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MINISTRY OF LABOUR AND EMPLOYMENT PRESENTS DRAFT CENTRAL RULES UNDER THE NEW FRAMEWORK ON WAGES

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In a step towards implementation of the recently notified Code on Wages, 2019 (Wages Code) which awaits a notification to be brought into force, the Ministry of Labour and Employment released the draft Code on Wages (Central) Rules, 2019 (Draft Central Rules) on 1 November 2019. The Draft Central Rules will be available for public comments for a period of one month.

It may be noted that most of the provisions of the Draft Central Rules are intended to apply to the following establishments (Covered Establishments):

a) establishments carried on by or under the authority of the Central Government;
b) railways;
c) mines;
d) oil fields;
e) major ports;
f) air transport services;
g) telecommunication;
h) banking and insurance companies;
i) corporations / authorities established by a Central Act;
j) central public sector undertaking and their subsidiaries; and
k) establishment of contractors for the purposes of the above-mentioned establishments.

While the 'appropriate government' for most private establishments is the state government which is yet to implement the provisions of the Wages Code, it is likely that the state governments would take a cue from the Draft Central Rules and make similar provisions for the establishments falling under their jurisdiction.

Set out below are some of the important provisions of the Draft Central Rules. The other provisions of the draft rules have reiterated the position in the existing Central rules under the Minimum Wages Act, 1948 (MW Act), the Payment of Wages Act, 1936 (PW Act) and the Payment of Bonus Act, 1965.

- *Categorisation of employees*: In an important change, the Draft Central Rules define unskilled, semi-skilled, skilled and highly skilled occupations for the purpose of Covered Establishments and also provide a list of occupations in Schedule E which would fall in each of these categories. The Draft Central Rules then stipulate that the Central Government shall take into consideration the skill of the employees while fixing the minimum rates of wages and can, for this purpose, modify, delete or add any entry in Schedule E.

  The term 'unskilled occupation' has been defined to mean one which, in its performance, requires the application of a bare minimum operating experience. Semi-skilled occupations require application of skill gained by on-the-job experience although subject to supervision / guidance of a skilled employee.

Skilled occupations, on the other hand, require not only skill and competence which could be attained through experience on the job or training as an apprentice, but also some degree of judgment / decision making. An increased level of professional training or occupational experience for a considerable period qualifies an occupation as highly skilled, requiring an employee to assume full responsibility for his / her decision making and performance.

- *Hours of work etc.*: As for Covered Establishments other than factories (which would continue to be governed by the Factories Act, 1948), a period of 9 hours would constitute a normal working day which shall not exceed 12 hours in any day after including the rest intervals. While these provisions are a reproduction of those under the MW Act, an important change is the absence of a stipulation on the working hours of children in view of the embargo imposed on engagement of children under the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986.

  The Draft Central Rules also provide that where the employees are engaged in any work of emergency which could not have been foreseen or any work which for technical reasons is required to be completed before the duty is over or other similar works of urgency, the actual work hours (*excluding rest intervals and periods of inaction*) cannot exceed 9 hours while the spread-over (*i.e. normal working hours combined with rest intervals and periods of inaction*) would be limited to 16 hours.

- *Manner of fixing floor wage*: In order to cater to the issue of disparity in the minimum rates of wages across states in India, the Wages Code provides that the Central Government shall fix a 'floor wage' taking into 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 furtherance of these provisions, the Draft Central Rules provide that the Central Government shall consult the Central Advisory Board (Board) for fixing the Floor Wage for states taking into account factors such as the food, clothing and housing requirements of 3 adult consumption units including the worker in the family. The advice of the Board will be circulated by the Central Government to all state governments for consultation. It is likely that state governments will press for fixation of different Floor Wages to suit the local dynamics.

- *Single application for filing of claims*: Much like the PW Act, the Wages Code provides for a joint application of claims which may be filed on behalf of a number of employees in the establishment. It may be noted that the PW Act is limited in its application to only certain kinds of establishments (*i.e. 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 specify; so far, only few states such as Maharashtra, Karnataka, Haryana and Tamil Nadu have extended its application to shops and commercial establishments*). However, the Wages Code is applicable to all kinds of establishments including shops and commercial establishments, thus allowing employees of such establishments to file a joint application.

  Further to this objective, the Draft Central Rules provide that the employees of Covered Establishments can file a joint application with respect to various claims such as shortfall in payment of wages including minimum wages, failure to pay overtime etc.

- *Maintenance of consolidated registers*: The Wages Code provides for consolidation of compliance requirements for maintaining registers. Pursuant to the said provision, the Draft Central Rules provide that all fines and deductions and the realisations thereof pertaining to Covered Establishments shall be prepared in Form I. Given that the provisions relating to fines and deductions apply to 'employees' which is defined under the Wages Code to include managerial employees as well, employers would be required to record details of even such employees such as designation, acts and omissions leading to imposition of fines, damage or loss caused due to neglect or default of the employee, total amount of wages paid etc. Similarly, the employer of a Covered Establishment would be required to maintain a register of employees in Form IV which shall have the same particulars as those set out in the Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2017.

- *Procedure for composition 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 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.

  In furtherance to the aforesaid provision, the Draft Central Rules provide, in relation to the Covered Establishments, that an application in Form VI will be required to be made by the employer to the Gazetted Officer notified under Section 56(1) of the Wages Code containing details pertaining to the offence and any pending prosecution against the employer at the time of making the application.

- *Responsibility of principal employers*: In an unexpected move that is likely to impact all establishments, the Draft Central Rules provide that where the employees are employed in an establishment through contractor, the company which is the proprietor of the establishment shall pay to the contractor the amount payable to him / her before the date of payment of wages so that payment is made to contract workers within the stipulated timeline. Further, where the contractor fails to pay minimum bonus to his / her employees, the principal employer shall be responsible for such payment.

On the whole, the Draft Central Rules have retained most of the rules framed under the extant laws on wages and may enable employers get a sense of the provisions likely to be implemented by states for private establishments under the Wages Code. However, clarity on several aspects is warranted. For example, the provisions on hours of work and overtime under the Wages Code and the Draft Central Rules may overlap with similar provisions in state-specific shops and establishments statutes (S&E Act). Further, under the S&E Act of several states, exemption is granted to managerial employees from the provisions thereof, which exemption is not provided under the Wages Code, thus leading to uncertainty as to whether provisions relating to overtime, permissible deductions from wages etc. will apply to such employees. The provision in the Draft Central Rules imposing the obligation on the principal employer to make advance payment to the contractor for payment of wages to contract workers (without there being any obligation on the contractor to produce the relevant records indicating the amount to be paid) and to pay minimum bonus to contract workers are understandably onerous and impracticable, given that the principal employer does not have the same level of visibility as regards contract labour related compliances which a contractor is likely to possess. The provisions should, at the very least, allow the principal employer to recover, from the contractor, the amounts paid by it in respect of the contract workers.

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