

## ERGO

*Analysing developments impacting business*

### LABOUR CODE 2020 – PARLIAMENT PASSES THE CODE ON SOCIAL SECURITY, 2020

On 23 September 2020, Parliament passed the [Code on Social Security, 2020](#) (Code 2020). The introduction of the bill in the Lok Sabha on 19 September 2020 and its subsequent clearance by both houses of Parliament come after the Code on Social Security, 2019 (Code 2019) was introduced in Parliament last year and subsequently sent to the Standing Committee on Labour 2019-2020 for evaluation.

Much of Code 2019 has been replicated in Code 2020, with only some notable differences which are examined in this ERGO. Therefore, this write-up may be read along with our [ERGO](#) on Code 2019 for a comprehensive understanding of the changes introduced in the existing legal regime.

#### [Important variations / additions](#)

➤ Opting in and opting out of voluntary coverage

Code 2019 had provided for voluntary coverage of establishments under Chapter III (employees' provident fund contribution) and Chapter IV (contribution towards employees' state insurance fund) in the event the employer and the majority of employees in the relevant establishment agreed for such coverage. Code 2020 goes a step further and also provides that the employer of an establishment covered voluntarily under the relevant chapters may make an application to the Director General of Employees' State Insurance Corporation / Central Provident Fund Commissioner for opting out of such coverage. The relevant authority shall, if satisfied that there is an agreement between the employer and the majority of the employees to this effect, make the provisions of the relevant chapter inapplicable to such establishment.

➤ Inclusion of contract labour in the definition of 'employee'

Under Code 2019, the definition of 'employee' did not include contract labour hired through a third-party manpower services provider within its ambit. However, the definition of 'employee' as set out in Code 2020 covers such contract labour as well.

Such inclusion of contract labour has two important implications. First, establishments which would otherwise not meet the threshold for the application of various chapters of Code 2020 may now do so if they have engaged contract labour, for say, ancillary activities such as housekeeping and security. Second, while provisions relating to employees' provident fund contribution (Clause 17), employees' state insurance fund contribution (Clause 31), and employees' compensation (Clause 85) allow the entity engaging contract labour to recover any payments incurred in respect of such workers from the contractor employing them, the chapter relating to gratuity does not have a similar provision, hence being a cause of worry for the industry.

➤ Changes in the definition of 'building or other construction work'

Under Code 2019, the term 'building or other construction work' excluded from its purview any building or other construction work which is related to one's own residential property and does not involve more than the prescribed number of workers. Perhaps, the government foresaw potential misuse of the exclusion, and therefore, Code 2020 places emphasis on the purpose of the construction work rather than the nature of the

property on which the same is being carried on. Accordingly, it is now provided that the term 'building or other construction work' would exclude any construction work related to 'own residential purposes of an individual or group of individuals for their own residence'. Moreover, it is now provided that the total cost of such work should not exceed INR 50,00,000 (or a higher prescribed amount) and the number of workers engaged should not exceed such number as may be specified by the appropriate government, to avail the exception.

➤ Changes in the definition of 'inter-state migrant worker'

Code 2019 brought about a significant change in the definition of 'inter-state migrant worker'. The current Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 is applicable only in cases where a migrant worker has been engaged by an establishment through a contractor. However, the said code widened the protection net by including even a migrant worker directly recruited by an entity in one state for employment in an establishment in another state.

Code 2020 defines 'inter-state migrant worker' along similar lines and clarifies that a worker who belongs to one state and has obtained employment in an establishment in another state (without being routed through an intermediary) would also be an inter-state migrant worker and protected as an unorganised worker. That said, it has also been provided that a person would be considered as inter-state migrant worker if they are drawing wages not exceeding INR 18,000 per month or such higher amount as may be notified by the Central Government from time to time.

➤ Clarification regarding payment of gratuity to working journalists

The chapter relating to payment of gratuity in Code 2020 remains largely the same as the one set out in Code 2019. The continuation of the same approach is important because the Standing Committee on Labour 2019-2020 had, in its report, recommended that the period of continuous service to be completed by an employee to avail gratuity should be reduced from the present 5 years to 1 year, in view of the number of short-term employments that are visible in India's labour market.

