



## ACTION TO ADOPTION LABOUR CODES

Presented By

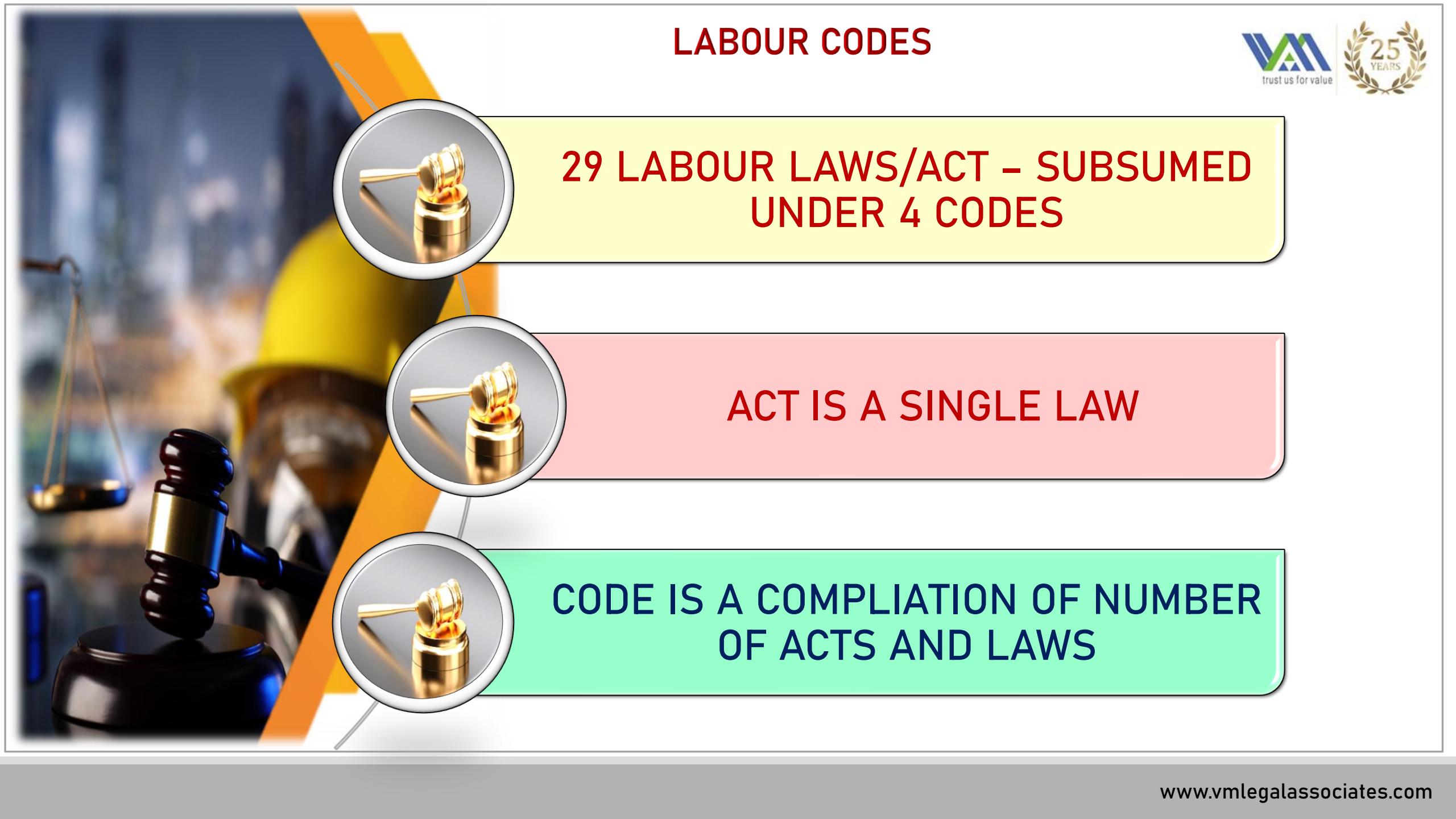


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## Difference - Act & Rules :

An Act is a law passed by the Legislature (Parliament or State Legislature)	A Rule is a subordinate (delegated) legislation made under the authority of an Act.
<ul style="list-style-type: none"> <li>◆ Made by Parliament or State Legislature</li> <li>◆ Has supreme legal authority</li> <li>◆ Lays down broad principles, rights, duties, and framework</li> <li>◆ Cannot be made by departments or officials</li> </ul>	<ul style="list-style-type: none"> <li>◆ Made by the Government ( Central &amp; State)</li> <li>◆ Provides detailed procedures to implement the Act</li> <li>◆ Cannot exist independently—must be based on an Act</li> <li>◆ Must not conflict with the Act</li> </ul>
<ul style="list-style-type: none"> <li>◆ Source of power is Our Constitution</li> <li>◆ Purpose - Creates law and lays down rights and obligations</li> </ul>	<ul style="list-style-type: none"> <li>◆ Source of power is Specific section of the Act</li> <li>◆ Purpose - Provides procedures to implement Act</li> <li>◆ Cannot override the Act</li> </ul>



29 LABOUR LAWS/ACT – SUBSUMED  
UNDER 4 CODES



ACT IS A SINGLE LAW



CODE IS A COMPLIATION OF NUMBER  
OF ACTS AND LAWS

# THE LABOUR CODES



## Code on Wages

The Minimum  
Wages Act, 1948

The Payment of  
Wages Act, 1936

The Payment of  
Bonus Act, 1965

The Equal  
Remuneration  
Act, 1976

# LABOUR CODES – CODE ON WAGES



## Code on Wages :

Employee 2 (K) - Definition of Employee is wide enough to cover all employees.

The Object/features of the Code on Wages, 2019 specifically states that the provisions relating to wages shall be applicable to all employments covering both organized as well as un-organized sectors.



