employment of any woman between the hours of 10 pm and 5 am. A similar restriction is provided in the Plantations Labour Act, which restriction may be waived upon the state government's permission.

The OSH Code does away with the restrictive language and provides that notwithstanding anything contrary contained in another law, women workers will, upon their written consent, be allowed to work before 6 am and after 7 pm.

- Common facilities: As per the Factories Act, where, in any premises, separate buildings are leased to different occupiers for use as separate factories, the owner of the premises shall be responsible for the provision and maintenance of common facilities and services therein. The OSH Code, on the other hand, imposes a joint and several liability on the owner of the premises and the occupiers of the factories utilising the common facilities.
- General prohibition on disclosure: Under the Factories Act, an inspector of factories is prohibited from disclosing any information relating to any manufacturing or commercial business / process which may come to his / her knowledge in the course of his / her official duties, unless the same is sought to be disclosed upon the prior written consent of the owner of the business or for the purpose of a legal proceeding. This obligation is now cast on every person who may obtain the information in the course of his / her official duties.

### Provisions Concerning Contract Labour

- Definition of 'contract labour': The term 'contract labour' is defined under the CLRA to mean a workman who has been hired by a contractor *in or in connection with the work of an establishment*. The OSH Code similarly defines the term but also adds that the definition will exclude from its scope any worker who is regularly employed by the contractor for any activity of his / her establishment and the employment of such worker is governed by mutually accepted standards of the conditions of employment. This exclusion is intended to clarify the scope of 'contract labour'. This is necessitated on account of the number of obligations

imposed on the principal employer in respect of contract labour by law, including ensuring provision of amenities and payment of wages to such workers, making contributions towards employees' provident fund on behalf of such workers etc. Therefore, where a contract worker is employed by the contractor on a regular basis for any activity of his / her own establishment, the principal employer will not be liable towards such contract workers but will have responsibility only towards those workers who are hired for the work of the principal employer's establishment.

- Validity period of contractor license: Under the extant law, the validity period of contractor license is prescribed under the state-specific rules. This period varies greatly across states. For instance, in Maharashtra, a contractor license shall remain valid till the time the principal employer proposes to engage contract labour, unless revoked earlier by the licensing officer. In Haryana, such contractor license shall remain in force up to the 31<sup>st</sup> day of December of the year for which the licence is granted or renewed. In Delhi, the contractor license shall remain in force for 12 months from the date it is granted or renewed. The OSH Code provides for a uniform validity period of 5 years. However, within the said period, if the contractor wishes to increase the number of contract workers, he will be required to apply for renewal of the license.
- Intimation on receipt of work order: A new provision in the law relating to contract labour is provided in the OSH Code which requires every contractor to intimate the appropriate government about any work order received by him from an establishment for deployment of contract labour / executing a contract through contract labour.
- Primary responsibility for welfare facilities on principal employer: The OSH Code imposes the responsibility of providing welfare facilities to the contract labour on the principal employer. This is unlike the present framework where such responsibility is placed on the contractor. It is only when the contractor fails to provide the welfare facilities, that the principal employer becomes responsible to make provisions for the same. In such case too, the principal employer can recover the expenses incurred in providing the amenities from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.
- Deemed employment in case of engagement of contract workers through unlicensed contractors: Under the CLRA, there is no automatic absorption of contract workers into the establishment of the principal employer where they are engaged through an unlicensed contractor. However, in *Hindustan Newsprint Limited v HNL Casual and Contract Workers Centre* [2016 (2) KLJ 198], the Kerala High Court observed that if any engagement of workers was being made through an unlicensed contractor, it could be said that it is a 'sham contract' or a 'camouflage'. This inference becomes all the more likely where both the principal employer and the contractor have not obtained registration and license respectively.

Under the OSH Code, it is expressly provided that where any establishment employs contract labour through a contractor who has not obtained a license therein, the contract labour so engaged shall be deemed to be employed by the principal employer. The provision inevitably requires establishments to be thorough while exercising due diligence as regards the contractors engaged by them.

- Mode of payment of wages: Under the CLRA, the disbursement of wages is required to be made by the contractor in the presence of an authorized representative of the principal employer. However, the OSH Code takes into account practical considerations and mandates contractors to make disbursement of wages through bank transfer or otherwise through electronic mode and inform the principal employer about the same. Where such transfer is not practicable, wages shall be

disbursed in the presence of a duly authorized representative of the principal employer.

