



ADVENT MANAGEMENT
& CONSULTING SERVICES

Study and Observations about Four New Labour Codes

Submitted by:

Advent Management & Consulting Services

#15, 4th Floor, Times Square Building, B Block,
Sushant Lok, Gurugram, Haryana - 122002, India

Email:-support@adventmcs.com **Website:** www.adventmcs.com



Contents:

S. No.	Description
1.	Objective
2.	Background - Why Labour Codes
3.	New Definitions of Employee, Worker and Wages
4.	Other Important Changes to Ponder
5.	Proposed Action / Changes
6.	Overall Recommendations
7.	How Advent Can support in review, assess and realignment



Objective of the Study

1. The objective of this extensive study is to provide all important aspects with implications of new Labour Codes
2. Provide an appropriate opinion to ensure consistency with applicable law provisions and submit recommendations.

Background:

Central Govt. has repealed existing 29 Labour Laws and enacted consolidated new Labour Codes; rules of which are likely to be implemented on or before 1st April 2021.

All the earlier said 29 labour laws including any rule, regulation, notification, scheme, appointment, order or direction shall be in force to the extent they are not contrary to the provisions of this Code made thereunder by the appropriate Government.

The objective of introducing these 4 codes is to rationalize, simplify, streamline and amalgamate the existing labour laws in India, a new labour legislation.

- (a) to rationalize and simplify
- (b) to facilitate ease of compliance for business
- (c) to extend social security benefits to all employees and workers (*organized or unorganized or any other sectors*);
- (d) to promote use of technology for improved efficiency
- (e) to ensure effective enforcement

Definitions of Employee

Section 2(k) explains that any person (other than an apprentice engaged under the Apprentices Act, 1961), employed on wages by an establishment to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied and also includes a person declared to be an employee by the appropriate Government"

Definitions of Worker

Covers any person (*except an apprentice under the Apprentices Act, 1961*) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work but does not include any person:

- 1) who is employed mainly in a managerial or administrative capacity; or
- 2) who is employed in a supervisory capacity drawing wage of exceeding INR 18,000/- per month or an amount as may be notified by the Central Government from time to time.



Definitions of Wages

Section 2 (k) of Code on Wages:

“**Wages**” means all remuneration whether by way of salaries, 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 employed in respect of his employment or of work done in such employment, and Includes -

- (i) Basic Pay;
- (ii) Dearness Allowance; and
- (iii) Retaining Allowance, if any,

but does not include-

- a) any bonus does not form part of the remuneration payable under the terms of employment;
 - b) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government;
 - c) any contribution paid by the employer to any pension or provident fund,
 - d) any conveyance allowance or the value of any travelling concession;
 - e) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment;
 - f) house rent allowance;
 - g) remuneration payable under any award or settlement between the parties or order of a court or Tribunal;
 - h) any overtime allowance;
 - i) any commission payable to the employee;
 - j) any gratuity payable on the termination of employment;
 - k) any retrenchment compensation or other retirement benefit payable to the employee or any ex gratia payment made to him on the termination of employment:
- *If payments made by the employer to the employee under clauses (a) to (i) exceeds one-half (50%), or such other percent of the all remuneration calculated under this clause, the amount which exceeds such one-half (50%), or the percent, so notified, shall be deemed as remuneration and shall be accordingly added in **wages** under this clause.*
- **Wages in kind** to the extent it does not exceed **15%** of total wages, shall be included in wages.



Other Important Changes to Ponder:

