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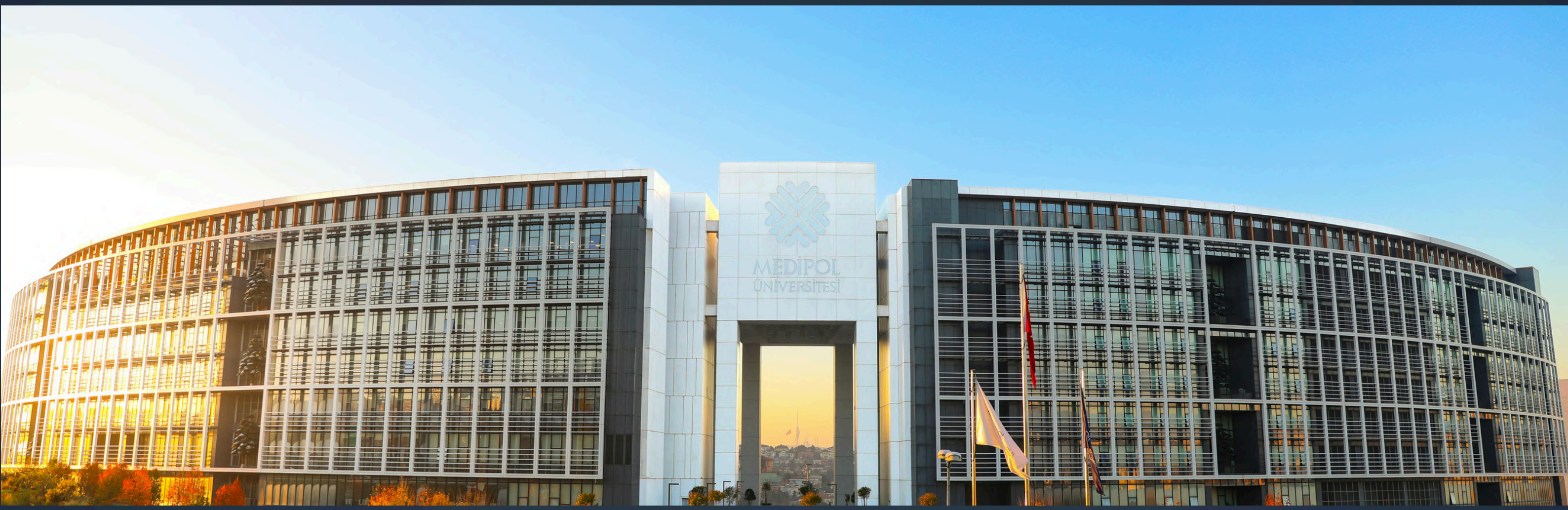


Is Performance Incentive / Variable Pay "Wages" Under the Labour Codes?

BALA HARISH
VICE PRESIDENT

As employers finalise CTC structures and wage computations under the four Labour Codes, one question keeps resurfacing in audit queries and payroll reviews alike: does the annual performance-based variable bonus count as "wages"? The short answer many teams have relied on — "no, per the Ministry FAQ" — is incomplete, and treating it as the final word can leave a compliance position exposed.

The Ministry's Position — and Its Limits

The Ministry of Labour & Employment has, through FAQs issued on 30 December 2025 and 16 March 2026, clarified that performance-based incentives, ESOPs, variable pay, and reimbursement-linked payments do not form part of "wages" for computation under the Codes.

The Substantive Test: What Courts Actually Look At

A consistent line of judicial authority — developed primarily under the Employees' State Insurance Act, 1948, whose definition of wages uses near-identical language ("all remuneration paid or payable… if the terms of the contract of employment, express or implied, were fulfilled") — offers a more reliable framework than the FAQ alone.

Three factors consistently determine the outcome:

Documented as a contractual term. Is the payment provided for under the terms of employment? Where an incentive or bonus is named as a component in the appointment letter or documented service conditions, it is treated as wages — the performance-linked nature of the amount does not change this once it becomes payable as of right upon meeting the stated conditions.

Consistent payment history. If not documented, has it been paid consistently over time? A payment absent from the original contract can still ripen into an implied term of employment where it has been paid regularly, at a fixed or near-fixed rate, over a sustained period — employees come to expect it as a matter of right rather than at the employer's discretion.

