



India's new labour codes: Prepare for the challenges ahead

The Dbriefs Geography Updates series

Saraswathi Kasturirangan / Atul Mittal

Radhika Viswanathan / Anjali Malhotra

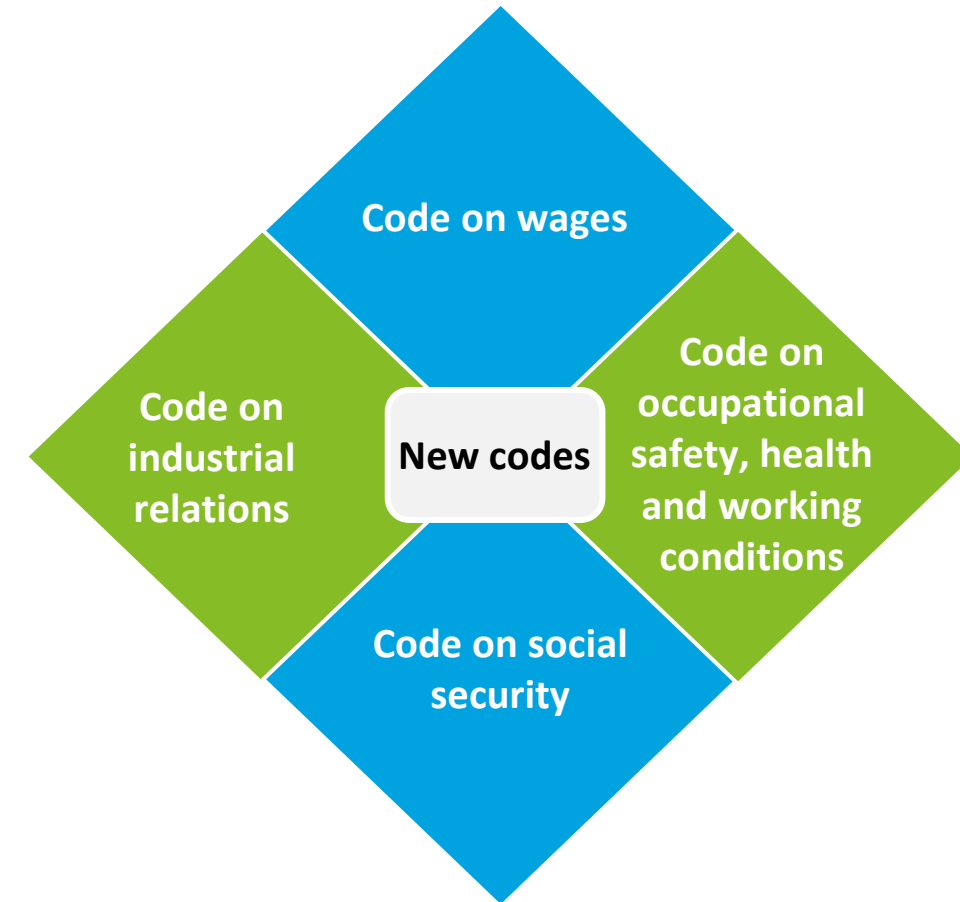
23 February 2021

Agenda

- Background
- What's changing?
- Impact of the wage definition
- Work force categorization
- Offences and penalties
- Way forward
- Questions and answers

Background

Labour codes – an overview



- *The codes are awaiting notification of effective date
- # The draft rules have been issued
- Existing schemes to be valid for one year to the extent they are not contrary to the provisions of the code

Legislations subsumed

₹ The code on wages 2019

- The Payment of Wages Act, 1936;
- The Minimum Wages Act, 1948;
- The Payment of Bonus Act, 1965; and
- The Equal Remuneration Act, 1976

🔒 The code on social security 2020

- The Employees' State Insurance Act, 1948;
- The Employees' Provident Funds and Miscellaneous Provisions Act, 1952;
- The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959;
- The Maternity Benefit Act, 1961;
- The Payment of Gratuity Act, 1972;
- The Cine-Workers Welfare Fund Act, 1981;
- The Building and Other Construction Workers' Welfare Cess Act, 1996;
- The Unorganised Workers' Social Security Act, 2008



Legislations subsumed (cont'd)

The industrial relations code 2020

- The Trade Unions Act, 1926,
- The Industrial Employment (Standing Orders) Act, 1946 and
- The Industrial Disputes Act, 1947