# LABOUR CODES – CODE ON WAGES



## The Wage Code defines the terms “Employees” and “workers”

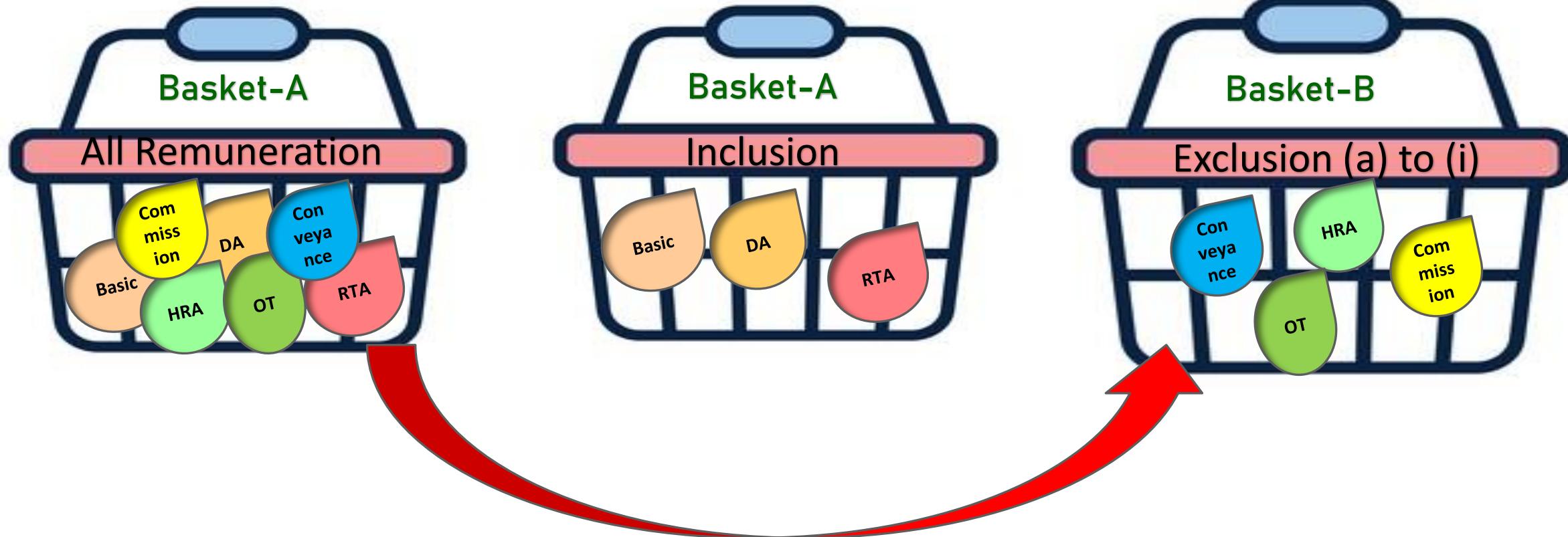
Worker	Employee
<ul style="list-style-type: none"><li>◆ <b>Worker means</b> any person (except an apprentice defined under apprentice Act) employed in any industry to do any manual, unskilled, skilled, Technical, Operational, Clerical, or Supervisory work for hire or reward and includes working Journalist and Sales promotion Employees</li></ul>	<ul style="list-style-type: none"><li>◆ <b>The term “Employee”</b> has been given an expansive meaning by including even persons employed in a managerial, administrative, and supervisory capacity.</li><li>◆ It covers any person (other than an apprentice engaged under the Apprentice Act), employed on wages by an establishment to do skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied.</li></ul>
<ul style="list-style-type: none"><li>◆ The term “worker” excludes managerial and supervisor employees and Covers only non-managerial / non-supervisory staff</li></ul>	<ul style="list-style-type: none"><li>◆ All employees including Supervisors / Managers may also get protection for “Non Payment of wages or Less payment of wages or Illegal deduction of wages from their salary which were not available in the existing Acts to these categories of employees.</li></ul>

# LABOUR CODES – CODE ON WAGES



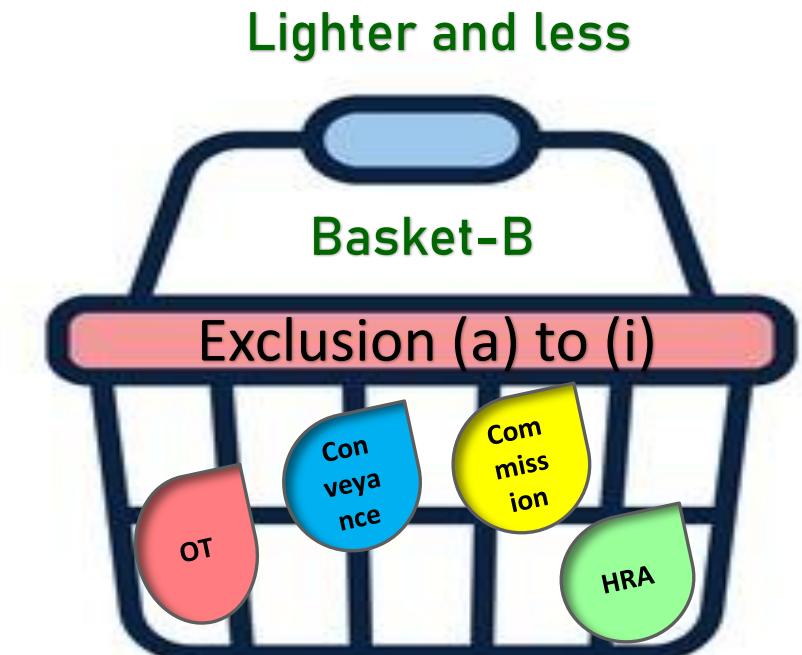
Inclusions Basket - A	Exclusion Basket - B
<ul style="list-style-type: none"> <li>◆ All remuneration whether by way of salary, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employe in respect of his employment or of work done in such employment, and includes,—</li> <li>◆ basic pay</li> <li>◆ Dearness allowance; and</li> <li>◆ Retaining allowance, if any</li> </ul> <div style="text-align: right; margin-top: 20px;"> <ul style="list-style-type: none"> <li>◆ Minimum Wages = Basket A</li> <li>◆ Basic wages = Minimum Wages</li> </ul> </div>	<ul style="list-style-type: none"> <li>◆ <b>Bonus - payable</b> under any law for the time being in force, which does not form part of the remuneration payable under the terms of employment;</li> <li>◆ value of any <b>house-accommodation and amenities</b> etc or of any service ordered to be excluded by Govt.</li> <li>◆ <b>PF and Pension contribution of Employer + interest</b> accrued, thereon</li> <li>◆ any <b>conveyance allowance</b> or the value of any travelling concession</li> <li>◆ any sum paid to the employed person to <b>defray special expenses</b> entailed on him by the nature of his employment</li> <li>◆ <b>House rent allowance</b></li> <li>◆ Remuneration payable under <b>any award or settlement</b> between the parties or order of a court or Tribunal</li> <li>◆ <b>Overtime Allowance</b></li> <li>◆ <b>Commission payable by the Employer + Value of any remuneration in kind- upto 15%</b></li> <li>◆ <b>gratuity payable</b> on the termination of Employment</li> <li>◆ <b>retrenchment compensation or retrial benefit or any ex-gratia payment made on the termination of employment</b></li> </ul>

# LABOUR CODES – CODE ON WAGES



Move Exclusion (a) to (i) to Basket B

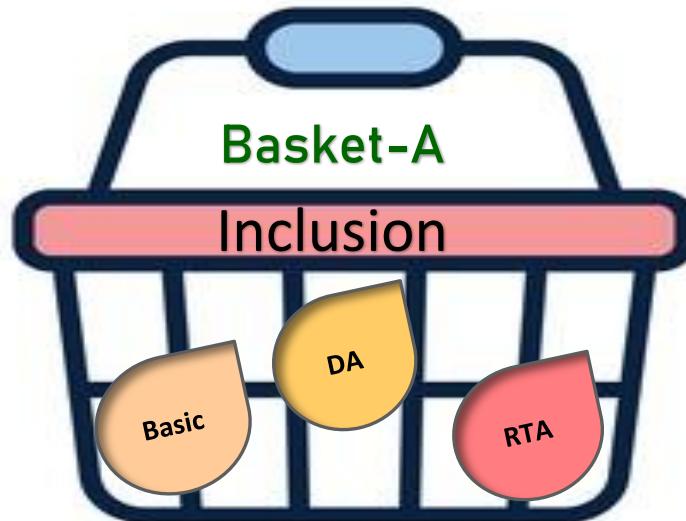
# LABOUR CODES – CODE ON WAGES



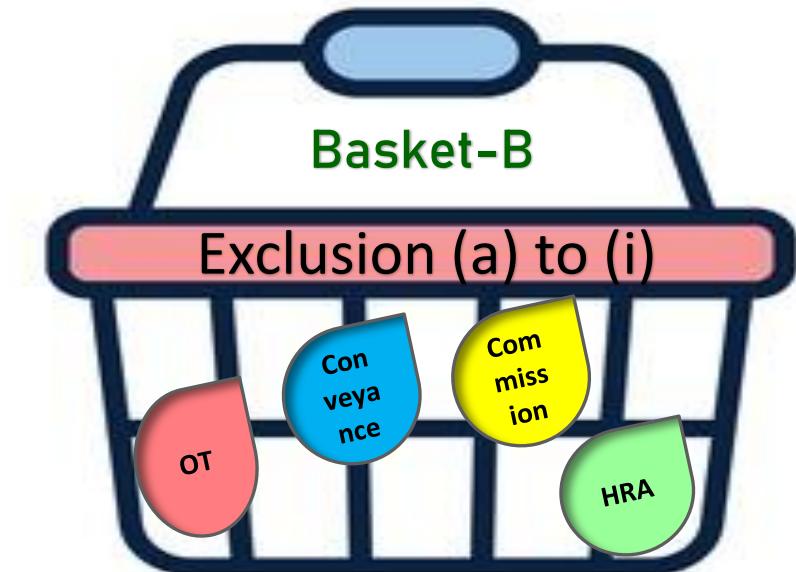
If basket A is heavier than Basket B, then the same shall be reckoned as

