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Impact on Wages If Labour Codes Are Implemented

The Labour Codes are yet to be implemented by the Central Government and the same may be delayed as the Central Government may revisit the draft rules prepared in 2020. There are ambiguities with regard to certain provisions included in the Code on Wages 2019 and many industries have submitted their suggestions and concerns with the Central Government. It is suggested to wait for the final rules under these codes for companies to take an appropriate decision to make changes in the existing company policies and payroll structures. Considering the existing draft rules under the Codes, the following are the some of the additions which may have a significant impact to industries in case the existing draft rules are implemented.

Presently the Central Government's minimum wages notification is limited to certain scheduled employment and industries.

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However, under the Code on Wages, the Central Government may be required to fix the floor wages for various class of employments and industries, and state governments may be required to take this into account when determining the minimum wages for their respective states. The following criteria have been considered for fixing the floor wages in the existing draft rules for the Code on Wages:

- An average daily food consumption for a working-class employee including spouse and two children,
- Clothing requirement for the household per year,
- A minimum of ten percent of food and clothing expenses as house rent,
- A minimum of twenty percent of the minimum wages for fuel, electricity and other miscellaneous expenses,
- A minimum of twenty-five percent of the minimum wages for expenditure for children's education, medical requirement, etc.

If the aforesaid method of determining the floor wages is considered it may lead to a significant increase from the existing minimum wages prescribed for various class of employment. Currently the minimum wages is being fixed or revised only on the basis of variation on the cost of living index whereas the above mentioned fixation of floor wages has included various other factors. The appropriate government may reassess the issue in the light of the industry comments, and we may have to wait for a final government notification and gazette order for the floor wages.



Presently the minimum wages for Shops and Establishments have been fixed on daily and monthly wages. There is no such minimum wages prescribed for hourly wages and part-time employment (except couple of states) for the employment under Shops and Commercial Establishment. However, considering the provision under the Code on Wages, the working hours may continue to be limited at 48 hours in a week without daily restriction for the employment fixed for monthly wages and daily spread-over limit may continue. There is also provision given for part-time employment and the minimum wages for such part-time employment may be fixed for maximum daily working hours as 4 hours only.

The Principal Employer is responsible for ensuring the payment of bonus to contract employees. Currently, contract employees are not included in the definition of "employee" under the Payment of Bonus Act. Though a few States' CLRA License requirements have made the Principal Employer responsible. There are no more clarifications given in terms of wage allocation under multiple headings and keeping basic wages at a minimum of 50% of total gross wages.

In view of the above points, it is advisable to wait for the revised draft rules or any further guidelines with regard to implementation of Codes from the government. The changes in salary structure, implementation of minimum wages, changes in the policy with regard to overtime and applicability of other benefits may be done only after the appropriate government publishes the final rules under these codes.



What To Do in Case of Wrongful Termination of Employment

Unfair dismissal, or wrongful termination of an employee, is an act where an employer terminates/dismisses/removes an employee without providing any valid grounds of removal. It is imperative that the employer furnish strong and valid reasons for termination, and in case it is not provided, it's a wrongful termination. Wrongful, also because the employee is not provided with an opportunity to be heard. With this, even the fundamental legal principle which says, "Listen to the other side," stands violated. As the pandemic worsened and the economy slowed, a large number of employees were dismissed in various sectors. Such termination entails a risk for the employer in the market, in terms of reputation. These matters are generally dealt with under labour and industrial laws, which were enacted to deal with various labour issues, ranging from protection of rights of workmen to regulating instances such as closure, retrenchment, lay off, etc. in the establishment. Before getting into that, let us briefly touch upon the relevant regulation under the labour laws.



Labour Laws

Labour Law is a concurrent subject, which implies that both Central and State governments can regulate it. Undoubtedly, this has worked preferably in granting protection to employees, but it has made compliance difficult for businesses. Subsuming 29 central laws and state laws, the Indian government came up with four major Labour Codes. This was indeed a welcome move to simplify the complex procedures associated with labour issues. **The Code of Wages, 2019** covers aspects relating to the payment of wages, bonuses, remuneration to employees. It subsumes four labour laws. **Industrial Relations Code, 2020** subsumes three labour laws namely, The Industrial Disputes Act, 1947, The Trade Unions Act, 1926, The Industrial Employment (Standing Orders) Act, 1946. It deals with employment conditions, industrial disputes, working conditions of employees, making it one of the most hotly debated codes.

The Occupational Safety, Health, and Working Conditions Code, 2020 subsumes 13 central labour laws dealing with contract labour, factories, establishments, etc. **The Code on Social Security, 2020** subsumes nine laws meant for social security for workmen pertaining to various retirement, maternity, and other health and social benefits. With the incoming of the above-mentioned codes, it is preferably assumed that labour issues will be streamlined in a much more convenient manner. Nevertheless, there are no such 'substantial' changes in the law itself, making more of a unification of existing laws. The government has not notified the dates from which the codes will be effective.