The occupational safety, health and working conditions code 2020

- The Factories Act, 1948;
- The Mines Act, 1952;
- The Dock Workers (Safety, Health and Welfare) Act, 1986;
- The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996;
- The Plantations Labour Act, 1951;
- The Contract Labour (Regulation and Abolition) Act, 1970;
- The Inter-state migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979;
- The Working Journalist and other News Paper Employees (Conditions of Service and Misc. Provision) Act, 1955;
- The Working Journalist (Fixation of rates of Wages) Act, 1958;
- The Motor Transport Workers Act, 1961;
- Sales Promotion Employees (Condition of Service) Act, 1976;
- The Beedi and Cigar Workers (Condition of Employment) Act, 1966;
- The Cine Workers and Cinema Theatre Workers Act 1981



Polling question 1

What, in your view, would be the effect of the changes in the labour codes to your business?

- Financial implications
- Need for process change
- Realign salary structure
- All the above
- Don't know/not applicable

What's changing?

Code on wages and code on social security

Salient features

Particulars

Code on wages

- Applies to all establishments, employees and employers as defined unless specifically exempt in the code
- Covers all employees including managerial cadre
- Wage definition standardized
- State government minimum wage rates to be aligned to national floor wages
- Need to meet wages payment dates as prescribed
- Recoveries from wages specified with monthly recovery capped at 50%
- Settlement time of dues in case of resignation/dismissal shortened
- Time for preferring claims extended
- Role of inspector widened to include facilitation function
- Penalties and prosecution enhanced

Code on social security

- Coverage broadened to include gig/platform workers, fixed term employees, and those in the unorganized sectors with the organized sector
- Existing schemes valid for a period of one year after effective date to the extent the same is not contradictory to provisions of the code
- Monetary thresholds to be brought in through schemes/notifications
- Period of limitation introduced
- No specific reference to international workers – expected to be introduced under the schemes
- Stringent penalties and prosecution provisions provided for

• A contractor is identified as an “employer” having independent responsibilities – compliance responsibility from the principal employer reduced

Code on wages and code on social security

Areas of impact

Areas of impact	Key change triggering the impact	Challenges to be addressed
Definition of wages	<ul style="list-style-type: none"> Uniform and wider definition of wages as compared to varied definitions under existing regulations 	<ul style="list-style-type: none"> Change in coverage of employees for ESI, Payment of Bonus Act etc. Impact on PF and gratuity contributions
Provident Fund (PF)	<ul style="list-style-type: none"> Change in definition of wages 	<ul style="list-style-type: none"> Increase in quantum of PF contributions for domestic employees drawing salary below wage ceiling (presently INR 15,000) and international workers Review of employment contracts and policies relating to employees earning more than INR 15,000 pm
Gratuity	<ul style="list-style-type: none"> Change in definition of wages Extending gratuity benefits to fixed term employees 	<ul style="list-style-type: none"> Likely increase in the quantum of gratuity – new inclusions in the definition - retroactive impact? Individuals on fixed term employment entitled to gratuity benefits under the code on a pro-rata basis in addition to regular eligible employees
Overtime	<ul style="list-style-type: none"> Employee covered under the schedule employment alone are eligible for overtime 	<ul style="list-style-type: none"> Employees in supervisory and managerial role also entitled for overtime wages – detailed rules awaited
Gig workers/platform workers	<ul style="list-style-type: none"> Presently, there is no specific social security schemes for the gig/platform workers 	<ul style="list-style-type: none"> Government to introduce a scheme enabling such employees to be eligible for social security benefits Aggregators will be required to contribute towards such scheme
Payment of wages	<ul style="list-style-type: none"> Wage ceiling of INR 24,000 pm removed 	<ul style="list-style-type: none"> Impact on settlement timelines, capping of deductions from wages etc.