# LABOUR CODES – CODE ON WAGES

Lighter and less



Heavier and More



If basket B is heavier than Basket A, then proviso of 50% will apply.

# LABOUR CODES – CODE ON WAGES



## Examples:

Employers are mandated to fix 50% of wages as Basic, Dearness Allowance and Retaining Allowance, and Remaining if any, may be fixed as various allowances

### Case Study I

CTC Breakup	Amount
Basic	Rs.7,000
HRA	Rs.4,000
Conveyance	Rs.3,000
<b>Total</b>	<b>Rs.14,000</b>

\*\* Wages under the codes shall be Rs.7000/-

### Case Study II

CTC Breakup	Amount
Basic	Rs.5,000
HRA	Rs.4,000
Conveyance	Rs.3,000
Special Allowance	Rs.2,000
<b>Total</b>	<b>Rs.14,000</b>

\*\* Wages under the codes shall be Rs.7000/-

- ◆ Designation, Nomenclature and Salary limit are not real test for the worker definition or any consequence and also drawing wages above Rs.15000/- p.m. will not take any person outside the ambit of term worker. The true test is the nature of duties and not the designation.

# LABOUR CODES – CODE ON WAGES

## Time Limit For Payment :

**Daily wages** : At the end of the shift

**Weekly wages** : At the end of last working day of the week

**Fortnight wages** : within 2 days after the end of the fortnight

**Section 17(2)** : Wages shall be paid within 2 working days of his removal, dismissal, retrenchment or resignation

**Section 17(2)** : The Provisions of Payment of Wages Act provides to settle within 2 days only in the event of termination on behalf of the Employer



- ◆ Required to pay wages to its employees by cheque or by direct credit to their bank account

## Impact On Minimum Wages :

- ❖ The code seeks to regulate the MW of certain employees in all employments. The Central Government will set the Floor wages ( FW ) under the code, which may vary for different geographical areas. The MW payable to employees fixed by the State Government cannot be below the FW notified for that area by the Central Government and no Employer can pay wages less than the notified MW for the area.
- ❖ Minimum Wages shall be revised / reviewed at the interval of not exceeding 5 years
- ❖ The central Government shall fix a floor wage taking into account the minimum living standards of workers and depending on the geographical areas

**Minimum Wages = Basic Wages or Basic Wages + DA**

**Illustration : Minimum wages as Notified by Government as Basic wages is 9000 & DA as 8000 and Total 17000)**

Minimum Wages Under Code On Wages,2019 ( Module I )

Basic :	17000
Total:	17000

Minimum Wages Under Code On Wages,2019 ( Module II )

Basic:	9000
DA:	8000
Total	17000

# LABOUR CODES – CODE ON WAGES



## Challenges in the payment of Minimum Wages :

This Act applies to the organised sector as well as certain workers in the unorganised sector such as agricultural workers. At present, there are more than 1700 employments notified by the Central and State governments.

- ◆ Whether the Central government may declare the same Floor wages across the Country or it may vary from region to region or state to state?
- ◆ If it varies from state to state or region to region, again the same challenge of fixing the minimum wages to employees will be extend to the organisations functioning Pan India Basis
- ◆ Example Security Guard working in IT industry / Airport / ONGC / IOC / Railways
- ◆ For Security working in IT Industry state Minimum Wages to be followed .
- ◆ For Security working in Airport / Railways – The central Minimum Wages to be followed

# LABOUR CODES – CODE ON WAGES



## Status Quo On Overtime Wages:

- ◆ The code requires an employer to pay overtime wages to employees working in excess of the prescribed daily hours. However, this obligation is in respect of the employees who MW is fixed under the Code. Assuming that the MW of workers will be fixed under the Code, the Managerial and Supervisory employees who do not qualify as workers may not be entitled to overtime wages under the Code.
- ◆ Unless exempt, such employees may nevertheless be entitled to overtime wages under the State-Specific Shops and Establishments Act applicable to them.
- ◆ Overtime to be paid twice the normal rate of wages
- ◆ Consent from worker required for overtime
- ◆ Employer approval to perform the overtime (work from home cases)

OVERTIME UNDER OSHW CODE, 2020	
Component	In Rupees
Basic Wages and DA	15500
Conveyance	7000
HRA	7500
Total	30000
50%	15000
Over Time	Rs.65/per hour (65*10(hours)*2=1300) Rs. 1300 for OT Cost

## Payment of Bonus Act:

## Bonus Applicability For Different States:

- ◆ Applicable to establishments employing 20 or more persons.
- ◆ Under the Bonus Act, an employee is eligible to receive statutory bonus if he/she is covered under the prescribed wage ceiling of INR 21,000. The Code does not prescribe a wage ceiling for such coverage. Instead it empowers the State Government to fix such ceiling.
- ◆ Therefore, each State may have a different wage ceiling, rendering similarly paid employees eligible for statutory bonus in some states but not eligible in other states. This lack of uniformity could make compliance more cumbersome for employers having Pan India operations.
- ◆ The only difference being that calculation for “Wage” will now be at a minimum rate of 50% of any “EMPLOYEE’S” remuneration i.e. Basic + DA- So cost will marginally go up if the employer having present structure designed with less percentage of Basic from the Gross wages Payable .

## Payment of Bonus Act:

- ◆ Principal employers liable to pay statutory bonus in case of any default by the contractor subject to conditions
- ◆ Provisions relating to minimum and maximum rate of bonus remains the same as 8.33% and 20% respectively
- ◆ Now Bonus can be forfeited on dismissal of service in the event on conviction for sexual harassment.

