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Analysing developments impacting business

LABOUR CODES 2020: PARLIAMENT PASSES OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020

24 September 2020

On 19 September 2020, the Government of India introduced the Occupational Health, Safety and Working Conditions Code, 2020 ([Code 2020](#)) in the Lok Sabha. The bill has since received clearance from both houses of Parliament, although it awaits the assent of the President of India and subsequent notification(s) of the government to be brought into effect.

It may be noted that the process of codification of Central labour laws in the country has been afoot for the past several years. In 2019, the Occupational Health, Safety and Working Conditions Code, 2019 (Code 2019) was introduced in Parliament, although the same was subsequently sent to the Standing Committee on Labour 2019-2020 for evaluation.

While several provisions of Code 2019 have been reproduced in Code 2020, there have been some improvements over the former bill possibly with the aim of rationalizing compliance requirements. Like Code 2019, however, several provisions such as those relating to working hours have been left to the discretion of the appropriate government.

This write-up may be read along with our [ERGO](#) on Code 2019 for a comprehensive understanding of the changes proposed in the existing legal regime.

Important variations / additions

➤ Concept of 'core activity of establishment' as regards engagement of contract labour

In an important move, Code 2020 (unlike Code 2019) introduces the concept of 'core activity of establishment' having relevance to engagement of contract labour. It explains that an activity for which an establishment has been set up including an activity essential or necessary thereto would be considered as a 'core activity'. To provide guidance on this concept, Code 2020 also sets out certain activities which would be considered as non-core activities unless an establishment has been set up to carry out the said activities. These include sanitation, courier services, housekeeping and laundry, transport services etc.

Code 2020 then goes on to stipulate that employment of contract labour in the core activities of any establishment shall be prohibited. That said, the bill creates a carve-out and states that contract labour may be engaged by an entity for a core activity upon fulfilment of one or more of the specified conditions viz. (a) the normal functioning of the concerned establishment itself being such that the activity in question is ordinarily done through contractors; (b) the activities are such that full-time employees are not required for the major part of the working day; or

(c) there is a sudden increase in the volume of core activity that needs to be completed within a stipulated time, thereby making it necessary to hire contract labour instead of onboarding a permanent workforce.

The concept of core activity and the prohibition on engagement of contract labour in such activities with limited exceptions is not new to the labour law jurisprudence. By way of Contract Labour (Regulation and Abolition) (Andhra Pradesh) (Amendment) Act, 2003, Andhra Pradesh had provided a similar stipulation in the Contract Labour (Regulation and Abolition) Act, 1970 (CLRA) as applicable to the state.

➤ Threshold number of workers for factory

A move aligned with the recent amendment ordinances promulgated by some state governments is increase in the threshold number of workers for application of provisions relating to factories. The threshold has been increased from 10 workers to 20 workers for factories running with the aid of power and from 20 workers to 40 workers for factories running without the aid of power. However, this threshold will remain 10 workers as far as the chapter relating to registration is concerned.

➤ New exclusions from the definition of 'industry'

A significant change pertains to the definition of 'industry', wherein Code 2020 makes two new exclusions viz. '*institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic services*' and '*any other activity as may be notified by the Central Government*'.

➤ Increased wage threshold for exclusion from the definition of 'worker'

Under Code 2019, a person employed in a supervisory capacity drawing wages more than INR 15,000 per month was excluded from the ambit of the definition of 'worker'. Code 2020 increases this wage threshold for exclusion to INR 18,000 per month (or such other threshold as notified by the Central Government).

➤ Saving of previous registration

As per the provisions requiring registration under Code 2020, any establishment registered '*under any central labour law*' or '*any other law which may be notified by the Central Government and which applies to the establishment which is in existence at the time of the commencement of this Code*' is deemed to have been registered under Code 2020, provided that the relevant details are conveyed to the registration officer in the prescribed manner. However, considering the multiplicity of extant laws and registrations thereunder (each having different requirements including the particulars required to be stated by the employer), one may have to await rules to understand how the existing registrations would be utilised.

➤ Revised threshold for appointment of safety officers

Code 2020 has revised the threshold for appointment of safety officers in establishments carrying on building or other construction work from 500 workers (in Code 2019) to 250 workers. It has also fixed the threshold for said requirement as 250 workers in case of factories carrying on hazardous processes.

➤ Common crèche facility

In an important change, Code 2020 allows employers employing more than 50 workers (who would be required to provide the facility of crèche to workers) 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. The existing regime had not allowed employers to have a shared crèche, although it was felt by the industry that such provision would be a small yet important step

towards promoting gender diversity at the workplace (by not making welfare provisions onerous for employers).

➤ Statutorily fixing daily working hours

Like Code 2019, Code 2020 has left several provisions relating to working hours to the discretion of the appropriate government, except that it has fixed the daily working hours for workers to a maximum of 8 hours.

➤ Removal of requirement of consent 'in writing' for working overtime

Code 2019 had mandated employers to obtain a written consent of workers for the purpose of requiring them to work overtime. Code 2020 has omitted the words 'in writing'. Code 2020 additionally provides that the appropriate government may prescribe the total number of hours of overtime.

➤ Move towards gender equality

Code 2019 had allowed the appropriate government to prohibit employment of women in an establishment where it is of the view that their employment at such places is dangerous for their health and safety. Moving another step towards gender equality, Code 2020 provides that instead of prohibiting the employment of women in such cases, the appropriate government may require the employer to provide adequate safeguards before employing women in dangerous operations.