Understanding Nuances of Wrongful Termination:

No standard procedure is followed for the termination of employees in India, even though the law tries to resolve multiple issues. Protecting the interests of employees must be prioritised over other aspects; nevertheless, this is an absolute grey area. Most of the employees have a lenient approach towards employers, making them more vulnerable to any unfair dismissal. Also, there cannot be any specific reasons for dismissal, which largely varies from place to place and organization to organization, making an inexhaustible list of grounds. But it is to be noted that there has to be uniformity in the grounds of dismissal for all employees.

The main law which handles such termination is the **Industrial Disputes Act, 1947 (ID)**, which will be under the **Industrial Relations Code, 2020 (IRC)**, once effective. Under the IRC, termination for any reason other than disciplinary action will be treated as Retrenchment, which requires a months' written notice period. This notice period must stipulate the reason for retrenchment. With the retrenchment being done, compensation must be equal to 15 days of average pay for every completed year of continuous service. Therefore, it must be noted that the employee has the right to certain payments, as per the IRC, or the employment contracts, as the case may be. In the case of those establishments where not less than 300 workers have been in continuous service for one year, prior permission of the appropriate government is required for termination. Also, the employer is required to provide a three-month notice period to employees. In case the termination is done on grounds of misconduct, the employer needs not provide any prior written notice. But the inquiry must have been done in accordance with the principle of natural justice, as mentioned, giving due opportunity to employees to present their contentions. An important point that might fall against the rights of workers is the concept of fixed-term employment, which is kept outside the purview of Retrenchment under the IRC. In this case, any workers who are under fixed-term employment can be dismissed and terminated on completion of the period, without giving any reasons.

This can substantiate the unfair dismissal/wrongful termination, without providing any strong rights to employees. The IRC bars the jurisdiction of the Civil Court in any matter to which any provision of the Code applies. It also abolishes the Labour Court. Instead, it provides for the establishment of the Industrial Tribunal and National Industrial Tribunal as per Section 44 and Section 46 of IRC.

Issues related to the discharge and dismissal of workers, or the grant of relief, will be under the jurisdiction of the Industrial Tribunal as per Section 44(7) of IRC. The abolishment might curtail the rights of the workers in terms of denying access to justice. Across most legislations, the notice period is usually one month for termination of employment. Such notice entitlement is under the ID Act and is also present in different State Shop and Establishment Acts. For example, in Delhi State Shop and Establishments Act, 1954 a notice period of thirty days needs to be given to the employee. But in the Maharashtra State Shop and Establishment (Regulation of Employment and Conditions of Service) Act 2017, no formal statutory notice period has been specified. On the other hand, if an employer wants to change any condition of service applicable to any worker, it needs to provide a Notice of Change, at least 21 days before the change. Having no standard procedure, the main document is the Employment Contract between the employee and the employer wherein the terms and conditions are enshrined. In case the contract is arbitrary, it is to be noted that the labour law will supersede the employment contracts. Therefore, while terminating an employee, the employer needs to comply with the central and the state law, or the Codes, once effective. As mentioned, the employer must provide a reasonable reason for the dismissal. If the reasons are not provided, it is the prerogative of the employee to seek them. In case the reasons are unjust, the employee has the right to conduct an inquiry against the unjust treatment. The employee can send a legal notice to the employer in case of such unjust termination. The employee can finally move to the Labour Court, in case no relief is provided from the employer. Once the Codes are effective it will be the Industrial Tribunal, rather than Labour Courts.

The Maternity Benefit Act, 1961, which will be subsumed in the **Code of Social Security, 2020**, prohibits any sort of termination of woman employees on the reason of pregnancy.

The Code does not change any such maternity benefits, allowing a paid maternity leave for 26 weeks for the first two births and 12 weeks for subsequent births.

The employer can cite any reason for making an unfair dismissal seem a fair one, which is very common. Any small charges, such as non-performance or unsatisfactory work can be cited by the employer as a reason for dismissal. In such cases, the employee needs to be cautious of the reasons. It is also highly advised that the employee must keep all the documentation and credible evidence at hand, for dealing with any false allegation. Any mishandling by the employer must be noted, in case any allegations are put against the employee. An important point to be noted is that if a Tribunal or a National Industrial Tribunal awards any such reinstatement of any worker, and the employer appealed such decision in the High Court or the Supreme Court, the IRC makes it clear that the employer shall be liable to pay the worker the last drawn full wages if the worker has not been employed during the period of pendency of such proceedings in the High Court or the Supreme Court. If the employer is found liable for any wrongful dismissal, the Tribunal or the higher adjudicating body can direct the employer to compensate the employee and restore the service, as the case may be. The employer can also be penalised. Finally, it is also advisable to consult a lawyer in such cases, as a lawyer will be in a better position to understand the situation and advise the next step.