Industrial relations code and occupational safety, health and working conditions code

Salient features

Particulars	
Industrial relations code	<ul style="list-style-type: none">• Limit of worker enhanced from 100 to 300 for applicability of standing order;• Constitution of works committee, if 100 or more workers are employed and ordered by appropriate government;• Grievance redressal committee to complete its proceedings within 30 days of receipt of application;• Prohibits employers, workers, and trade unions from committing any unfair labour practices such as restricting workers from forming; trade unions, coercing workers to join trade unions, threatening worker, establishing employer sponsored trade union, etc.• Increase in retrenchment cost- additional compensation towards re-skilling fund, retrenchment compensation;• Preference to retrenched worker for re-employment within 1 year;• Notice of strike, lockout-extended to all industries;• Additional ground for strike - mass leave;• Prior approval of government - layoff, retrenchment, closure where 300 or more workers (factory, mine, plantation);• Introduction of concept of negotiating union
The occupational safety, health and working conditions code	<ul style="list-style-type: none">• Single registration for all establishments;• Working hours: 8 hours with a spread of 48 hours in a week;• Issuance of appointment letter to employees/workers is mandatory;• Prohibition to engage contract labour in core activities;• Mandatory free health check-ups for below categories:<ul style="list-style-type: none">– Who has attained age of 45 years for prescribed industries (factory, mine, plantation); or– Worker who are engaged in hazardous process/mines• List of benefits for inter-state migrant workers has been extended;• Flexibility in employment of women;• Constitution of safety committee and appointment of safety officer in prescribed industries;• Constitution of national occupational safety and health advisory board for monitoring the implementation of the code;

- **Enhancement of monetary penalties and introduction of compounding/composition**

Industrial relations code and code on occupational safety, health and working conditions code

Impact areas

Areas of impact	Key change triggering the impact	Challenges to be addressed
Core activity	<ul style="list-style-type: none"> • Introduction of concept of core activity 	<ul style="list-style-type: none"> • Contract labour is prohibited to engage in core activities subject to certain exemptions <ol style="list-style-type: none"> a) The normal functioning of the establishment is such that the activity is ordinarily done through contractor; or b) The activities are such that they do not require full time workers for the major portion of the working hours in a day or for longer periods, as the case may be; c) Any sudden increase of volume of work in the core activity which needs to be accomplished in a specified time
Mandatory issuance of appointment letter	<ul style="list-style-type: none"> • Employee covered under extant act are sale promotion employees 	<ul style="list-style-type: none"> • Appointment letter to be issued to every employee in specified format with mandatory details: <ul style="list-style-type: none"> – Aadhar number – Labour Identification Number (LIN) of the establishment – Universal Account Number (UAN)/Insurance Number (ESIC), applicability of social security EPFO and ESIC benefits • Appointment letter in specified format shall be issued to existing employees within 3 months of commencement of code
Leave encashment	<ul style="list-style-type: none"> • Reduction in time limit to be eligible for leave with wages • Leave can be demanded for encashment while in service 	<ul style="list-style-type: none"> • Worker who has worked for 180 days or more in a calendar year will be entitled for leave with wages • Worker shall be entitled on his demand for encashment of leave at the end of calendar year • Where the leaves exceeds 30 days, worker shall be entitled to encash the exceeded leaves
Re-skilling fund	<ul style="list-style-type: none"> • Introduction of new concept of re-skilling fund 	<ul style="list-style-type: none"> • Overall increase in worker's retrenchment compensation • In addition to existing retrenchment compensation, 15 days wages to be contributed to re-skilling fund maintained with government: within 10 days of retrenchment
Negotiating union	<ul style="list-style-type: none"> • Introduction of concept of negotiating union 	<ul style="list-style-type: none"> • It is mandatory on the employer to recognize negotiating union where the trade union is registered • Going forward, negotiating union will negotiate on the terms of employment including consultation on standing orders

Wage definition – impact

Code on wages/code on social security

Definition of wages

Meaning and inclusions	Specified exclusions	Conditional inclusions	Value of remuneration in kind
<ul style="list-style-type: none">• Means all remuneration whether by way of salaries, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, in terms of employment, express or implied, where fulfilled, be payable to a person employed in respect of his employment, and includes –<ul style="list-style-type: none">– Basic pay;– Dearness allowance; and– Retaining allowance, if any	<ul style="list-style-type: none">• Statutory bonus payable but not forming part of remuneration;• Value of house accommodation and utilities (such as light, water, medical attendance, etc.);• Employer contribution to provident fund/pension together with accretions;• Conveyance allowance or value of travelling concession;• Sum paid to defray special expenses due to nature of work;• House rent allowance;• Remuneration payable under any award settlement;• Any overtime allowance;• Any commission payable;• Any gratuity payable on termination;• Any retrenchment comp/benefit payable or ex gratia payment made	<ul style="list-style-type: none">• Where the aggregate of specified exclusions as highlighted:<ul style="list-style-type: none">– Exceeds one-half or such other notified percentage of all remuneration calculated under this clause,– Amount which exceeds such one-half or other percent, so notified– Shall be deemed as remuneration– And shall accordingly be added under this clause• Conveyance/value of travel concession, house rent allowance, remuneration payable under award or settlement and overtime allowance shall be taken for computation of wage – for the purpose of equal wages to all genders	<ul style="list-style-type: none">• Where an employee is given remuneration in kind<ul style="list-style-type: none">– In lieu of either the whole or part of the wages payable to him– Value of such remuneration as does not exceed 15% of total wages payable to him• Shall be deemed to form part of wages of such employee

