

# INFOLEX

NEWSALERT

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## UNION CABINET APPROVES THE WAGE CODE

### 1. INTRODUCTION

The Second National Labour Commission in 2002, recommended the division of labour laws into four or five broad groups concerning wages, social security, safety, industrial relations, welfare and working conditions.

In 2015, the Union Ministry of Labour and Employment introduced the draft Labour Code on Industrial Relations Bill (the “**Industrial Relations Code**”) and the draft Labour Code on Wages Bill (the “**Wage Code**”).

There was a fair amount of speculation in the media that both the Industrial Relations Code and the Wage Code would be introduced in the Parliament. To that end, the Union Cabinet on July 26, 2017, approved the Wage Code, which is intended to replace the Minimum Wages Act, 1948, the Payment of Bonus Act, 1965, the Payment of Wages Act, 1936 and the Equal Remuneration Act, 1976.

### 2. KEY FEATURES OF THE WAGE CODE

#### 2.1 Encompasses four existing pieces of legislation

The Wages Code essentially attempts to harmonize the approach to wages across the provisions of the Payment of Wages Act, 1936 (the “**PW Act**”), the Payment of Bonus Act, 1965 (the “**PBA Act**”), the Equal Remuneration Act, 1976 (the “**ERA Act**”) and the Minimum Wages Act, 1976 (the “**MW Act**”).

In particular, the Wage Code proposes to bring together the objectives of these pieces of legislation with a common definition of ‘wages’ pertinent throughout. The definitions of ‘employee’ and ‘establishments’ in the Wage Code is deliberately wide so that it comprises all kinds of employees and establishments, including Government establishments. The Wage Code will be uniformly applicable to *all* employees, as it proposes to do away with the thresholds prescribed under the existing four pieces of legislation. Further, the Wage Code will empower the Government to set a ‘*national minimum wage*’, which will apply across *all* sectors and States.

#### 2.2 Maintenance of Records, Registers; Returns to be filed

The Wage Code proposes a single system of returns that need to be filed by the employer electronically, instead of the prevalent system of filing different returns under the PBA Act, the MW Act and PW Act. The burden of maintaining records and registers under the prevalent four pieces of legislation will be significantly reduced through the introduction of a single register, which can be preserved online.

#### 2.3 Common authority to decide claims

Unlike different authorities prescribed under the existing four pieces of legislation, the Wage Code will appoint a common authority which will hear and decide claims relating to the non-payment of wages, deductions made by an employer from the wages of an employee which are not authorized under the Wage Code, the payment of wages less than the minimum

wage, the non-payment of wages for any leave period, the non-payment of overtime wages, the non-payment of equal remuneration to male, female and transgender employees and the non-payment of bonus.

## 2.4 Common penalties

The Wage Code puts forward common penalties for the non-payment of minimum wages, discrimination on the ground of gender, failure to pay bonus, and unauthorized deductions. The common penalty for the first offence is INR 50,000 (Indian Rupees Fifty Thousand only). The Wage Code also provides the option for compounding of offences with the relevant governmental authority.

## 2.5 Prohibition of discrimination against transgender employees

The ERA Act, at present, prohibits discrimination against women employees in the matter of payment of wages. The Wage Code plans to extend this prohibition of discrimination to transgender employees as well.

### IndusLaw View:

The Wage Code is a welcome proposal for change to India's existing labour law, further bringing it in line with international standards and it will, hopefully, compliment and facilitate the '*ease of doing business*' in India, a cornerstone of the Government's objectives.

The Wage Code seeks to expand the scope of existing wage laws to *all* kinds of establishments and employees, which will be one of the most significant changes in recent times. The proposal for just one authority to address claims has been a necessity for a while and it should help to streamline and consolidate claims, processing them in a more efficient manner. Further, the consideration of equal opportunities to be extended to transgender employees is a critical step in the right direction.

In our view, the Wage Code, in its present form, does appear to be a consolidation of existing statutes and codification of certain judicial decisions rather than a mere '*re-writing*' of existing legislation. That being said, some of the bureaucratic hurdles may continue to exist, in particular, in relation to the maintenance of records and registers and the filing of returns.

The Wage Code is also limited to regulation of '*claims*' in a formal manner rather than providing for more comprehensive alternative methods of dispute resolution. The provision allowing for compounding of offences may also make certain employers indifferent and less vigilant. Moreover, the Wage Code does not address protection of rights of workers in the unorganized sector.

While the Wage Code is not a paradigm shift in Indian labour law, it is, however, a clear and important statement of intent from the legislature and the executive vis-à-vis the overall reforms that we can expect in Indian labour law in the near future.

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