Source : [Economic Times](#)



Provident Fund New Guidelines: Withdrawing PF Money Before Due Date Can be Taxable

Along with offering a good interest rate, the Employees' Provident Fund Organisation (EPFO), which regulates Employees Provident Funds (EPF), gives the subscribers the option of early withdrawal of money from their PF corpus under certain circumstances. The employees who are looking to withdraw a specific amount from their PF account should know the rules about withdrawing provident fund money.

What to do for EPF withdrawals: To withdraw money, the EPFO subscribers need to have an active Universal Account Number (UAN), and the mobile number used for activating the UAN number should also be working. Moreover, the UAN number should have KYC details like the Aadhaar number, PAN number and bank details.

Is EPF withdrawal taxable? The EPFO subscribers must know that withdrawing EPF money can be taxable if you want the amount before the completion of five years term. However, if you withdraw money after five years, it will not attract income tax. Even early withdrawals can be out of the tax ambit if the money is used for emergency purposes. On the other side, withdrawal of PF money can attract tax if the PF account has not registered any new contributions for five straight years. In such a case, the entire PF amount is considered taxable for that financial year.

When are EPF claims getting rejected? Many times, the PF claim can be rejected for reasons including the non-updation of bank account number and IFSC code on the EPFO portal. Apart from this, the incomplete KYC details and an unclear cheque can also lead to the PF claim getting rejected.

Source: www.india.com

Life Certificate Submission Last Date Nears: How to Submit It Without Visiting Banks

Government pensioners require to submit their life certificates annually to continue receiving their pension without any breaks. The last date to submit life certificates this year is on November 30. While the window to submit their proof of being alive has already opened for pensioners above 80 on October 1, the same will open for those below 80 on November 1. Life certificates, also known as the Jeevan Pramaan Patra, is an essential document of existence for pensioners which acts as a proof that he or she is still alive. This certificate has to be shown before an authorised pension distributor or agency, for example, the bank or the post office. The production of the life certificates ensures that the pensioner's workplace does not continue payments after his or her death. To facilitate the submission process of pensioners' Jeevan Pramaan Patra, the Department of Pension and Pensioners' Welfare has come up with an official memorandum dated September 20, 2021, following which one can know about the various ways to submit this essential document.

Generally, the pensioner who wants to submit his or her life certificate has to be present in person before the distributing agency issue the document. However, due to the Covid-19 pandemic situation that emerged in 2020, the Centre has come up with digital life certificates (DLC) to avoid Covid risks, which is considered enough proof for pension disbursement. There are other ways, too, through which one can submit their life certificate or Jeevan Pramaan Patra without being physically present before the disbursing agencies. Read on to find out what they are.

Online submission of life certificate via Jeevan Pramaan Portal: Life certificates can be submitted digitally via the Jeevan Pramaan website (<https://jeevanpramaan.gov.in/>) or the app. One has to first download the Jeevan Pramaan mobile application to get themselves registered for the process. Here, the applicant has to submit their Aadhaar number, pension payment order, bank account number, bank name and mobile number.

This portal uses the Aadhar platform for biometric authentication and the applicant has to submit their fingerprint for identification. After successful authentication, the Jeevan Pramaan portal will send an SMS to the registered mobile number, which carries the life certificate ID. After that, the life certificate can be accessed by providing the ID.

Submission of life certificate through Doorstep Banking Alliance:

Life certificates or Jeevan Pramaan Patra can be also submitted by doorstep banking (DSB), which is an alliance between 12 public sector banks. The State Bank of India, Bank of Baroda, Punjab National Bank and others are part of this alliance. To avail of this service, one has to download the Doorstep Banking App on their mobile phone from Google Playstore or visit the website <https://doorstepbanks.com/>. Thereafter, the pensioner has to enter their bank and place their request to avail doorstep banking service for submission of life certificate. After this is done, the person has to enter their pension account number, verify it and pay nominal charges for the service. Once this is done, the pensioner will receive an SMS mentioning the name of the bank agent who will visit to complete the submission process. Once the agent comes to the person's home, further processes can be completed.

Submission of life certificate via postman at home:

To facilitate ease of procedure, the Department of Posts along with the Ministry of Electronics and Information Technology came up with Doorstep Service for submission of Digital Life Certificate through Postman in November last year. In this process, the pensioner has to submit the Postinfo App. It is a chargeable service and is available to all Central Government Pensioners across the country irrespective of the fact their pension accounts are in a different bank.