**The Disqualification for Bonus continues the same:**  
**(Subject to the order of punishment as per the provisions of Standing Order or Model Standing Order adaption as per the New Code)**

- ◆ Fraud
- ◆ Riotous or violent behaviour in the premises of the establishment
- ◆ Theft, Misappropriation
- ◆ Sabotage of any property of establishment

## Productivity Bonus:

- ◆ Even earlier under the Payment of Bonus Act, Bonus could be paid in two methods:-
- ◆ Bonus calculated on Profit and Loss basis.
- ◆ Productivity linked bonus- Section 31A of the Payment of Bonus Act.
- ◆ Productivity linked bonus was payable to employees primarily engaged in sales production, based on their performance.
- ◆ The present Wage Code also has continued with both the above methods of pay out.
- ◆ In case if an employer has paid any advance amount before the bonus becomes payable, he shall deduct the advance amount paid earlier and employee is entitled to receive only the balance. But need to obtain the consent from the employee or the part of Bonus paid in advance to be shown in the monthly wage slip as "Bonus Advance". Or preferably clearly mentioned as "Statutory Bonus Advance payment"

## Rule 57 of the Code on Wages Rules, 2020 Responsibility for Payment of Minimum Bonus:-

Where in an establishment, the employees are employed through contractor and the **contractor fails to pay minimum bonus** to them under section 26, then, **the company** or firm or association or other person as referred to in the proviso to section 43 shall, on the written information of such failure, given by the employees or any registered trade union or unions of which the employees are members and on confirming such failure, **pay such minimum bonus to the employees.**

## Payment of Minimum Bonus.

Section 39 (2) of the Wage Code clearly states that **if there is a dispute for payment at the higher rate**, the employer shall pay eight and one-third per cent. of the wages earned by the employee as per the provisions of this Code within a period of eight months from the close of the accounting year

## Permissible Deductions:

- ◆ The code requires employers to pay full wages to their employees without any deductions, except those authorised under the Code.
- ◆ Deductions should not exceed 50% of the employee's total wages in a wage period
- ◆ Since the new definition of "Employee" includes even the managerial and supervisory employees, employer henceforth may not be able to enforce graze back provisions negotiated with such employees, or make adjustments from the final pay-outs to such employees at the time of their exit from employment



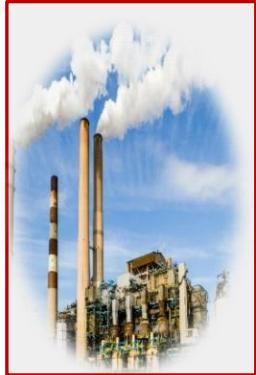
## Claims under Code and procedure

- ◆ **Section 45(4)** of the Code specifically outlines who can file an application for claims arising under the provisions of the Code.
- ◆ According to the Code on Wages, 2019, **if an employer fails to pay an amount due to an employee**, the following individuals can file an application for claims:
  - ◆ **The Employee Concerned:** The employee who has not received the payment can directly file a claim.
  - ◆ **Trade Union:** Any registered trade union under the Trade Unions Act, 1926 of which the employee is a member can file the application on behalf of the employee.
  - ◆ **Inspector-cum-Facilitator:** A designated Inspector-cum-Facilitator appointed by the appropriate government can also file a claim on behalf of the employee
- ◆ **Section 45 (6)** The period of limitation for filing of claims by a worker has been enhanced to **three years**, as against the existing time period varying from six months under the MW Act to twelve months under the POW Act.

## Occupational Safety, Health & Working Conditions Code 2020

- ◆ The Factories Act, 1948
- ◆ The Mines Act, 1952
- ◆ The Contract Labour (Regulation and Abolition) Act, 1970
- ◆ The Inter-State Migrant Workmen (RoE and CoS) Act, 1979
- ◆ The Plantations Labour Act, 1951
- ◆ The Building and Other Construction Workers (RoE and CoS) Act, 1996
- ◆ The Dock Workers (SH&W) Act, 1986
- ◆ The Sales Promotion Employees (CoS) Act, 1976
- ◆ The Motor Transport Workers Act, 1961
- ◆ The Working Journalist and Other News Paper Employees (CoS and MP) Act, 1955
- ◆ The Working Journalist (Fixation of rates of wages) Act, 1958
- ◆ The Beedi and Cigar Workers (CoE) Act, 1966
- ◆ The Cine Workers and Cinema Theatre Workers Act, 1981

## Coverage & Applicability



### Factory Threshold

Applies to factories with 20 or more worker (powered) Vs (old 10 or more with power) Or 40 or more workers (without aid power) Vs (old 20+without



### Sectoral Coverage

Includes mines, plantations, motor transport, construction, audiovisual production, dock work, and numerous other sectors



### Worker Categories

Explicitly covers contract workers and migrant workers, providing comprehensive protections across employment types



### Applicability Vs Government Offices

Excludes Government offices but notably covers contract labour engaged therein, closing previous loopholes

## Appropriate Government: Central vs State

The OSH Code 2020 clarifies the jurisdiction of the 'Appropriate Government' (Section 2(e)), designating responsibility for enforcement based on the nature and scope of the establishment. This ensures clear oversight and application of safety standards

Central Government Jurisdiction	State Government Jurisdiction
<ul style="list-style-type: none"><li>◆ Railways, mines, oilfields, major ports, Tele Communication Service, Banking Company, any Insurance Company</li><li>◆ Establishments under central Government control</li><li>◆ Establishments with operations in multiple states</li><li>◆ Public sector undertakings under Central control</li><li>◆ Air transport services</li></ul>	<ul style="list-style-type: none"><li>◆ All other establishments not explicitly covered by the Central Government's jurisdiction.</li><li>◆ This includes most manufacturing units, Commercial Establishments, and other local industries.</li></ul>

## Contractor Vs Contract Labour

Contractor	Contract Labour
<ul style="list-style-type: none"> <li>◆ (20) "contractor", in relation to an establishment means a person, who—</li> <li>◆ (i)undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment through contract labour; or</li> <li>◆ (ii) supplies contract labour for any work of the establishment as mere human resource, &amp; includes a subcontractor;</li> </ul>	<ul style="list-style-type: none"> <li>◆ employed in or in connection with the work of an establishment when he is hired by or through a contractor, with or without the knowledge of the principal employer</li> <li>◆ Inter-State migrant worker but does not include an employee (other than part time employee)</li> <li>◆ who is regularly employed by the contractor for any activity of his establishment and</li> <li>◆ his employment is governed by mutually accepted standards of the conditions of employment (including engagement on permanent basis), and</li> <li>◆ gets periodical increment in the pay, social security coverage and other welfare benefits in accordance with the law for the time being in force in such employment</li> </ul>

## Non Core Activities

What is not essential or necessary activity, if the establishment is not set up for such activity, namely:—

- ◆ Sanitation works, including sweeping, cleaning, dusting and collection and disposal of all kinds of waste;
- ◆ watch and ward services including security services;
- ◆ Canteen and catering services;
- ◆ Loading and unloading operations;
- ◆ Running of hospitals, educational and training Institutions, guest houses, clubs and the like where they are in the nature of support services of an establishment

- ◆ Courier services which are in nature of support services of an establishment;
- ◆ Civil and other constructional works, including maintenance
- ◆ gardening and maintenance of lawns and other like activities;
- ◆ Housekeeping and laundry services, and other like activities, where these are in nature of support services of an establishment;
- ◆ Transport services including, ambulance services;
- ◆ Any activity of intermittent nature even if that constitutes a core activity of an establishment

## Establishment Means

**Industry, Trade & Business  
Business with 10 or more  
more workers**

A place where any industry, trade, business, manufacturing or occupation is carried on

**Others with  
10 or more workers**

Motor transport undertaking, newspaper establishment, audiovisual production, building and other construction work or plantation

**Specialized Workplaces with  
with No threshold**

A mine, port or vicinity of port where dock work is carried out.  
hazardous or life-threatening activity



## Hazardous processes

- ◆ "hazardous process" means unless special care is taken, raw materials used therein or the intermediate or finished products, bye-products, hazardous substances, wastes or effluents thereof or spraying of any pesticides, insecticides or chemicals used therein, as the case may be, would—
  - ◆ (i) cause material impairment to the health of the persons engaged in or connected therewith, or
  - ◆ (ii) result in the pollution of the general environment
- ◆ List of 40 Industries involving Hazardous process is provided in Schedule

## Interstate Migrant Worker

- ◆ Has been recruited directly by the employer or
- ◆ indirectly through contractor in one State for employment in such establishment situated in another State; or
- ◆ Has come on his own from one State and obtained employment in an establishment of another State
- ◆ Earning Wages **not Exceeding Rs.18,000/month** (or notified amount).