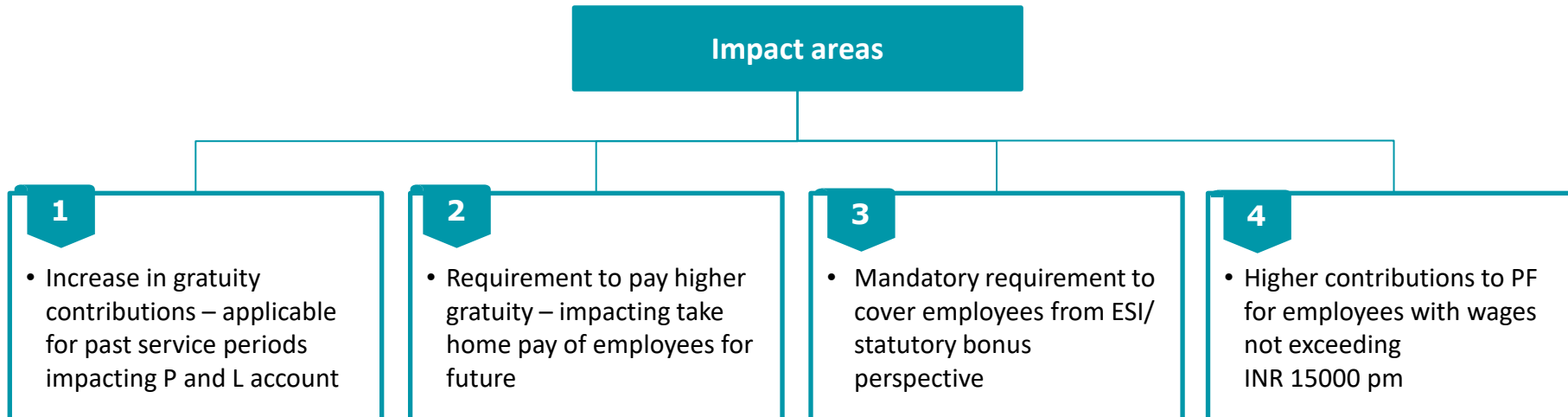
Key impact areas

Change in the definition of wages

- **Wages** – was defined in a varied manner under the existing regulations
- Attempt to simplify and have a standard definition across all subsumed regulations

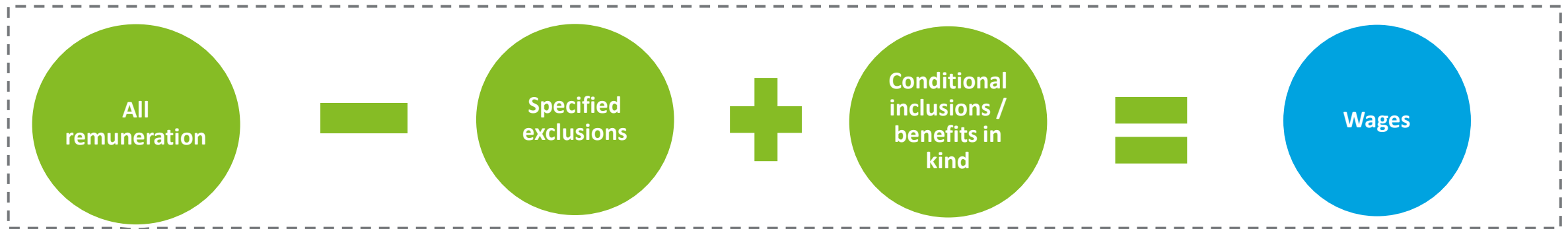


- Need for companies to map the definition with specific reference to the salary structure of the company and analyze the impact e.g.,
 - Quantum of contributions to retiral benefits impacting cost to the company/take home pay of employees
 - Coverage of employees under the Payment of Bonus Act, employees state insurance etc.