- Issue of experience certificate: The OSH Code has introduced a provision for issuance of an experience certificate to the contract workers by the contractor or the principal employer giving details of the work performed by such contract labour. Interestingly, the previous draft i.e. the Code on Occupational Safety, Health and Working Conditions, 2018 had imposed this responsibility only on the principal employer, which could have been a matter of concern as the principal employer does not have the same level of visibility as regards contract labour which a contractor is likely to possess.

#### Specific Provisions Concerning Other Workers

- Expanding the ambit of ‘inter-state migrant workman’: At present, the term ‘inter-state migrant workman’ as used in the ISMW Act covers in its ambit only a person recruited by or through a contractor in one state for an establishment in another state. However, the OSH Code widens the ambit of the term to also include ‘any person’ (earning wages up to an amount to be prescribed by the Central Government) recruited by an employer in one state for employment in his establishment situated in another state.
- Expanding the ambit of provisions relating to cine workers: The OSH Code seeks to widen the ambit of the provisions relating to working conditions of cine and theatre workers so to include digital audio-visual workers engaged in different forms of electronic media. Therefore, while the Cine Workers Act uses the term ‘cine-worker’ and limits it to workers employed in connection with the production of a feature film only, the OSH Code uses the term ‘audio-visual worker’ and also brings within its ambit workers engaged in works created wholly or partly in India through animation, cartoon depiction and advertisements.
- Expanding the ambit of ‘working journalist’: A small yet significant addition to the definition of ‘working journalist’ is persons employed in any establishment relating to ‘any electronic media’. However, the exclusion of persons employed mainly in a managerial, supervisory or administrative capacity from the scope of the term continues.
- Wider coverage in terms of sales promotion employees: Presently, the Sales Employees Act covers pharmaceutical establishments and any other establishment notified by the Central Government. However, the OSH Code goes a step ahead and covers all persons engaged in ‘any establishment’ to do any work relating to promotion of sales or business, provided such persons are not engaged mainly in a managerial or administrative capacity or are not engaged as supervisors drawing more than INR 15,000 per month.

#### Miscellaneous Provisions

- Advisory board: The OSH Code provides for a uniform National Occupational Safety and Health Advisory Board to be constituted by the Central Government and a similar board to be constituted by the state government to provide advice on the administration of the OSH Code. It may be noted that these boards will replace certain existing advisory boards which have representation from the relevant stakeholders. For example, the BOCW Act provides for the constitution of the Central and the state building and other construction workers’ advisory committees. These committees *inter alia* have representation from building workers, associations of architects, engineers and accident insurance institutions.
- Compounding and other changes in penalty provisions: The OSH Code allows for compounding of offences not punishable with imprisonment for a sum of 50% of the maximum fine provided for such offence. However, this option is not available where

an offence, which has been earlier compounded or for which conviction order has been passed, is committed for the second or subsequent time within a period of 5 years from the date of commission of the offence.

There is a significant overall increase in the penalty amount for contravention of the provisions relating to occupational safety, health and working conditions of employees and workers. The general penalty has been provided in the form of a fine which shall not be less than INR 2,00,000 but which may extend to INR 3,00,000.

- Limitation period: The OSH Code has provided for a limitation period of 6 months for making a complaint, the said period to be counted from the date on which the alleged commission of an offence came to the knowledge of the inspector-cum-facilitator. In certain statutes such as the Factories Act, the BOCW Act and the ISMW Act, this limitation period is three months.

### Conclusion

The OSH Code appears to be a positive step towards ensuring occupational safety and health and better working conditions of workers. In more ways than one, the OSH Code seeks to widen the coverage of the workers and employees – be it audio-visual workers, inter-state migrant workers or sales promotion employees – who would benefit from its provisions. The employment of women in night shifts is a positive step towards ensuring gender equality. A less talked about and yet encouraging move is the power given to the Central Government to require certain establishments to provide sufficient arrangement for toilets as well as locker rooms to transgender workers separately.

From the perspective of the employers, while most of the provisions remain intact, the provisions concerning engagement of contract workers may seem onerous. However, most of the concerns could be allayed if the principal employer exercises due diligence in ensuring that the contractor, as the employer of the contract workers, complies with the applicable labour laws. Further, the provision relating to deemed registration of establishments may take care of prolonged delays in administrative processes.

Since the implementation of a number of provisions of the OSH Code has been left to the appropriate government, it is yet to be seen how the objective of consolidation and simplification in compliance with the labour laws would be achieved.

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