## Appointment Order

Issue formal appointment letters with prescribed details to all employees, ensuring transparency in employment terms

## Hazard-Free & occupational disease-free Workplace

Ensure workplace remains free from hazards causing injury, occupational disease, or health impairment

## Key Employer Duties Under OSH Code

### Ensuring occupational safety and health

comply with the occupational safety and health standards declared under OSH Code + provide protective equipment and mandatory medical examinations with annual health examination or test free of costs

### Waste Management

Accept full responsibility for proper disposal of hazardous waste and electronic waste in compliance with environmental norms

## OSH Code: Reporting Workplace Incidents & Health

Sections 10 to 12 of the Occupational Safety, Health and Working Conditions Code, 2020, mandate crucial reporting and in such form and within such time and record-keeping for dangerous occurrences and specified occupational diseases, ensuring worker safety and compliance

### Section 10 & 11 : Dangerous Occurrences

- ◆ Employers must promptly notify the Inspector-cum-Facilitator of any dangerous incidents or accidents in the workplace that could have caused bodily injury, poisoning, or death, even if no harm occurred.

### Section 12: Occupational Diseases

- ◆ It is mandatory for employers to report any prescribed occupational diseases contracted by employees due to their work conditions to the designated authorities, facilitating investigation and prevention.

### Section 13: Maintaining Records

- ◆ Detailed records of all reported dangerous occurrences and occupational diseases, including investigation findings and remedial actions taken, must be meticulously maintained for inspection and future reference.

# LABOUR CODES - OSHWC



Working Hours	Annual Leave	Weekly Compensatory Holiday	Responsibility for payment of Wages
<ul style="list-style-type: none"> <li>◆ 8 Hours Per day - shall not spread over for more than 12 hours in a day (for OT consent is required)</li> <li>◆ Interval for rest of at least half an hour / 5 hours</li> <li>◆ Over time shall not exceed 125 Hours in any quarter</li> </ul>	<ul style="list-style-type: none"> <li>◆ Should have worked for 180 days</li> <li>◆ 1 day leave for every 20 days of his work</li> <li>◆ When worker is discharged or dismissed or quits employment –</li> <li>◆ Leave encashment to be done before the expiry of the 2nd second working</li> <li>◆ In case of superannuation or death – 2 months</li> <li>◆ Encashment of leave can be done at the end of calendar year</li> </ul>	<ul style="list-style-type: none"> <li>◆ No worker shall be allowed to work in an establishment for more than 6 day in any one week</li> <li>◆ When a worker is deprived of any of the weekly holidays, the worker shall be allowed, within the month in which the holidays were due or within two months immediately following that month, compensatory holidays of equal number of the holidays, so deprived.</li> </ul>	<ul style="list-style-type: none"> <li>◆ In case the contractor fails to make payment of wages or make short payment, then, the Principal Employer shall be liable to make wages in full or unpaid balance dues.</li> </ul>

## Special Provisions Relating to Employment of Women

- ◆ Women are entitled to work in all establishments and all types of work, including night shifts (7 PM to 6 AM),
- ◆ provided they give consent and employers ensure their safety.

## Safety in Hazardous Operations

- ◆ when women are employed in dangerous or hazardous processes, as prescribed by the appropriate government, the employer is required to provide adequate safeguards prior to the employment of women for such operation to minimize risks and protect health.

## Appointment of safety committee and Safety officers

- ◆ The Employer shall constitute a safety committee in the prescribed manner consisting of equal number of employer representative and worker representative .
  - The employer shall appoint safety officers who shall possess such qualifications as prescribed by appropriate Government
  - Every Establishment which is a **factory** wherein **500 workers or More**
  - Factory carry on **hazardous process** wherein **250 workers or more**
  - **Building & other Construction Work** wherein **250 workers or more**
  - **Mine** Wherein **150 Workers or more**

# LABOUR CODES - OSHWC



The OSH Code significantly upgrades worker welfare provisions, expanding coverage and modernising requirements compared to the Factories Act, 1948.

Welfare Provision	Factories Act, 1948	OSH Code, 2020
Canteen	Mandatory for establishments with <b>250 or more workers</b>	Mandatory for establishments with <b>100 or more workers</b> , and applicable to wider range of establishments.
First Aid Appliances	First aid boxes required for <b>10+ workers</b> ; dedicated first aid room for <b>150+ workers</b> .	Mandatory for <b>all establishments</b> ; includes comprehensive first aid facilities and trained personnel
Ambulance Room	Required for factories with <b>500 or more workers</b>	Required for mines with <b>500 or more workers</b> ; other hazardous establishments to be specified.
Shelters/Rest Rooms	Mandatory for establishments with <b>150 or more workers</b>	Mandatory for <b>all establishments</b> ; provisions for comfortable rest and dining areas.
Welfare Officer	Mandatory for factories with <b>500 or more workers</b>	Mandatory for establishments with <b>250 or more workers</b> ; duties expanded to cover broader welfare aspects
Crèche Facilities	Required for establishments employing <b>30 or more women workers</b> .	Required for establishments employing <b>50 or more workers</b> (irrespective of gender); includes enhanced childcare provisions.

Note : Establishment can avail common crèche facility of the Central or State Govt, or NGO or common crèche by employers