Source: www.news18.com

Attempt To Fix Minimum Wages Faces a Roadblock Yet Again

The labour ministry has reconstituted the expert committee tasked with determining minimum wages, stalling the process for the second time in two years, Economic Times reported. The move comes three months after the government formed an expert group led by Ajit Mishra, director of the Institute of Economic Growth, to provide technical inputs and recommendations on minimum wages.

Now, the committee will be headed by S.P. Mukherjee, emeritus professor at the University of Kolkata. Mukherjee also heads committees responsible for conducting labour-related surveys, including the Quarterly Employment Survey released earlier. This is the second time since Parliament passed the **Code on Wages, 2019** that the attempt to fix minimum wages has been stalled. "This is the third occasion on which the central government has constituted or reconstituted an expert committee to make recommendations which would help in the determination of minimum wages. Such measures by the government do not instil confidence in either the employers or the workers. It creates ambiguity and uncertainty.

At the end of the day, more than 2 years have passed by since the wage code was enacted and the 500 million-odd workers have been waiting for statutory minimum wages," Sundar added. This is also a matter of concern that the government has not considered it appropriate to consult the ILO, considering that they have huge expertise in these matters or the law-making process or members associated with the National Commission on Enterprises in Unorganised Sectors (NCEUS), appointed by the UPA govt whose expertise in these matters is impeachable, he noted. A labour economist who did not wish to be named said, "It is also a concern that the government has not appointed well-known labour economists in the committee."

The wage code introduced the concept of floor wages wherein the rates would be fixed by the central government based on the minimum living standards of workers.

Under the code, state governments weren't allowed to fix wages lower than the national floor determined by the Centre.

In 2019, a committee headed by *economist Anoop Satpathy* came out with a report titled *Determining the Methodology for Fixing the National Minimum Wage*. The panel recommended that the government increase the national minimum wage to Rs 375 per day. The report called for "setting the single value of the NMW (National Minimum Wage) for India at Rs 375 per day (or Rs 9,750 per month) irrespective of sectors, skills, occupations and rural-urban locations." It also called for an additional house rent allowance (city compensatory allowance), averaging up to Rs. 55 per day i.e., Rs. 1,430 per month for urban workers over and above the minimum wage.

The government did not accept the recommendations of its committee because the benchmark of Rs 375 per day was deemed to be too high compared to the existing rate of Rs 176 per day. Instead, the government in July 2019 proposed a hike of Rs 2 in the national minimum wage from Rs 176 per day to Rs 178 per day just a few months after the committee's recommendation. The Economic Survey of 2018-19, too, advocated a mandatory national-level minimum wage to promote social justice and curb distress migration. India has been setting a benchmark on the minimum wage since 1948 when the Minimum Wages Act was passed. Yet, state governments kept setting different minimum wages for different categories of jobs and workers (unskilled, semi-skilled, skilled and highly skilled), leading to a wide disparity in the minimum wage across regions. To put in place a uniform wage structure and to reduce wage disparities, the government in 1996 introduced the National Floor Level Minimum Wage on the recommendations of the National Commission on Rural Labour (NCRL), 1991. The National Floor Level Minimum Wage was fixed at Rs.35 per day in 1996, which was revised periodically. After subsequent revisions, the national floor minimum wage was fixed at Rs 100 in 2009 and Rs 176 in 2017. These, however, were not legally binding on the states.

Source: www.moneycontrol.com

SC Seeks Centre's Reply on Plea Denying Maternity Leave for Adopting Child Above 3 Months

The Supreme Court recently issued notice to the Union government on a plea challenging the "discriminatory and arbitrary" provision of the **Maternity Benefit Act, 1961** allowing maternity leave to a woman who adopted a child just below the age of three months. A bench of Justices S A Nazeer and Krishna Murari sought a response from the Ministry of Law and Justice, Ministry of Women and Child Development on the petition by Karnataka resident Hamsaanandini Nanduri challenging the constitutional validity of **Section 5(4)** of the **Maternity Benefit Act, 1961**. The law states that a woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother.



MATERNITY LEAVE



The plea claimed, "Section 5(4) apart from being discriminatory and arbitrary towards the adoptive mothers, also arbitrarily discriminates against orphaned, abandoned or surrendered children above the age of three months, which is completely incompatible to the object of the Maternity Benefit Act as well as the Juvenile Justice Act." It also contended that the purported 12 weeks of maternity benefit to adoptive mothers was not only a "mere lip service but when juxtaposed with the maternity benefit of 26 weeks provided to biological mothers, fails to stand even the basic scrutiny of Part III (fundamental rights) of the Constitution which is wedded to the concept of non-arbitrariness."

Source: [Deccan Herald](#)

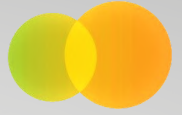


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