



## ERGO

*Analysing developments impacting business*

### LABOUR CODES 2020 - PARLIAMENT PASSES THE INDUSTRIAL RELATIONS CODE, 2020

24 September 2020

After the clearance of the [Industrial Relations Code, 2020](#) (IRC 2020) by the Lok Sabha, the Rajya Sabha also passed the IRC 2020 on 23 September 2020. It is noteworthy that prior to this swift approval, the Industrial Relations Code, 2019 (IRC 2019) was introduced in November 2019 and thereafter was referred to the Standing Committee on Labour 2019-2020 (Standing Committee) for comments. We previously discussed the salient features of IRC 2019 as well as the prominent recommendations made by the Standing Committee as part of our monthly ELB E-Bulletin coverage available [here](#) and [here](#).

In this ERGO, we examine the key changes / additions brought about by IRC 2020 in comparison to IRC 2019. Note that IRC 2020 awaits the assent of the President of India and subsequent government notification(s) to be brought into effect.

#### **I. Industrial disputes and related provisions**

- Increased applicability threshold for special provisions: Under IRC 2019, the special provisions, which *inter alia* require employers to obtain prior permission of the appropriate government to lay off / retrench any employees or close down the establishment, were applicable to specified kinds of establishments employing 100 or more workers on an average in the preceding 12 months. In line with amendments made by various states in this regard recently, IRC 2020 increases this threshold to 300 or more workers.

Further, while IRC 2019 permitted the appropriate government to increase or decrease the threshold as it deemed fit, IRC 2020 only allows notification of a higher number of workers by the government, thereby ensuring a minimum applicability threshold of 300 workers across the country.

- Gratuity for fixed-term employees: Under IRC 2019, fixed-term employees were eligible for all statutory benefits available to permanent workers in proportion to the period of service rendered by them, even if the statutory qualifying period of employment is not satisfied. Adding to this provision, IRC 2020 specifically stipulates that a fixed-term employee will be eligible for gratuity if such employee renders service under the contract for a period of 1 year. This, however, may cause confusion given that the proposed law on social security including gratuity, i.e., the Code on Social Security 2020, does not envisage the said qualifying condition.
- Contributions to the worker re-skilling fund: IRC 2019 stipulated that every employer retrenching its employees or closing down the establishment will be

required to make a contribution to the worker re-skilling fund of an amount equal to 15 days' wages last drawn by every impacted worker. However, IRC 2020 requires such contribution '*in case of retrenchment only*'. This change avoids a significant financial liability which would have arisen out of mass redundancies in the scenario of closure of an establishment.

- Notice of change in conditions of service: IRC 2020 introduces a new clause whereby an advance notice of any change in conditions of service of a worker will not be required if '*such change is effected in accordance with the orders of the appropriate government*'. This clause may be particularly useful to employers in a situation akin to a government-mandated lockdown (say in the event of a pandemic) or imposition of any other such restrictions on business.

Note that the judicial precedents have recognised this exception even in the existing regime, the rationale being that the present Section 9-A of the Industrial Disputes Act, 1947, which talks about the prior notice requirement, also specifies the employer as the initiator of the change. This impliedly means that a change initiated by a government order would not fall within the purview of Section 9-A.

- Termination on the ground of continued ill health: Unlike IRC 2019, the extant exclusion of 'continued ill health' of a workman from the definition of 'retrenchment' has been retained under IRC 2020, thereby meaning that termination on such ground would not entail payment of retrenchment compensation to the concerned employee.

## II. Trade unions

- Recognition of sole negotiating union: In case of multiple trade unions functioning in an establishment, IRC 2019 provided that the union supported by at least 75% of the workers shall be recognized as the sole negotiating union to carry out negotiations with the employer. IRC 2020 decreases this threshold for support to 51% of the total workers in the establishment.
- Representation in negotiating council: IRC 2019 provided that in case no trade union has a 75% representation, the *appropriate government* would constitute a negotiating council consisting of the representatives of those trade unions which have the support of at least 10% of the total workers. IRC 2020 increases this threshold from 10% to 20%, and also removes reference to the appropriate government.