## Penalty Comparison: Old Laws vs OSH Code 2020

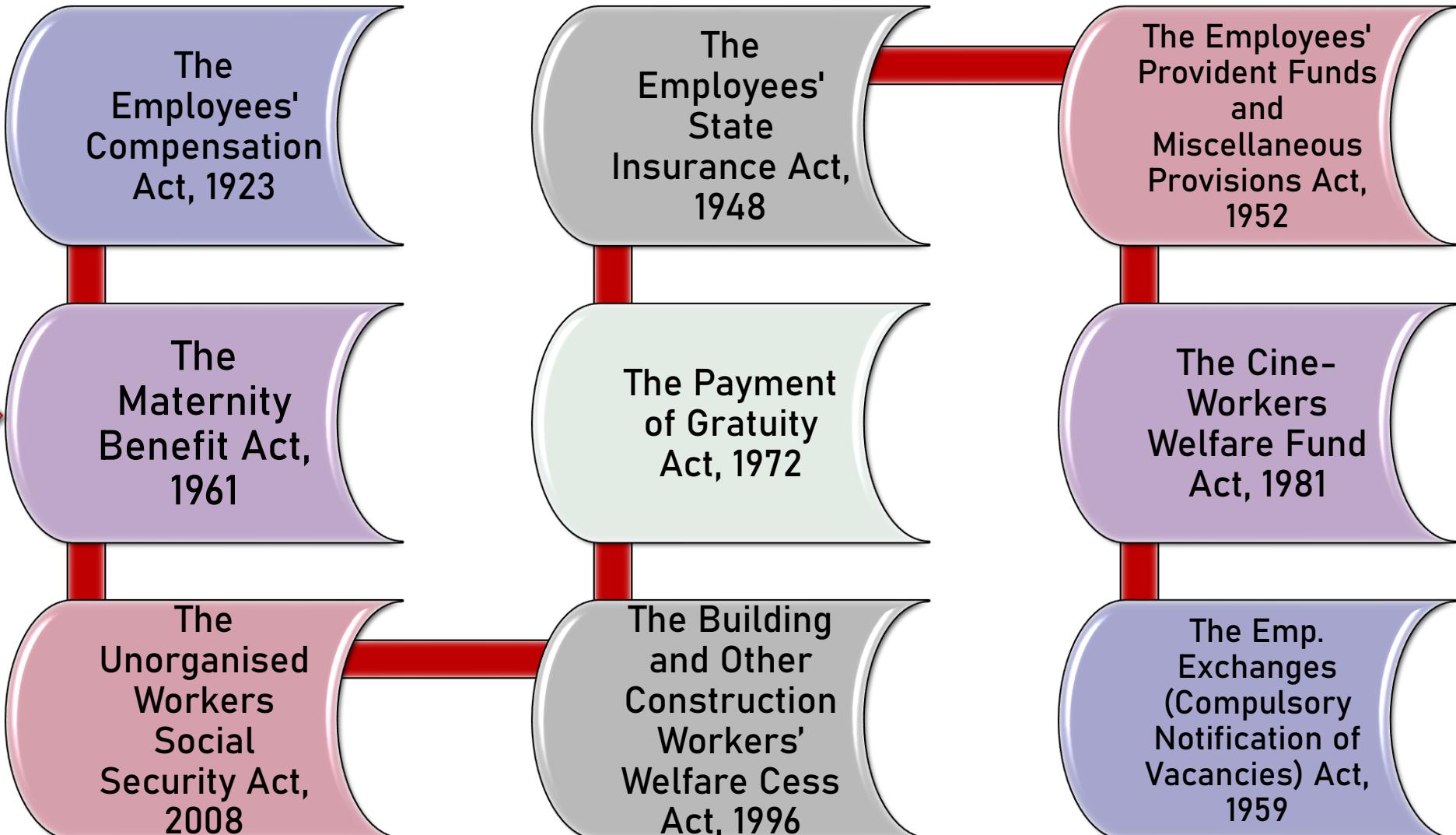
**Prosecution is better avoided Ensure compliance once the notice is received to avoid the difficulties in bringing in the occupier to court**

Offence Category	OSH Code, 2020 Minor Procedural
Minor Procedural Lapses	<ul style="list-style-type: none"> <li>◆ Maximum Imprisonment up to 6 months or Maximum fine upto INR 2 Lakhs or With both</li> </ul>
Hazardous processes	<ul style="list-style-type: none"> <li>◆ Maximum Imprisonment which may extend up to 2 years and fine upto INR 5 Lakhs</li> </ul>
accident or dangerous occurrences	<ul style="list-style-type: none"> <li>◆ In the event of death, - imprisonment upto 2 years, or with a fine which shall not be less than five lakh rupees, or with both;</li> <li>◆ serious bodily injury - imprisonment upto 1 year, or with a fine which shall not be less than two lakh rupees but not exceeding four lakh rupees, or with both</li> <li>◆ Out of fine imposed , not less than 50% goes to the victim's family</li> </ul>
Contravention of prohibition of employment order if the factory or part causes of such serious hazard or imminent danger	<ul style="list-style-type: none"> <li>◆ Maximum Imprisonment up to 2 years or</li> <li>◆ Maximum fine upto INR 5 Lakhs or With both</li> </ul>

# LABOUR CODES - COSS



## CODE ON SOCIAL SECURITY



# LABOUR CODES - COSS

Employer	<ul style="list-style-type: none"> <li>◆ Person who employs one or more employees in his establishment</li> <li>◆ Includes a Contractor and legal representative of the deceased employer.</li> </ul>
Establishments	<ul style="list-style-type: none"> <li>◆ Means any place where any industry, trade, business, manufacture or occupation is carried on</li> <li>◆ includes Government establishment</li> </ul>
Gig worker	<ul style="list-style-type: none"> <li>◆ A person who performs work</li> <li>◆ Or participates in a work arrangement</li> <li>◆ and earns from such activities</li> <li>◆ outside of traditional employer-employee relationship</li> <li>◆ <b>Example</b> : Freelancers, contingent workers, independent contractors,</li> </ul>
Platform worker	<ul style="list-style-type: none"> <li>◆ A person engaged in or undertaking platform work*</li> <li>◆ (*work arrangement outside of a traditional employer-employee relationship</li> <li>◆ in which organisations/ individuals use an online platform to solve specific problems</li> <li>◆ in exchange for payment</li> <li>◆ <b>Example:</b> Ola or Uber drivers, Swiggy or Zomato delivery agents, etc.</li> </ul>
Fixed term employment	<ul style="list-style-type: none"> <li>◆ Engagement of an employee</li> <li>◆ for a fixed period;</li> <li>◆ hours of work, wages, allowances and other benefits shall not be less than that of a permanent employee</li> <li>◆ And shall be eligible for all benefits proportionately</li> <li>◆ <b>Example:</b> Project-Based Roles, Seasonal Needs, Covering Leave, Specific Events</li> </ul>

# LABOUR CODES - COSS

## Unorganised workers

(includes a worker in the organised sector who is not covered by the Industrial Disputes Act, 1947 or Chapters III to VII of this Code)

Home-based worker	<ul style="list-style-type: none"><li>◆ Person engaged in production of goods/ services</li><li>◆ for an employer in his home/ other premises other than the workplace of the employer,</li><li>◆ for remuneration</li><li>◆ whether or not the employer provides the equipment, materials etc.</li><li>◆ <b>Example :</b> Electronics Assembly, Garment Stitching &amp; Finishing, Handicrafts</li></ul>
Self-employed worker	<ul style="list-style-type: none"><li>◆ Person not employed by an employer,</li><li>◆ but engages himself in any occupation in the unorganised sector</li><li>◆ subject to a monthly earning of a notified amount by the CG or the SG,</li><li>◆ holds cultivable land subject to such ceiling as may be notified by the State Government</li><li>◆ <b>Example :</b> Small Vendors, Artist</li></ul>
Wage worker	<ul style="list-style-type: none"><li>◆ Person employed for remuneration</li><li>◆ in the unorganized sector,</li><li>◆ Directly/ indirectly by an employer</li><li>◆ whether exclusively for one employer or for one or more employers,</li><li>◆ whether as a home-based worker, or as a temporary or casual worker, or as a migrant worker, or workers employed by households,</li><li>◆ with a monthly wage of a notified amount</li><li>◆ <b>Example :</b> Construction Laborer, Fast-Food Employee, Retail Cashier</li></ul>

## Provident Fund Contributions:

- ◆ In our opinion, If the PF contribution is restricted to Rs.15000 (PF Wages) and payment were made, then, in that case there will not be any change in the costing to the company based on the Code unless the PF organisation makes changes in the present restricted contribution of Rs.15000.
- ◆ New Rules may result in the restructuring of salaries for employees whose employers are contributing to the provident fund (PF) based on actual salary.
- ◆ "If Employer / Employee opted to pay PF on full Basic salary instead of Rs.15000/- per month, now planning to revert back to Rs.15000 pm (or the new wage limit, if applicable) is likely to need a joint declaration with the employee."
- ◆ If the Gross wages is less than Rs.15000 p.m. then Employer can make 50% of Gross wages as Basic wages (as PF wages) and PF contribution to be paid on 50% of Basic wages.\
- ◆ Limitation on Inquiry : A five-year limit to initiate inquiry under the Employees' Provident Fund
- ◆ **Reduced Deposit for Appeals 25% of the awarded amount (from 40-70% under existing provisions).**

## Employees State Insurance Payment:

- ◆ For the purpose of calculating ESI contributions, employees whose wages do not exceed ₹21,000 per month shall be taken into consideration
- ◆ In our opinion, we have to contribute at the rate of 50% of employee's remuneration (Subject to the present ceiling of Rs.21,000) The cost implication will there on the Industry by enrolling more employees under the ESI coverage and the Employer Contribution will shoot up.
- ◆ Scheme to be framed for unorganized gig and platform workers.