Employer's right of unilateral withdrawal. Does the employer retain an unconditional right to withdraw or vary the scheme? Payments remain outside "wages" only where the scheme was introduced voluntarily and the employer can modify, reduce, or discontinue it at any time, without assigning a reason and without needing employee consent. Where that discretion is absent — or exists only on paper — courts have been willing to treat the payment as remuneration in substance.

Illustratively, courts have held that incentive bonus schemes tied to a right of unilateral employer withdrawal fall outside wages, while schemes that become payable as of right once performance conditions are met — with no residual employer discretion — are treated as remuneration under the terms of employment, notwithstanding that the scheme is performance-linked or was not part of the original contract.

Relevant judicial authorities include Braithwaite & Co. v. E.S.I. Corporation (1968), Regional Director, ESIC v. Anup Engineering Ltd. (2014), Whirlpool of India Ltd. v. Employees' State Insurance Corporation (2000), and Titaghur Paper Mills Co. Ltd. v. Workmen (1959), among others.

Many IT/ITES variable pay schemes are not truly discretionary in the way the FAQ language assumes. A flat percentage of CTC (commonly 10–20%), disclosed upfront in the offer letter, paid annually, and released in full once a minimum performance threshold is met, sits closer to "payable as of right" than to a genuinely discretionary, freely withdrawable scheme. Relying on the FAQ label without testing the scheme against the three factors above risks a wage computation that does not hold up if challenged.

Hence,

• Before applying the FAQ exclusion to any variable pay component, test it against the appointment letter, the scheme document, and the actual payout history — not the scheme's label alone.

• Confirm, in writing, whether the employer retains an unconditional and exercised right to withdraw or vary the scheme.

• Where a variable component is fixed, disclosed, and paid consistently as of right, budget for the possibility that it may need to be treated as wages — including for PF, gratuity, and other statutory wage-linked computations — rather than relying on the FAQ position by default.

EPFO delays UPI-linked claim rollout to August as portal glitches persist

Union Finance Minister Nirmala Sitharaman recently urged the Income Tax department to work for the benefit of common people without making them run from pillar to post.She also went public with her disappointment at the "laidback" nature of government departments, which leads to illegal occupation or encroachments on government lands and underlined the need for integrity in conduct from all officials.

Citing the challenges faced by the department in getting permissions to construct a building in the Nariman Point business district, which she inaugurated on Sunday, Sitharaman said these experiences, despite serving in the Indian Revenue Service (IRS), would have given them an idea of what the common man goes through.

An IRS officer has the name of the Income Tax department behind him, a "powerful force to frighten people", Sitharaman reminded, adding that despite this, the officials had to run from pillar to post to get clearances from authorities to proceed with work on the 13-floor building. "Can this (experience) incentivise you to understand the position of a common citizen when he approaches you? Don't make them run from pillar to post where your authority is required; do the work for them," the FM said.

The minister was quick to say that she is not asking the officials to break the rules or do something out of the way for the common citizens but rued that it takes a lot of effort in this country for people to get their rightful claims.

The land parcel on which Aaykar Sindhu, the 1.13 lakh sq ft building, is built, had been with the I-T department since 1973, Sitharaman said, adding that despite this, illegal occupations had sprouted up on the land.

"The fact that you led it to have occupations, illegal occupation, shows somewhere in our governance, we are too laid back. It is somebody's job to take care of our assets, and when it is encroached, we say, oh, we have the land, but we can't build it," she said.Sitharaman also promised to look into the issue of many of the I-T officials not staying in official accommodations in Mumbai and Navi Mumbai areas, hinting that half of them do not enjoy such a facility and also travel for long to get to workplaces.

Stating that she would prefer government-to-government transfer of lands for the purpose, Sitharaman assured that she will facilitate the quick transfer of lands and other aspects like getting the permissions, building, dealing with CPWD (Central Public Works Department), assigning contracts and tenders will be the job I-T officials will have to perform.

"Get it all done at the earliest so that we do not get into the second half of the 21st century with scattered office spaces, rental accommodation in a city, which is fast growing and expect to pay rents or lease rental at phenomenal rates," she said.She particularly mentioned state-run BSNL, asking officials to get the telco's land and promised to speak with her counterpart minister.

Meanwhile, she also used the opportunity to underline the importance of integrity in the discharge of a critical work like tax collection for the country.