➤ Increase in the threshold for application of the provisions relating to contract labour

In a pro-employer move, Code 2020 has increased the threshold for application of the chapter relating to contract labour from 20 contract workers to 50 contract workers. Importantly, while Code 2019 had provided that the appropriate government could reduce the threshold by a notification, Code 2020 has not retained the said provision. This is important since, at present, certain states such as West Bengal (10 contract workers) and Telangana (5 contract workers) have very low thresholds for application of CLRA.

➤ No deemed employment in case of unlicensed contractor

Code 2019 had included a drastic provision which stipulated that if the principle employer engages contract workers through an unlicensed contractor, it shall be deemed that the contract workers are the employees of the principal employer. Several experts opposed the move, leading the government to omit the provision from Code 2020. The latest draft provides that in such cases, the engagement of contract labour shall be deemed to be in contravention of the provision of the code.

➤ Revised definition of 'inter-state migrant worker'

Code 2019 brought about a significant change in the definition of 'inter-state migrant worker' by including within the scope of the term, a migrant worker directly recruited by an entity in one state for employment in an establishment in another state. Earlier, only migrant workers hired through a contractor were covered in the definition.

Code 2020 additionally 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.

➤ Maintaining data of migrant workers

Code 2020 introduces a new provision whereby the Central government and the state governments are required to maintain a portal containing a database / record of inter-state migrant workers in the manner which will be prescribed. The portal would allow migrant workers, including such workers who have migrated to another state and are self-employed, to register themselves on the basis of self-declaration and Aadhaar. This is a timely initiative against the backdrop of recent news regarding unavailability of any data with the Central Government on migrant workers' deaths during the COVID-19 lockdown.

➤ Changes in provisions relating to inter-state migrant workers

As opposed to the threshold of 20 workers in Code 2019, Code 2020 provides a threshold of 10 inter-state migrant workers for the application of the relevant chapter. The code makes important changes in the chapter in an attempt to make them less onerous for employers. While Code 2019, like the existing regime, mandated provision of suitable residential accommodation and free medical facilities to such workers, Code 2020 has not retained the same. The requirement of payment of displacement allowance has also been done away with.

As regards journey allowance, Code 2019 provided that an allowance covering at least the to-and-fro journey of the inter-state migrant worker shall be paid by the employer at the time of recruitment. Code 2020, however, provides that the employer shall pay a lump sum amount towards journey allowance in the manner prescribed by the appropriate government taking into account the minimum service tenure of the worker, periodicity and class of travel, and other relevant factors.

➤ Application of Code 2020 in respect of mines

Code 2019 had provided that the stipulations in respect of mines shall extend to the whole of India including territorial waters, continental shelf, exclusive economic zone and other maritime zones of India as defined under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976. However, Code 2020 has removed this provision.

➤ Digitalization of procedures

In an attempt towards digitization which is discernable across labour codes, Code 2020 also provides that key processes may be carried out electronically including *inter alia* application for registrations and licenses, issue of registration certificates and intimation of amendments thereto, sending of notice of commencement / cessation of operations etc. Further, a web-based inspections scheme is also envisaged to be designed by the appropriate government taking into account relevant factors prescribed under Code 2020.

➤ Changes in the provision relating to composition of offences

Under Code 2019, all offences, except those punishable with imprisonment only or with imprisonment and also with fine, were compoundable for a sum of 50% of the maximum fine provided for such offence. Code 2020 instead enumerates specific provisions and violations which may be compounded, for a sum of 50% of the maximum stipulated fine in case of a 'penalty' (which possibly refers to violations liable to fine) and 75% of the maximum stipulated fine for an 'offence' (which possibly refers to violations liable to imprisonment or fine). It has been clarified that composition is not possible for a repeated offence committed within 3 years of the first violation.

Further, all such amounts realized from composition of offences shall be credited to the social security fund to be established for the welfare of unorganized workers.

➤ Power to exempt in special cases

Code 2020 gives the state government the power to exempt, by notification, any new factory or class of factories from any or all provisions of the Code 2020 for such period and subject to such conditions as it deems fit 'in public interest' such that 'it is necessary to create more economic activities and employment opportunities'. Further, the provision also saves the applicability any such notifications issued by governments prior to commencement of Code 2020.

➤ Incorporation of pandemic-specific provisions

In view of the unprecedented impact made by COVID-19 on business, Code 2020 introduces certain pandemic-specific provisions. The power accorded to the appropriate government to exempt any establishments from any provision in case of a public emergency has been expanded to include scenarios of 'disaster or pandemic in the whole of India or part thereof'. The duration of such notification for exemption has also been increased from 3 months to 1 year at a time.

Separately, Code 2020 also permits the Central Government to make rules to regulate general safety and health of persons residing in the country, in case of declaration of an epidemic, pandemic or disaster.

Conclusion

Certain changes brought about by Code 2020 vis-à-vis Code 2019 are indeed welcome, such as deletion of deemed employment of contract labour by principal employer in cases involving unlicensed contractor, provision for common crèche, absence of the government's power to prohibit employment of women in dangerous operations. Others, such as power of exempting establishments from 'all or any of the provisions' of the code in case of a pandemic, are timely, but they may invite opposition from workers' representatives on the ground of the same being wide enough to disallow bare minimum entitlements.

There are several provisions such as those relating to working hours which would receive more clarity only upon the appropriate government rolling out the relevant rules. It would also be interesting to see how the jurisprudence around engagement of contract labour in core activities evolves upon implementation of Code 2020.

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