# LABOUR CODES - COSS



Module	Monthly Salary					As per code Salary split			As Per ESI Act		As Per Code		Remarks	
	Basic Pay	DA	HRA	OT	Gross Salay	Inclusion	Exclusio n	Gross	50% Gross	ESI Coverage	contribution of 4%	ESI Coverag e	contribution of 4%	
1	23000	0	0	0	23000	23000	0	23000	23000	No	-	No	0	Exceed the ESI Limit & No Exclusion wages are hence 50 % not apply
2	17000	2500	3500	5500	28500	19500	9000	28500	14250	No	-	Yes	780	Inclusion Wages Less than ESI Limit
3	17500	2500	9500	20500	50000	20000	30000	50000	25000	No	-	No	0	50% Wages Exceed the ESI Limit
4	16000	5000	5000	16000	42000	21000	21000	42000	21000	No	-	Yes	840	
5	16000	0	4000	2000	22000	16000	6000	22000	11000	Yes	880	Yes	640	Reduced the ESI Contribution

## Gratuity Payments:

- ◆ Provisions for "Gratuity" has been kept unaltered from the present "payment of Gratuity Act" whether it is with respect to applicability, eligibility etc. except for:
- ◆ In the case of an employee employed on fixed term employment or a deceased employee, the employer shall pay gratuity on pro rata basis and not on the basis of continuous service of five years;
- ◆ And, the eligibility for gratuity for working journalist, the eligibility period has been improved to three years of service instead of five years for others;
- ◆ Code has fixed different threshold with respect to eligibility for gratuity of permanent and fixed term employees.
- ◆ Records relating to gratuity to be maintained for 2 years from the date of preparation
- ◆ Employee to make a claim in Form IV within 30 days of leaving service (can be made in advance on superannuation)
- ◆ Employer to issue notice (either electronically /personally or by regd. post) in Form V within 15 days of receipt of such application either accepting or rejecting the claim (together with reasons). In case of denial, a copy of notice is to be endorsed to the Competent authority.

## Gratuity Payments:

- ◆ In our opinion that a major change when compared to the earlier Gratuity Act is that, for the calculation of wage, it has to be considered 50% of the Gross monthly remuneration paid to the employees.
- ◆ The costs will substantially go up because only for this chapter of Gratuity in this code, when we see the definition of "Employee" at Section 2 (26) , it includes Supervisor, Manager and administrative also, and though these were earlier also included in the Payment of Gratuity Act, now for calculation of "Wage" for the payment of Gratuity will be at 50% of their monthly Gross remuneration.
- ◆ The other addition being in case of Fixed Term Employee, he will be entitled to Gratuity even on completion of 1 year of service, so again marginally adding to our costs.
- ◆ Another very important change is at Section 57 of this Code, that the Government is proposing to strictly enforce that all companies compulsorily take Gratuity Insurance for all its employees, unless in any company there already exists a "Trust" In order to ensure adequate security for future gratuity or any other benefits.

## Analysis And Challenge:

- ◆ Here the effective date of implementation of Notification should be taken into consideration.
- ◆ From the date of notification, for the payment of gratuity to the employee, Basic wages to be considered with 50% of Monthly Gross wages as per the New Code.
- ◆ Unless the Government specially pronounces that this Code to be effective with retrospective period, for calculation part of the gratuity shall be in two phases.

### \*\*\* Phase - I

- ◆ The Gratuity calculation should be done as per the old basic wages earned by the employee before the date of Notification \* (last drawn wages)

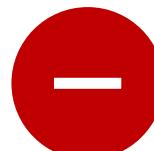
### \*\*\* Phase - II

- ◆ The second phase shall be the new basic salary as per the Code (i.e. 50% on Gross wages = New Basic wage) to be taken into account for calculation of Gratuity from the effective date of implementation of Notification
- ◆ \*\*\* (Subject to Judicial Scrutiny & appropriate representation by Employer Associations / Forums and outcome of Court Rulings.)

# LABOUR CODES - COSS

## Illustration – Wages

All Remuneration	
Basics	6000
HRA	6000
DA	6000
RTA	2000
Commission	5000
Over Time	5000
<b>Total</b>	<b>30000</b>



Specified Exclusions	
HRA	6000
Commission	5000
Over Time	5000
<b>Total</b>	<b>16000</b>



Conditional Inclusions / benefits in kind	
Specified Exclusions – 50% of Total Remuneration (16000-50% 30000)	1000



Wages	
Total Remuneration – Exclusions + Inclusions	15000
(30000-16000+1000)	

## Analysis and Challenge:

Payment of Gratuity can be divided into two parts:

### Example:

Assume Employee is present at the age of 56 working in our establishment At the time of retirement, on 58 years of age:

The Gratuity may be calculated on the following basis:

- ◆ From the date of effective implementation of notification of payment of Gratuity, the payment of 50% of Gross will be calculated and arrived for the balance period of two years.
- ◆ For the old previous experience period, the old basic applicable before the date of notification can be considered and calculation may be arrived;
- ◆ By adding both the amount, the final gratuity amount may be concluded to the tune of 20 lakhs. IF the gratuity payment exceeds 20 lakh rupees, then it is the policy of the company to pay or restrict to 20 lakhs
- ◆ In our opinion, in future, for higher designated employees, or highly paid employees, the employer need to consider 50% of Gross as Basic wage and the payment of Gratuity to be paid on 50% OF BASIC WAGES and this will have an impact in the increase of Gratuity payable.

## Analysis and Challenge

- ◆ The amounts considered don't include any perquisites, one-time pay-outs, variable payments etc. Additional clarity is expected from authorities with respect to one-time components which are not specifically discussed in the definition of Wages.
- ◆ Although COSS and COW are notified on 21 November 2025, the rules from centre and state are still awaited. The same could have further clarifications.

## Leave Encashment:

- ◆ There will be increase in cost when compared to earlier by the employer under the payment of Leave Encashment.
- ◆ Being the basic wage to be considered for payment of Leave Wages, ( 50% of Gross salary), the payment of leave wages will shoot up for higher designated and high paid employees of the company, whereas for the lower level employees, the increase in cost shall be marginal.
- ◆ In our opinion it is suggested to adhere the leave accumulation rules as specified and applicable to the establishment as per the provisions of S & E Act, in order to have checks & controls on the liability.

## Leave Encashment Impact

New Basic = Rs.50,000 + Exclusion Rs.50,000

As per Code Wages	Rs.50,000/-
Monthly Basic =	Rs.50,000
Daily =	Rs.50,000/30 = Rs.1,666
Leave Encasement =	Rs.1,666 per day



## Payment Of Maternity Benefit: (Subject To Notification And State Rules)

- ◆ In our opinion most of the employers are making the payment from the Gross wages at present towards payment of Maternity benefit to women employees. In that case, it is to be noted that, this payment of Maternity benefit based on the new code only on Basic wages, will be relief to the employer who are all making the payment from Gross salary .
- ◆ Creche to be provided for the use of children below 6 years.
- ◆ Location of creche should be within the establishment or at an appropriate distance from the establishment so that it is easily accessible
- ◆ Permits common crèche facility by the establishments having 50 or more employees

## Employer Compensation:

- ◆ In our opinion, under the Employee's Compensation Act, the only major financial impact would be calculation of wage at 50% of the employee's remuneration at time of accident or half month- salary .