That said, Code 2020 has clarified that as far as working journalists are concerned, the period of continuous service to be rendered by them in order to avail gratuity would be 3 years as opposed to 5 years. Note that the present Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955, already provides such reduced eligibility criterion, and therefore, the relevant provision in Code 2020 is only a clarification.

➤ Availing common crèche facility

As regards the provision of crèche, Code 2019 adopted the same approach as the one followed by Maternity Benefit Act, 1961. It provided that every establishment having 50 or more employees will be required to provide the facility of crèche in the prescribed manner. Several employers' associations and experts had been requesting the government to allow different employers to utilise a common crèche facility. The recommendation assumes significance especially in metropolitan cities wherein workplaces do not always have disposable spaces to own and maintain their own crèche.

In an important move, Code 2020 allows employers to avail common crèche facility of the government, municipality, non-governmental organisation, or private entity. A group of establishments may also pool in their resources for setting up a common crèche in the manner mutually agreed by them.

➤ Social security contributions by aggregators

Code 2019 introduced the terms 'aggregator', 'gig worker' and 'platform worker' and provided for formulation of a scheme for the benefit of gig workers and platform workers. Continuing with the approach, Code 2020 also provides that a scheme formulated by the Central Government for matters relating to life and disability cover, accident insurance, health and maternity benefit etc. may be wholly funded by the contributions of aggregators.

As regards the rate of contribution, Code 2020 provides that the contributions to be made by aggregators shall be between 1-2% (as fixed by the Central Government) of the annual turnover of each aggregator within a category of aggregators specified in the Seventh Schedule. The Seventh Schedule covers a range of aggregators including ride sharing services, food and grocery delivery services, professional services providers, and 'any other goods and service provider platform'. However, it is also provided that the rate of contribution shall not exceed 5% of the amount paid by gig workers and platform workers.

## ➤ Fixing the composition amount

Code 2019 introduced an option of compounding of any offence which is not punishable with imprisonment only / imprisonment and fine, on payment by the offender of such amount as may be notified by the Central Government. Code 2020, while additionally allowing composition of offences punishable with imprisonment of up to one year and fine, also specifies the amount to be paid by the offender for composition. Such amount would be half of the maximum fine provided for the relevant offence in case it is punishable with fine only, and it would be three-fourth of the maximum fine provided for the relevant offence in case it is punishable with imprisonment for a term which is not more than one year and also with fine.

## Comment

The government's move to finally consolidate the law on social security and making improvements over the previous version of the labour bill appears well intended. However, when the earlier draft was sent to the Standing Committee on Labour 2019-2020, several employers' associations had hoped that the government would revisit its move of requiring 'wages' to be at least 50% of the remuneration and making the same as the basis for social security contributions.

Similarly, including contract labour within the purview of the term 'employee' may have onerous implications especially for smaller establishments which may otherwise not be covered under a particular chapter of Code 2020 but may now be so covered due to engagement of some contract workers especially when the immediate employer of such contract workers would be covered / registered and be required to contribute.

As regards fixed term employment, several employers have expressed their concerns over the government extending minimum tenure benefits to fixed term employees which are otherwise payable only upon completion of a certain service period. Perhaps, the government could have referred to the approach followed by other jurisdictions, which involves placing restrictions on the number of renewals of fixed term contracts and / or limiting their use only to tasks of a temporary nature (by using certain objective criteria). Such approach would have allowed genuine fixed term employment arrangements to be drawn up according to business requirements without the relevant employer worrying about provision of benefits which are otherwise a function of service continuity.

It would have been ideal if the government had released the draft of the revised bill for public comments as has been the tradition and general practice. A consultative approach would have enabled the government to address specific concerns of the industry and other stakeholders especially during the present challenging times and given the sensitivity and potential impact on the country's organized and unorganized workforce that the subject matter of the bill entails.

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