## III. Standing orders

- Increased threshold for applicability: In line with the extant Central legislation, Chapter IV of IRC 2019 was sought to apply to industrial establishments wherein 100 or more workers are employed or were employed on any day of the preceding 12 months. However, IRC 2020 stipulates an increased applicability threshold of 300 or more workers.

Interestingly, the power to increase or decrease the threshold accorded to the appropriate government under IRC 2019 has also not been retained under IRC 2020, thus removing any scope for confusion in the future in terms of state-specific thresholds.

- No continuing coverage: IRC 2019 provided that once the provisions pertaining to standing orders have become applicable to an establishment, they shall continue to apply even if the number of workers employed therein falls below

the threshold at any time thereafter. IRC 2020 omits this provision for continuing coverage.

- Deemed certification of standing orders: IRC 2020 introduces a new provision whereby the certifying officer must complete the procedure for certification of the draft standing orders / modifications thereof within 60 days from its receipt, failing which the draft standing orders / modifications are deemed to have been certified.

Similarly, in case an employer simply adopts the model standing orders framed by the Central Government, then such standing orders will also be considered as certified, upon the employer forwarding the information to the certifying officer in this regard.

#### **IV. Miscellaneous provisions**

- Increased wage threshold for exclusion from ‘worker’: Under IRC 2019, a person employed in a supervisory capacity drawing wages more than INR 15,000 per month was excluded from the definition of ‘worker’. IRC 2020 increases this wage threshold for exclusion to INR 18,000 per month (or such other threshold as may be notified by the Central Government).
- Power to grant exemptions ‘in public interest’: Under the IRC 2020, the appropriate government has been granted powers to exempt, by notification, any new establishment or class of establishments unconditionally from any or all provisions of the IRC 2020 for such period as it deems fit ‘in public interest’. Further, the provision also saves any such notifications issued by governments prior to commencement of the IRC 2020 for the remainder of their validity period.
- Digitalization of procedures: In an attempt towards digitization which is discernable across labour codes, IRC 2020 also provides that key processes may be carried out electronically including *inter alia* applications for registration of a union, certification of standing orders and permissions for lay-off / retrenchment of employees or closure of an establishment. That said, the precise steps and procedures in this regard will have to be prescribed in the rules to be framed under IRC 2020.
- Compounding of offences: IRC 2020 provides for compounding of offences for a sum of 50% of the maximum fine stipulated for an offence punishable with fine only and for 75% of the maximum fine stipulated for an offence which is punishable with imprisonment up to 1 year or with fine. The only exception to the rule is offences repeated within 3 years of the first violation. From a review of the penalty provisions, it appears that the maximum duration of imprisonment for offences under the IRC 2020 is 6 months or fine, or both. Therefore, it appears that all offences under IRC 2020 are compoundable.

Further, all such amounts realized from composition of offences are to be credited to the social security fund which would be created under the Code on Social Security, 2020.

#### **Comments**

While several changes under IRC 2020 have been introduced based on the Standing Committee’s suggestions, certain crucial recommendations have not been accepted. For instance, retention of the provision giving the power to the appropriate government to cease the enforceability of an award given by a Tribunal in relation to an industrial dispute to which it is a party and then also reject / modify such award ‘on public grounds affecting national economy or social justice’. This provision has been retained

despite the Standing Committee's forewarning that such a provision has been held to be unconstitutional and '*will certainly again be struck down by the court of law*'. Some may also view the discretion to notify sweeping exemptions for new industrial establishments as excessive power granted in the hands of the executive.

That said, the clearance of the labour codes by Parliament has been on the cards for a considerable period of time, and the simplification and rationalization of numerous labour legislations in this manner is a desirable step. Considering the wide extent of delegated legislation used under IRC 2020, a lot would depend on the rules to be framed under IRC 2020 as well as the other labour codes to ensure that the new labour law regime is indeed simple, certain and uniform.

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