# LABOUR CODES - COSS

Offence	Penalties
Failure to pay/ deposit employees contributions deducted from employees' wages	<ul style="list-style-type: none"> <li>◆ Fine INR 100,000 and imprisonment between one to three years</li> <li>◆ For second and subsequent offence: Imprisonment up to 2 years and fine of 2 lakhs</li> </ul>
Non/ improper maintenance of records Failure to pay any contribution liable to be paid under the Code	<ul style="list-style-type: none"> <li>◆ First instance – Fine INR 50,000 and imprisonment up to six months</li> <li>◆ Second and subsequent instances: Fine of INR 300,000 and imprisonment between two to five years</li> </ul>
Contravention of any other provision Deducts employer's contribution, fails to pay gratuity, maternity benefit, cess, fails to produce records	<ul style="list-style-type: none"> <li>◆ First instance: Fine up to INR 50,000 and imprisonment of up to One year</li> <li>◆ Second and subsequent instances: Fine of INR 300,000 and imprisonment between two to five years</li> </ul>
Non-compliance of the provisions of the Code after the timelines under the directions from Inspector cum Facilitator	<ul style="list-style-type: none"> <li>◆ Fine up to INR 50,000 and/or imprisonment of 1 year;</li> <li>◆ No opportunity provided to the employer if violation of the similar nature is repeated within a period of 5 years from the first instance</li> </ul>
Fails to submit returns, obstructs executive officer, fails to pay compensation, send a statement of fatal accident/ Dishonestly makes a false return	<ul style="list-style-type: none"> <li>◆ Fine up to INR 50,000</li> <li>◆ Imprisonment up to six months</li> </ul>

# LABOUR CODES – IR Code



## Industrial Relations Code

**The Trade Union Act, 1926**

**The Industrial Employment  
(Standing Orders) Act,  
1946**

**The Industrial Disputes  
Act, 1947**

## Grievance Redressal Committee Setting up of GRM

- ◆ Very significant changes
- ◆ No of members is now 10, earlier 6.
- ◆ Aggrieved Worker with individual grievance may file an application before GRC within one year from the date of cause of action of such dispute
- ◆ GRC to conduct its proceedings within 30 days
- ◆ Decision making process is explained in detail.
- ◆ Worker can seek an appeal if not satisfied with the decision of the GRC, within 60 days & file an application before the conciliation officer through the Trade Union.
- ◆ A worker can also directly approach Tribunal for adjudication of the dispute after the expiry of 45 days from the date he has made an application to the conciliation officer.

# LABOUR CODES – IR Code



Communication to Trade Union and change in its registration particulars	Recognizing of negotiating union or negotiating council
<ul style="list-style-type: none"><li>◆ Registered office</li><li>◆ Under the code 'trade union to inform the registrar if the members fall below 10 percent of total workers or 100 workers whichever is less'.</li><li>◆ Responsibility is fixed with the Trade Unions</li></ul>	<ul style="list-style-type: none"><li>◆ A new feature of <b>recognition of Negotiating union</b> has been introduced. The code provides for a negotiation union in an industrial establishment having registered trade unions for negotiating with the employer.</li><li>◆ If there is only one trade union in an industrial establishment, the employer is required to recognize such trade union as the sole negotiating union or the workers.</li><li>◆ In case of multiple trade unions, the trade union with support of at least 51% of workers on the muster roll of that establishment will be recognized as the sole negotiating union by the employer.</li><li>◆ <b>Statutory responsibility is on the employers.</b></li><li>◆ 3 years of recognition, but extendable up to 5 years if mutually decided.</li><li>◆ Facilities to be extended by the employer to the NU or NC.</li></ul>

# LABOUR CODES – IR Code

Standing Order	Adjudication – Sec 44,47, & 50	Conciliation – Sec 2(q) 4(10) & 53
<ul style="list-style-type: none"> <li>◆ Standing orders shall apply to establishments having three hundred or more employees on any day of the preceding 12 months. Earlier its limit was 100.</li> <li>◆ Proviso providing power to the app. Govt to reduce the number of workers is withdrawn.</li> </ul>	<ul style="list-style-type: none"> <li>◆ The Labour Courts are replaced by 2 member Bench of Industrial Tribunal, consisting of a Judicial member and an Administrative member</li> <li>◆ Any split verdict by the tribunal would be referred to another Judicial member and the decision of the majority would be final.</li> <li>◆ It is feared that this type of adjudication would delay the litigation process to the disadvantage of management as well as workers</li> <li>◆ During the pendency of industrial adjudication a worker could claim interim relief and Industrial tribunal would decide the request in the interest of justice.</li> </ul>	<ul style="list-style-type: none"> <li>◆ All industrial disputes concerning individual worker and disputes raised by trade unions are termed as "industrial disputes "under Sec2(q).</li> <li>◆ After conclusion of conciliation proceedings which end in failure without a settlement, a worker or a trade union are entitled to file a case before the industrial tribunal without a waiting order of reference made by Government to the Tribunal</li> </ul>

# LABOUR CODES – IR Code



Form of award, its communication & commencement	Special Provisions Relating To Lay-off, Retrenchment & Closure In Certain Establishments	Worker re-skilling fund
<ul style="list-style-type: none"> <li>◆ Award may be signed electronically.</li> <li>◆ No dissent possible under the code.</li> <li>◆ Publication not required.</li> <li>◆ Award to be sent to concerned parties &amp; the app. Govt directly by Tribunal.</li> <li>◆ Award enforceable from expiry of 30 days of communication to the parties.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Number of workers increased from 100 to 300 under the code.</li> <li>◆ Lay- off and retrenchment under IRC 2020 do not apply to industrial establishments with less than 50 workers on an average per working day or to seasonal industrial establishment</li> <li>◆ Establishment with less 300 workmen can be layed-off retrenched, closed without government approval. Further factories, mines and plantation, which have 300 or more workers, must take prior permission of the appropriate Government before lay-off, retrenchment and closure.</li> </ul>	<ul style="list-style-type: none"> <li>◆ NEWLY INTRODUCED IRC 20 provides for setting up of a <b>Re-Skilling fund</b> for the employees retrenched from the Industrial establishment by the employer</li> </ul>

## Impact Of The Industrial Relation Code:

- ◆ Now cost shall increase for worker reskilling fund at Section 83 whereby in case of retrenchment, the payout will not only be entitled to retrenchment compensation to the retrenched worker, but also a one-time lump sum amount of half month's salary to be paid to reskilling fund.
- ◆ The appropriate government shall set up an reskilling fund and the fund shall consist of contribution by an employer equal to fifteen days wages last drawn by the worker immediately before the Retrenchment.
- ◆ Maximum number of members in the Grievance Redressal Committee has been increased from 6 to 10 in an industrial establishment employing 20 or more workers.
- ◆ New addition in the Industrial Relations Code is at Section 50(2) whereby any dismissed or terminated workman can approach the Labour Court in India and seek interim relief, which the Court may grant based on Prima Facie facts and documents before it, pending full hearings of the case. So if Interim Relief is granted, he could also start getting wages pending Final hearing of the dispute.

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