"Integrity is the one and only principle I will advocate to each one of you," she said.

Source - Business Standard

The State of Bihar Repeals its Shops and Establishments Act to Mitigate Overlap with the OSH Code

Recently the Governor of Bihar promulgated the Bihar Shops and Establishments (Regulation of Employment and Conditions of Service) (Repeal) Ordinance, 2026 ("Ordinance"), repealing the Bihar Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2025 ("Bihar S&E Act") with immediate effect.

The Bihar S&E Act regulated the employment conditions of employees engaged in shops and commercial establishments across the State, covering matters such as working hours, overtime, leave entitlements and health & safety obligations, amongst others.

Why the Repeal Matters:

(a) Addressing Legislative Overlap:
A key rationale for repealing the Bihar S&E Act was to eliminate the overlap between the State legislation and the Labour Codes which came into force on 21 November 2025, particularly the Occupational Safety, Health and Working Conditions Code, 2020 ("OSH Code").

The OSH Code (as well as the other Labour Codes) consolidated specified Central labour legislations but did not expressly repeal or override State specific shops and establishments laws. Consequently, following the enforcement of the Labour Codes, employers in Bihar (amongst other States) were required to navigate parallel legal frameworks governing substantially similar aspects of employment conditions, including working hours, leave entitlements and other conditions of service. This created uncertainty regarding the extent to which the Bihar S&E Act continued to apply alongside the OSH Code.

This was further aggravated by Section 120 of the OSH Code which provided that the provisions of the OSH Code would prevail over any inconsistent law, agreement or contract of service with the exception where an employee is receiving more favourable benefits available under any law, agreement or contract of service. The coexistence of these provisions gave rise to interpretational uncertainty, particularly in determining whether provisions of the Bihar S&E Act that were more beneficial to employees would continue to operate despite the overriding effect of the OSH Code.

(b) What the Repeal Resolves:

The repeal of the Bihar S&E Act removes the dual regulatory framework that came into existence following the enforcement of the OSH Code. Consequently, employers in Bihar are no longer required to navigate 2 overlapping statutory regimes governing the same aspects of employment conditions.

From a compliance perspective, the repeal brings much-needed certainty by making the OSH Code and the rules framed thereunder by the State of Bihar the sole statutory framework governing shops and commercial establishments in the State. This eliminates the need for employers to undertake a comparative assessment of the Bihar S&E Act and the OSH Code to determine which provisions are more beneficial to employees and therefore continue to apply.

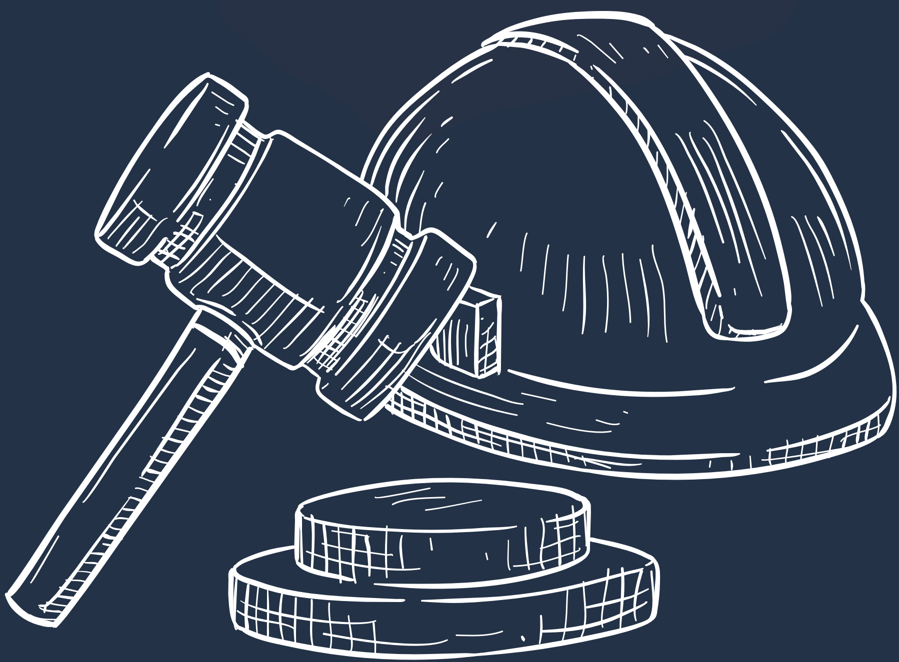
Outstanding Issues:

Although the OSH Code is in force, the Bihar Rules under the OSH Code have not yet been notified in their final form. Several operational requirements, including rest intervals, spread over of working hours, overtime and health and safety measures, are intended to be prescribed under the State Rules. These matters were previously governed under the Bihar S&E Act.

