

UNION CABINET PASSES THE CODE ON WAGES, 2017

1. INTRODUCTION

The Union Cabinet passed the Code on Wages, 2017 (the “Code”) on July 3, 2019. The Code intends to amalgamate, simplify and rationalize the provisions of the Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Payment of Bonus Act, 1965 and the Equal Remuneration Act, 1976. The amalgamation is expected to execute the intent of the four statutes and remove multiplicity of definitions and authorities.

2. KEY PROPOSED AMENDMENTS

We have compared the key provisions of the Code with the existing laws, in the table below.

S. No.	Subject Matter	Existing Law(s)	Code
a)	<i>Applicability</i>	Minimum Wages Act, 1948: Applicable to employees engaged in scheduled establishments.	Minimum Wages: The Code stipulates that the minimum wages must be paid to all employees by an employer. ¹
		Payment of Wages Act, 1936: Applicable to employees whose wages do not exceed INR 24,000 (approximately USD 350) per month. ²	Payment of Wages: The Code will be applicable to all employees. ³
		Payment of Bonus Act, 1965: Applicable only to establishments with 20 or more persons and for employees whose salary or wages do not exceed INR 21,000 (approximately USD 305) per month.	Payment of Bonus: Applicable to <i>all</i> employees whose salary is below the notified threshold and who have worked for at least 30 days in an accounting year. ⁴ There is no minimum threshold requirement anymore.
b)	<i>Definition of ‘Wages’, ‘Salary’ and ‘Remuneration’</i>	Each of the four labor legislations ⁵ , which are now amalgamated into the Code, had a different definition for the terms ‘wages’, ‘salary’ and ‘remuneration’.	The Code has now unified the definition of the term ‘wages’. The definition now includes all remuneration expressed in terms of money or capable of being so expressed, which would, if the terms of employment are fulfilled, be paid to an

¹ Section 5 of the Code.

² Gazette Notification dated August 28, 2017, available here: <http://egazette.nic.in/WriteReadData/2017/178375.pdf>

³ See Chapter III of the Code.

⁴ See Section 26 of the Code.

⁵ The Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Payment of Bonus Act, 1965, and the Equal Remuneration Act, 1976.

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			employee. The definition of the term 'wages' also carves out a different meaning for itself in relation to the provisions under Chapter IV (Payment of Bonus) of the Code. ⁶
c)	<i>Discrimination on the grounds of gender</i>	The Equal Remuneration Act prohibits gender discrimination in wage payment, recruitment, training, transfers and promotions.	The Code prohibits discrimination on ground of gender only in matters pertaining to wages. ⁷ There is no provision relating to gender discrimination in terms of training, transfers, promotions etc.
d)	<i>Power of Central Government to fix national minimum wage⁸</i>	-	The Central Government can set a national minimum wage for different states and geographical areas. ⁹ The minimum rates of wages set by State Governments cannot be less than the national minimum wage set by the Central Government. If the existing minimum rates of wages set by State Governments are higher than the national minimum wage, the States cannot reduce the minimum rate of wages.
e)	<i>Wages for overtime work</i>	Every employee who works in excess of the limit of hours and whose minimum rate of wages is fixed, shall be entitled to wages at the rate decided by the Central Government or the State Governments.	Every employee whose minimum rate of wages has been fixed under the Code, and who works overtime ¹⁰ , is entitled to an overtime rate which cannot be less than at least twice the normal rate of wages.
f)	<i>Mode of payment of wages</i>	The Payment of Wages Act, 1936 allows for wages to be paid in current coin or currency notes or in both or through cheques or by crediting wages in employees' bank accounts.	In addition to the presently-accepted modes of payment, the Code also allows the payment to be made via electronic or digital mode or to employees' bank accounts ¹¹ .

⁶ See the first proviso to Section 2 (x) of the Code.

⁷ Section 3 (1) of the Code.

⁸ Section 9 of the Code.

⁹ We note that the Central Government has reserved the right to set different minimum rates for different geographical areas. This

¹⁰ Works on any day in excess of the number of hours constituting a normal working day. See Section 14 of the Code.