Code on wages/code on social security

Definition of wages



All remuneration (INR)	
Basic	8,000
HRA	4,000
DA	1,000
Medical	3,000
Commission	4,000
Conveyance	5,000
Total	25,000

Specified exclusions (INR)	
HRA	4,000
Commission	4,000
Conveyance	5,000
Total	13,000

Conditional inclusions (INR)	
Specified exclusions –	500
50% of total remuneration	
	(13,000 – 50%*25,000)

Wages (INR)	
Total remuneration -	12,500
exclusions + inclusions	
	(25,000 – 13,000 + 500)

- Specified exclusions - capped at 50% of total remuneration
- Remuneration in kind as does not exceed 15% of total wages be deemed to form part of wages

The code on social security, 2020

Impact of the new wage definition – illustration

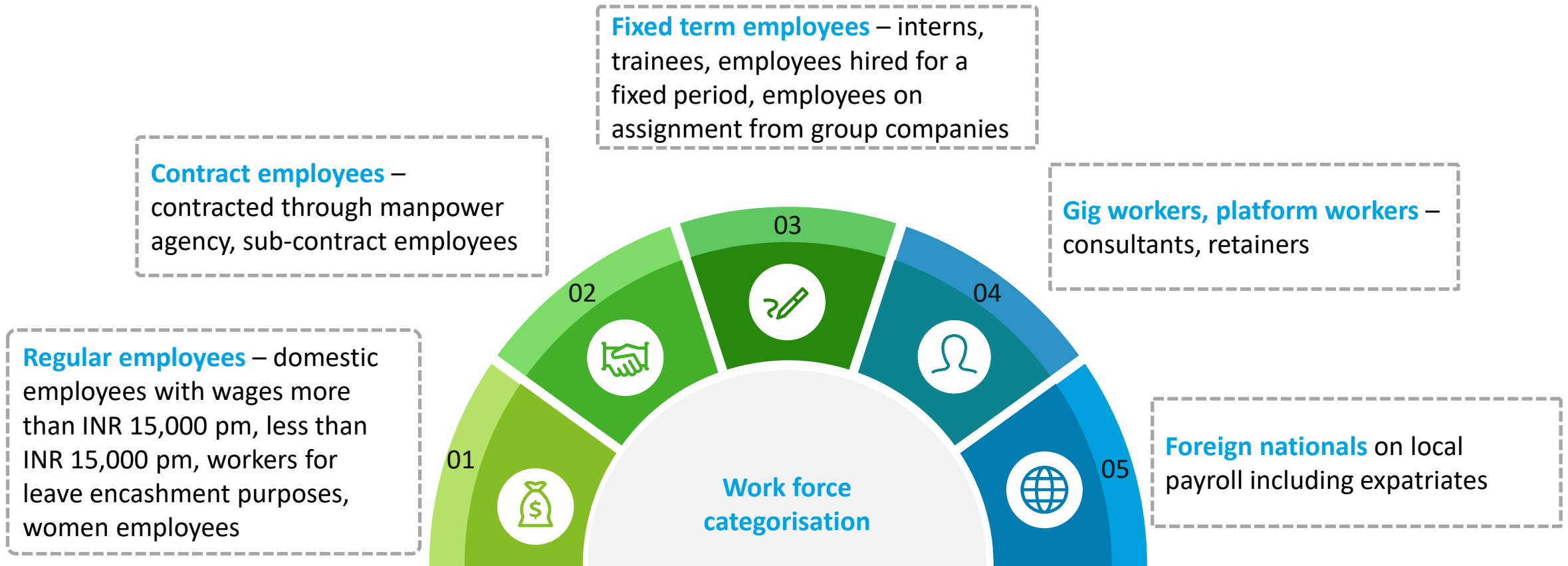
Pay components	Reference	Existing laws (INR)	Social security code (INR)
CTC including variable pay/ bonus	Total remuneration	15,00,000	15,00,000
Cost to company excluding variable pay	CTC	12,00,000	12,00,000
Basic pay (40% of CTC)	A	4,80,000	4,80,000
House rent allowance (40% of basic pay)	B	1,92,000	1,92,000
Leave travel allowance	C	1,00,000	1,00,000
Fuel reimbursement	D	1,20,000	1,20,000
PF contributions	E	57,600	1,04,375
NPS contributions	F	48,000	48,000
Telephone reimbursement	G	24,000	24,000
Sodexo meal e-vouchers	H	26,400	26,400
Gratuity	I	23,088	41,837
Special allowance	J	1,28,912	63,389
Variable pay/ bonus	K	3,00,000	3,00,000
Total wages to be considered for gratuity	Existing laws – A	4,80,000	8,69,789
	Social security code – (A+H+J+K)		
Total of exclusions (B+C+D+E+F+G+I)			6,30,211
Understanding the impact for an employee with 7 years of service			
Monthly wages for gratuity purpose		40,000	72,482
Total gratuity amount		1,61,538	2,92,717