- 1) The Excluded components cannot exceed 50% of Total Wages.
- 2) Wages in kind to the extent it does not exceed 15% of total wages shall be included in wages.
- 3) The central government will fix a National Floor Wage, taking into account living standards of workers. It may set different floor wages for different geographical areas
- 4) Minimum rates of wages fixed by the appropriate Government under section 6 shall not be less than the floor wage.
- 5) The payment has to be paid before expiry of 7th day of succeeding month for all the establishments. 10 days' time limit payment of wages for more 1000 employees has been removed.
- 6) All type of Full and Final settlements has to be paid within 2 working days.
- 7) Disqualification from Bonus if convicted for sexual harassment.
- 8) Employee deductions (loan, advance, fine, LOP etc.) should not exceed 50% of the employee's total wage. Previously, this limit was 30%.
- 9) Voluntary coverage of an establishment under Employees State Insurance (ESI) even if the number of employees is less than the threshold 10 or more AND it is mandatory for Hazardous & Life threatening occupation 1 or more.
- 10) Introduction of "Career Centre", "Gig Worker", "Platform Worker", home based worker etc. The definition of "employee" has been comprehensively elaborated to cover all the employees and workers, both in organized/unorganized sector;
- 11) Registration of every unorganised worker, gig worker or platform worker on the basis of self-declaration electronically.
- 12) Gratuity on pro rata basis to an employee employed on fixed term employment even though, he has not completed continuous service of five years;
- 13) If any employer fails to pay ESI contributions, even then ESI has to pass on the benefits to the employee. ESIC can recover it from the employer to the extent of the capitalized value of the benefit net of any payment of contribution amount, interest and damages payable by the employer
- 14) Increase penalty amount from 10,000 to 1,00,000 and imprisonment of one to three years on deduction of employee contribution from salary and non-deposit thereof.
- 15) Subsequent failure to pay contributions attracts imprisonment of two to five years and fine of three lakh rupees.



- 16) Code provides single registration under OHS Code for an establishment instead of multiple registrations. This will design a centralized database and develop an ease of doing business.
- 17) Working Hours For Women: Working Hours for Women as per this new proviso female workers/women can work during night shifts with their consent (night shift shall be from 7 p.m. and before 6 a.m.,)
- 18) The definition of Contract Labour has been modified and includes inter-State migrant worker but excludes part time employee, regularly employed and mutually accepted standards of the conditions of employment and entitled to Social Security benefits
- 19) Principal employer to provide welfare facilities, where the contract labour is deployed.
- 20) Principal employer shall be liable to make payment of wages to the contract labour deployed by him.
- 21) Definition of "Inter State Migrant worker" has been modified and ceiling limit of Rs 18000/- has been introduced.
- 22) Definition of "worker" has been revised and includes persons in supervisory capacity and working journalists, sales promotion employees getting salary up to Rs.18000/- per month or as may be notified by the Central Government from time to time
- 23) Establishment with less than 300 workmen can lay-off, retrenched, closed without government approval (earlier this limit was 100 employees). A fine of INR 1,00,000, which may extend up to INR 10,00,000, will be levied on any person who contravenes this provision.
- 24) A new feature of "Recognition of Negotiating Union" is introduced. The Code provides for a negotiation union in an industrial establishment, having registered trade unions for negotiating with the employer.
- 25) The provisions of Standing Orders on Industrial establishments will be applicable having 300 or more than 300 workers as notified by the appropriate Government.
- 26) In case any worker is suspended by the employer pending investigation or inquiry. The amount of subsistence allowance payable at 50% of the wages for the first 90 days of suspension; and at the rate of 75% of such wages for the remaining period of suspension.
- 27) "Superannuation", in relation to an employee, is fixed in the contract or conditions of service, in other case, the superannuation age shall be 58 years;



Proposed Action / Changes

The immediate effect of these laws would emphasize employers for review, reassess and redesign internal policies and processes including the following policies and or processes relating to:

- (a) Employees Compensation / Benefits
- (b) HR Policies & Systems
- (c) Payroll Process
- (d) Contracts / Agreements
- (e) Regulatory Compliance

Overall Recommendations

While the anomalies with regard to definition of employee, worker, wages and other labour laws have been removed and made simple as well as standardized, on the other hand, it is essential for employers to review their internal processes and realign / redefine to remain consistent and compliant with the new labour laws provisions.

How Advent Can support in review, assess and realignment:

1. Assessment of Cost Impact on:

- a) Employer,
- b) Permanent and Contractual Employees & their Benefits
- c) Liability on Compliance, if any

2. Review Existing Policies, Structure, Contracts and Advise on:

- a) HR Policy for Compensation & Structure
- b) Payroll Policies & Process
- c) Third Party Contracts

3. Statutory Compliance Aspects:

- a) Advisory to handle the proposed changes
- b) Approach for Ongoing Compliances

* * *