

Code on Social Security, 2020

Understanding the compliances

Subject matter experts

We will discuss...

- Overview of the Code
- Analysis of various definitions and understanding their impact from compliance perspective
- Salient features of various chapters of the Codes
- Areas of focus and possible challenges
- Case studies
- Next steps

Overview of the Code

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Overview

Particulars	Code on Social Security
Objective	<ul style="list-style-type: none">• Amalgamate, simplify and rationalize provisions• Facilitate ease of compliance and transparency.• Provide Uniformity of definitions
Current status	<ul style="list-style-type: none">• Received Presidential assent in September 2020, date of enforcement awaited• Draft schemes/ rules to be notified.
Applicability	Applies to all establishments, employees and employers as defined and to the extent specifically called out in the Code
Acts subsumed	<ul style="list-style-type: none">(i) The Employee's Compensation Act, 1923;(ii) The Employees' State Insurance Act, 1948;(iii) The Employees' Provident Funds and Miscellaneous Provisions Act, 1952;(iv) The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959;(v) The Maternity Benefit Act, 1961;(vi) The Payment of Gratuity Act, 1972;(vii) The Cine-Workers Welfare Fund Act, 1981;(viii) The Building and Other Construction Workers' Welfare Cess Act, 1996;(ix) The Unorganised Workers' Social Security Act, 2008
Salient features	<ul style="list-style-type: none">• Impact of Wage definition• Organized sector coverage to be continued;• Gig/ platform workers, fixed term employees, those in the unorganized sectors to be covered;• Monetary thresholds to be brought in through schemes/ notifications;• Period of limitation introduced – Offences and Penalties specified• International Workers – provisions expected through the Schemes

Key definitions and their impact on compliances

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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 – 50% of Total Remuneration	500
(13,000 – 50%*25,000)	

Wages (INR)	
Total Remuneration - Exclusions + Inclusions	12,500
(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

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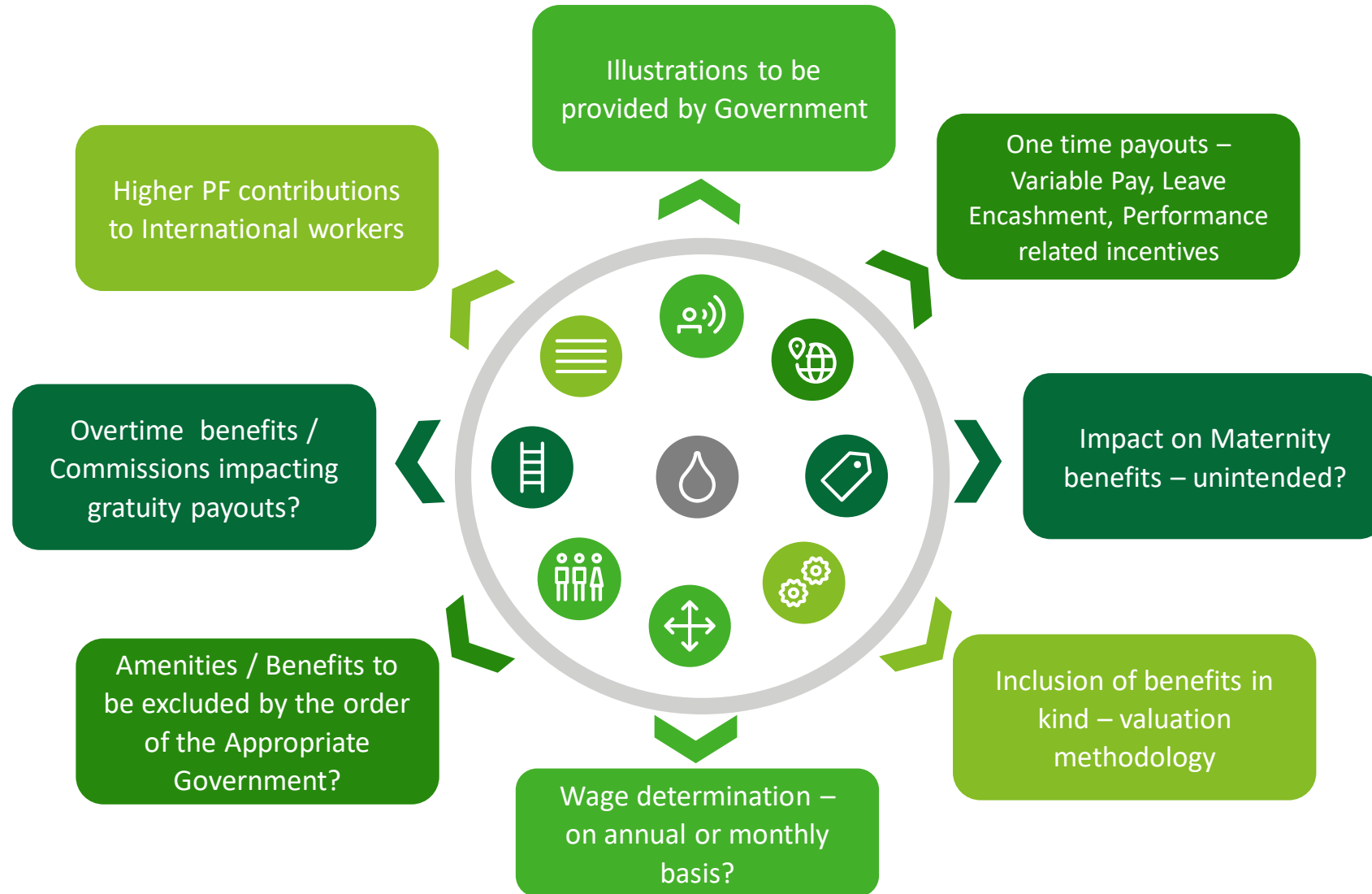
Impact of the new wage definition – Illustration