*Gratuity is payable on last drawn wages, for simplicity's sake, it is assumed that last drawn salary and average salary for 12 months is same

Work force categorization

Workforce categorization

We believe that the workforce can be bucketed in the following categories based on the provisions of the labour codes



- Review of processes/documentation relating to the workforce engagement required to ensure right categorisation and related compliances

Polling question 2

What do you believe could be the impact of the change in the definition of wages?

- Significant financial impact
- Minimal financial impact
- No impact
- Not assessed
- Don't know/not applicable

Offences and penalties

Offences and penalties

General non-compliance

- For non-compliance such as non-maintenance/improper maintenance of records, failure to submit draft standing orders within prescribed time, non-compliance/contravention of any other provision or rules – fine from Rs. 10,000 to Rs. 10,00,000

Second offence

- For second or subsequent default- Fine up to Rs. 20,00,000 **or** imprisonment up to 6 months or both

Non compoundable

- Failure to pay/deposit contribution deducted from employees' wages – fine of INR 100,000 in addition to imprisonment for a term ranging between 1 to 3 years

Officer in default

- Factory-occupier, mines-owner/agent/manager
- Establishment – the person who has ultimate control over the affairs of the establishment
- Employer in other cases

Way forward

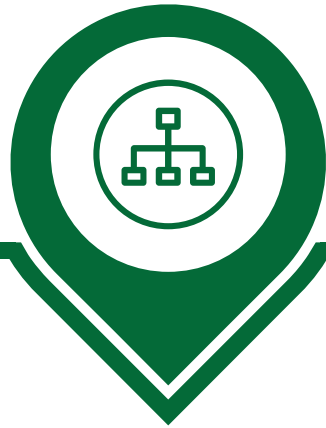
Focus areas

The areas that are critical for establishments transition smoothly from the existing laws to the New legislation with optimal efficiency



Understand “wage” and quantify financial impact

- Understand the impact of the definition of “wages”
- Analyzing the salary structure, identify inclusions and exclusions to determine wages
- Quantify the financial impact on account of the changed definition of wages
- Identify the impact on coverage of employees



Aligning compensation structure

- Basis the impact of the definition of “wage”, the organisation align the compensation structure to optimise the impact
- Determine the impact of revising the salary structure and conclude on the financial impact, the take home pay of the employees, the retirals and possible tax implications



Aligning HR policies

- Align the impacted policies– e.g. Maternity benefit, Gratuity, PF etc.
- Align working hours, leave policy, overtime policy, rest days and related HR policies, timelines for wage settlement
- Align appointment letters
- Align retrenchment policy, medical examination facility etc.



Work force categorization

- Defining the employee across different cadres –
 - on-roll regular employees; contracted / third party employees;
 - fixed term employees; gig workers.
 - Consultants/ retainers; other non-traditional employer-employee arrangements
- Engaging of contract work in core-non-core activities and identifying compliances relating to the same