Until the Bihar Rules are notified, uncertainty remains regarding the applicable requirements on these aspects. Further, unlike the repealed Bihar S&E Act, neither the OSH Code nor the Bihar Rules under the OSH Code provide for statutory entitlements relating to sick leave and casual leave. As a result, there is currently no specific statutory framework in Bihar governing these leave entitlements.

Other Considerations:

It is pertinent to note that an ordinance is a temporary legislative measure. Under Article 213 of the Constitution of India, an ordinance ceases to operate upon the expiry of 6 weeks from the date on which the State Legislature reassembles, unless it is replaced by an enactment passed by the State legislature and assented to by the Governor. Accordingly, while the repeal has taken immediate effect, it will attain permanence only if the Ordinance is subsequently replaced by legislation enacted by the State Legislature of Bihar.



Key Action Points for Human Resources and In-house Counsel:

Employers operating shops and commercial establishments in Bihar should review their existing compliance framework in light of the repeal of the Bihar S&E Act. To the extent the provisions of the OSH Code are presently enforceable, employers should ensure compliance with those requirements, subject to further clarifications from the Government.

Employers should also prepare for compliance with the Bihar Rules under the OSH Code once they are notified in their final form by reviewing their existing policies and processes. In addition, employers should continue to monitor legislative developments, including the enactment of legislation replacing the Ordinance and the notification of the Bihar Rules under the OSH Code.

Source - L&E Global

Inspection scheme soon to flag firms dodging EPFO

In a bid to strengthen worker protections, the Labour and Employment Ministry is launching a comprehensive inspection program. This proactive approach will target businesses that fail to register with the Employees' Provident Fund Organisation.

The labour and employment ministry is firming up an inspection scheme to identify establishments that are eligible for coverage under the Employees' Provident Fund Organisation (EPFO) but devise ways to remain outside the ambit of the social security coverage to avoid compliance and financial burden, depriving thousands of workers of social security benefits.

Currently, establishments with 20 or more employees need to be mandatorily registered with the EPFO for provident fund, pension and insurance benefits.Most establishments keep their declared headcount below 20 to avoid mandatory enrolment under the EPFO. Besides, while workers with wages up to ₹15,000 per month are mandatorily covered under the EPFO schemes, many organisations do not offer coverage to those earning in excess of this limit. The plan is to use data from GST, income tax and other government departments for identifying organisations that should be covered under the EPFO.

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Currently, establishments with 20 or more employees need to be mandatorily registered with the EPFO for provident fund, pension and insurance benefits.

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Besides, while workers with wages up to Rs 15,000 per month are mandatorily covered under the EPFO schemes, many organisations do not offer coverage to those earning in excess of this limit. Consequently, such workers do not have a retirement kitty despite being in job all their lives. Moreover, India loses out on formalisation of the workforce, which continues to be less than 10% of the estimated 500 million workers in the country.

The plan is to use data from goods and services tax (GST), income tax and other government departments for identifying organisations that should be covered under the EPFO.

In addition, already registered organisations will be nudged to enrol all workers for social security benefits under the Employees' Provident Fund (EPF) scheme as the government strives to achieve universal social security in India, a senior government official told ET on condition of anonymity.

The Code on Social Security 2020 provides for devising an inspection scheme. However, the rules under the code are still being firmed up and the scheme will be made operational once the rules are in place.

The labour and employment ministry in November 2025 launched the Employees' Enrolment Scheme, which will run till April 30. Under this amnesty scheme, it is specifically targeting left-out eligible employees who joined employment between July 1, 2017, and October 31, 2025.

It will soon set up an internal group of senior officials to undertake a detailed analysis of the present situation and suggest an appropriate strategy to improve enrolment and strengthen compliance with the provisions of the scheme.
In the future, data driven analysis could become a regular feature to ensure no eligible establishments and employees are left out of the social security coverage.