¹¹ The central or state governments may specify, through notification, the types of employments where wages can be paid only through electronic mode or by crediting to bank accounts, as per Section 15 of the Code.

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g)	Inspection	Under the four prevalent statutes, 'inspectors' were appointed to (i) examine, seize or take any register, record of wages or notices required to be kept or exhibited by these legislations, (ii) examine any person found on the inspected premises, and (iii) exercise such other powers as may be prescribed. The range of an inspector's powers varied under the four legislations.	The Code states that the appropriate Government may lay down an inspection scheme by notification for generation of web-based inspection schedules. ¹²
h)	Facilitators and their powers¹³	-	<p>The concept of an 'inspector' has been removed from the Code. The Code has instead introduced the concept of 'facilitators'.</p> <p>A facilitator may, within the local limits of his or her jurisdiction, (a) supply information and provide advice to employers and workers regarding the most effective means of complying with the provisions of the Code, and (b) inspect an establishment on the basis of the inspection scheme.</p>
i)	Offences & Penalties	Each of the four labour legislations which have been amalgamated into the Code prescribed fines as well as an imprisonment term, in the event of violation of certain provisions.	The Code stipulates that a first-time offender will only be levied a fine. ¹⁴ Subsequent offences or similar offences repeated within 5 years of the first offence will, however, carry a fine as well as an imprisonment term. ¹⁵
		The extent of fines levied by the legislations ranged from INR 500 (approximately USD 7) to INR 22,500 (approximately USD 325).	The extent of fines levied under the Code ranges from INR 5,000 (approximately USD 70) to INR 50,000 (approximately USD 725).
j)	Compounding of offences	There were no provisions relating to the compounding of offences, although certain States had made amendments to insert such provisions.	The Code provides an opportunity to all first-time offenders, in a 5-year interval, to compound their offences. ¹⁶

¹² Section 51 (2) of the Code.

¹³ Chapter VII (Facilitator) of the Code.

¹⁴ Section 53 (1) (a) and (c) of the Code.

¹⁵ Section 53 (1) (b) and (d) of the Code.

¹⁶ Section 55 of the Code.

3. INDUSLAW VIEW

The consolidation of the provisions of the four labour legislations is a welcome move, as is widening the scope of the minimum wages to all employees. By introducing a concept of '*national minimum wages*' for different geographical areas,¹⁷ the Code ensures that all national minimum wages are fixed after taking into account parameters which are local and acute to the respective area. Similarly, the introduction of '*facilitators*' is noteworthy as they would be replacing the *inspectors*. The role envisaged for them seems to be a more collaborative one in the sense that, while they can conduct inquiries and investigations, they are also empowered to provide employers and workers with advice in relation to the most effective means of compliance.

The Code also proposes to bring in the use of technology which will help improve transparency and accountability and also provide an impetus to India's progress towards a digital economy. That being said, the Code appears to have diluted certain important provisions, such as the following:

- a) unlike the existing provisions on the prohibition of gender discrimination under the Equal Remuneration Act, 1976, the Code is silent on the prohibition of gender discrimination in matters relating to recruitment, training, transfers and promotions;
- b) the Code has taken a softer approach against a first-time offender in cases where the employer has paid to any employee an amount which is less than the prescribed amounts. The Code now prescribes a fine of INR 50,000 (approximately USD 725). An offence of the same nature within 5 years or a subsequent offence will, however, have a sterner punishment;¹⁸ and
- c) the Code permits the employers who have violated the provisions of the Code for the first time in a period of 5 (five) years, to compound their offences. The existing labor legislations do not permit the compounding of offences at the central level. Only a few states have permitted such concessions by way of amendments.

The Code is yet to be presented before the Parliament. We will provide a more detailed update on the Code once it becomes statutory law.

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Date: July 18, 2019

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¹⁷ Section 9 (1) of the Code, which stipulates that the Central Government may fix the national minimum wages. Provided that different national minimum wages may be fixed for different States or different geographical areas.

¹⁸ Section 53 (b) of the Code.