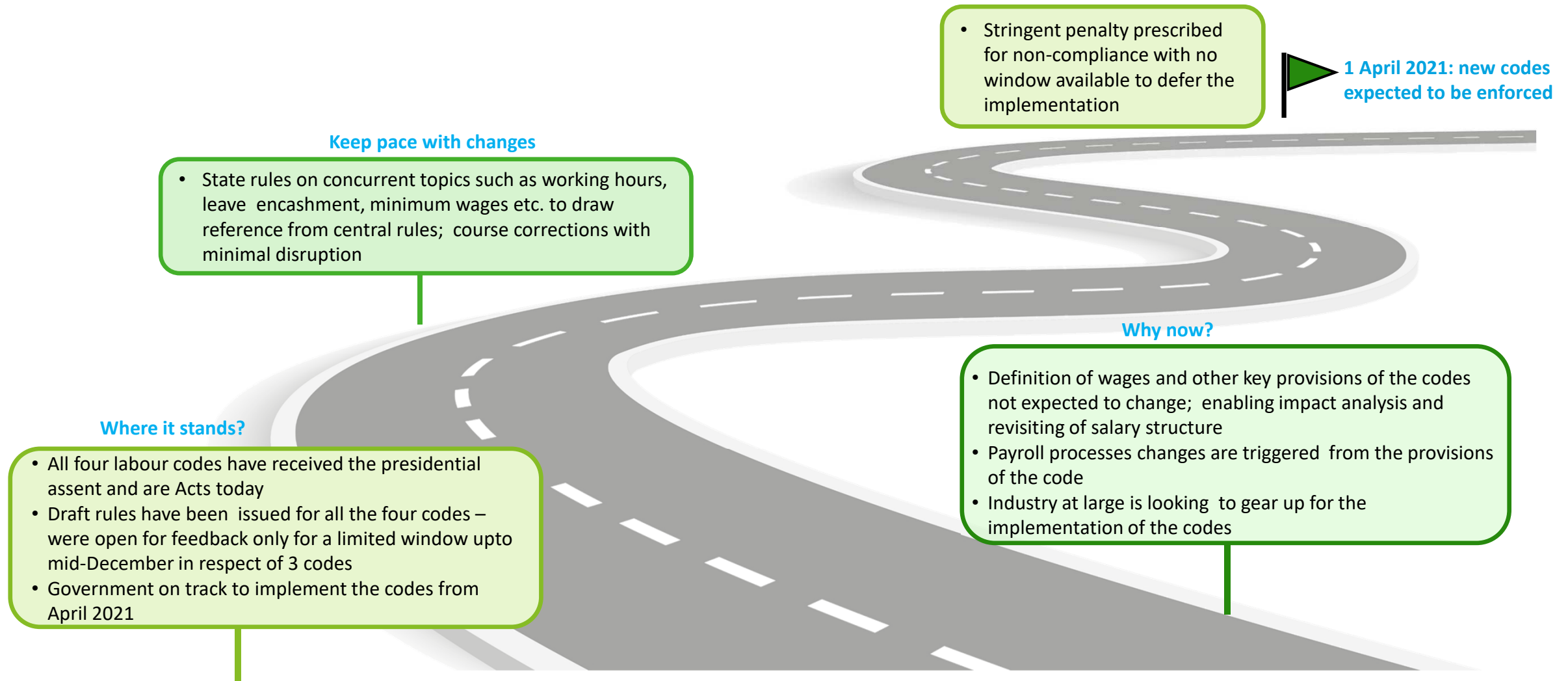


Being compliant

- Identify and understand the change in compliance requirements, timelines,
- Map the current compliance processes
- Identify areas of changes and realign the internal processes to meet the compliance requirements under the codes

Why commence the journey now?

Understanding of the implications, better preparedness, smoother transition



Polling question 3

What do you believe is the key area of focus for your company, basis the discussions we have just concluded?

- Review of salary structure and impact analysis
- Review of compliances and timelines
- Review of policies and processes
- All the above
- Don't know/not applicable

Question and answers

Thanks for joining today's webcast.

You may watch the archive on PC or mobile devices via Apple Podcasts, RSS, YouTube.

Eligible viewers may now download CPE certificates. Click the CPE icon at the bottom of your screen.



Join us 25 February at 2:00 PM SGT (GMT+8) as our
Transfer Pricing series presents:

Parental Corporate Guarantee: Changing landscape

For more information, visit www.deloitte.com/ap/dbriefs

Contact information



Saraswathi Kasturirangan
Tax Partner
Deloitte India
skasturirangan@deloitte.com



Atul Mittal
Senior Director
Deloitte India
atulmittal@deloitte.com



Radhika Viswanathan
Tax Director
Deloitte India
rviswanathan@deloitte.com



Anjali Malhotra
Senior Manager
Deloitte India
manjali@deloitte.com



About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

© 2021. For information, contact Deloitte Touche Tohmatsu Limited.