Source - The Economic Times

Govt begins national floor wage exercise. What changes for workers?

The government has started the process of fixing India's first statutory national floor wage under the Code on Wages, 2019, nearly six years after Parliament passed the law. The labour ministry has begun consultations with states and is preparing to constitute the Central Advisory Board.

India has, until now, followed a National Floor Level Minimum Wage (NFLMW), a non-binding benchmark that states were advised to consider while fixing minimum wages. Once the relevant provisions of the Code on Wages are implemented, the floor wage will become part of the statutory wage framework.

Here's what it means.

What is a national floor wage?

A national floor wage is the "minimum benchmark" fixed by the Union government below which no state or Union Territory can set its statutory minimum wage.

Section 9 of the Code on Wages, 2019 empowers the Union government to fix a floor wage after taking into account the minimum living standards of workers. The law also allows different floor wages for different geographical areas.

It further provides that if a state's existing minimum wage is already higher than the floor wage, the state cannot reduce it to match the national floor.

The floor wage is, therefore, not the wage every worker will receive. Instead, it sets the legal minimum benchmark that states must follow while fixing their own minimum wages.

How is it different from a state's minimum wage?

The national floor wage and minimum wages serve different purposes.

The floor wage is fixed by the Union government and acts as the lowest permissible benchmark across the country.

The minimum wage is fixed by the appropriate government, either the Centre or the states, for workers under their respective jurisdictions. Under the Code on Wages, governments may classify minimum wages based on skill levels, geographical areas and, where necessary, the nature of work.

This means minimum wages will continue to vary across states because living costs, labour markets and economic conditions differ. However, no state will be allowed to notify a minimum wage below the national floor.

Why did India earlier have a National Floor Level Minimum Wage?

India introduced the concept of the National Floor Level Minimum Wage in 1991 after the National Commission on Rural Labour recommended a national benchmark to reduce wide differences in wages across states.

Unlike the proposed floor wage under the Code on Wages, the earlier National Floor Level Minimum Wage was only an advisory benchmark. States were requested to ensure that their minimum wages did not fall below it, but there was no statutory requirement to do so.

The government revised the benchmark periodically to reflect changes in inflation. The last revision took effect on July 1, 2015, when the National Floor Level Minimum Wage was increased from ₹137 to ₹160 per day, following an increase in the Consumer Price Index for Industrial Workers (CPI-IW).

What changes under the Code on Wages?

The biggest change is that the floor wage moves from an advisory concept to one recognised in law.

The Code on Wages requires the Central government to fix the floor wage after considering the minimum living standards of workers and consulting state governments. It may also seek the advice of the Central Advisory Board before notifying the floor wage.

The Code also expands the coverage of minimum wages. Under the earlier Minimum Wages Act, 1948, minimum wages largely applied to scheduled employments. The Code extends the minimum wage framework to all employees and requires governments to ordinarily review or revise wage rates at intervals not exceeding five years.

Why is the labour ministry conducting this exercise now?

Although Parliament enacted the Code on Wages in 2019, many of its provisions required rules, consultations and coordination with states before implementation.

Business Standard reported that the labour ministry has now begun consultations with states and is preparing to constitute the Central Advisory Board. The Board's advice, along with inputs from state governments, will help determine the floor wage and whether different geographical regions require different benchmarks.

The exercise also comes amid changing inflation levels and differences in living costs across states, factors that the Code allows the government to consider while fixing the floor wage.

Will workers across India receive the same minimum wage?

No.

The Code does not create a single national minimum wage. Instead, it creates a national floor wage, below which states cannot go. States will continue to notify their own minimum wages based on local conditions, industries, skill levels and geographical differences. A state that already pays higher minimum wages can continue to do so.

In practice, workers in states with higher living costs are likely to continue receiving higher statutory minimum wages than workers elsewhere.

Source - Business Standard

Highlights

[PF Scheme 2026: New compliances w.e.f Jul 2026]

[Gujarat – Final Rules Gazette Notification on the Social Security Code & Occupational Safety, Health and Working Conditions Code, 2020]

[Rajasthan – Final Rules Notification on the Occupational Safety, Health and Working Conditions Code, 2026]

[Andhra Pradesh – Final Rules Notification on the Code on Wages]

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