Pay Components	Reference	Existing Laws (INR)	Social Security Code(INR)
Cost To Company including Variable Pay/ bonus	Total Remuneration	15,00,000	15,00,000
Cost To Company	CTC	12,00,000	12,00,000
Basic Pay (40% of CTC)	A	4,80,000	4,80,000
House Rent Allowance	B	2,40,000	2,40,000
Leave Travel Concessions	C	1,00,000	1,00,000
Fuel reimbursement	D	1,20,000	1,20,000
PF Contributions	E	57,600	96,855
NPS Contributions	F	48,000	48,000
Telephone Reimbursement	G	24,000	24,000
Sodexo meal e-vouchers	H	25,200	25,200
Gratuity	I	23,088	38,823
Special Allowance	J	82,112	27,123
Variable Pay/ Bonus	K	3,00,000	3,00,000
Total wages to be considered for Gratuity	Existing Laws – A Social Security Code – (A+J+K)	4,80,000	8,07,123
Understanding the impact for an employee with 7 years of service			
Monthly Wages		4,80,000/12	50% of total remuneration i.e. 8,07,123/12
Monthly wages for gratuity purpose		40,000	67,260
Total Gratuity Amount		15/26*40,000*7 = 1,61,538	15/26*67,260*7 = 2,71,628
Total wages to be considered for Maternity Benefit	Existing Laws – (A+B+C+D+G+H+I+J+K) Social Security Code – (A+J+K)	13,94,400 or 1,16,200 p.m.	8,07,123 or 67,260 p.m.

*It is assumed that last drawn salary and average salary for 12 months is same.

Definition of Wages

Clarity required



Have you carried out an impact analysis of the changed definition of wages?

(Select one of the options flashing on the right panel to respond)

- Yes
- No
- In process
- Do not believe it is required

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Key definitions

Employer

- person who employs one or more employees in his establishment
- Includes a **Contractor** and legal representative of the deceased employer.

Employee*

- Person employed on wages
- To do skilled, semi-skilled, unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work
- for hire or reward, whether the terms of employment be express or implied

*For the purposes for Chapter III except in case of the Employees' Provident Fund Scheme and Chapter IV, the term "employee" shall mean only such employee drawing wages less than or equal to the wage ceiling notified by the Central Government.
Provided further that for the purposes of Chapter VII, the term "employee" shall mean only such persons as specified in the Second Schedule and such other persons notified by the CG/ SG;
Chapters III , IV and VII refer to Employees' Provident Fund, Employees' State Insurance and Employee's Compensation respectively

Establishment

- Means any place where any industry, trade, business, manufacture or occupation is carried on
- includes Government establishment

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Key definitions

Unorganised workers*

Home-based worker

- person engaged in production of goods/ services
- for an employer in his home/ other premises other than the workplace of the employer,
- for remuneration
- whether or not the employer provides the equipment, materials etc.

Self-employed worker

- Person not employed by an employer,
- but engages himself in any occupation in the unorganised sector
- subject to a monthly earning of a notified amount by the CG or the SG,
- holds cultivable land subject to such ceiling as may be notified by the State Government

Wage worker

- Person employed for remuneration
- in the unorganized sector,
- Directly/ indirectly by an employer
- whether exclusively for one employer or for one or more employers,
- whether as a home-based worker, or as a temporary or casual worker, or as a migrant worker, or workers employed by households,
- with a monthly wage of a notified amount

*includes a worker in the organised sector who is not covered by the Industrial Disputes Act, 1947 or Chapters III to VII of this Code

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Key definitions

Gig worker

- A person who performs work
- Or participates in a work arrangement
- and earns from such activities
- outside of traditional employer-employee relationship

Platform worker

- A person engaged in or undertaking platform work*
- (*work arrangement outside of a traditional employer-employee relationship
- in which organisations/ individuals use an online platform to solve specific problems
- in exchange for payment

Fixed term employment

- Engagement of an employee
- for a fixed period;
- hours of work, wages, allowances and other benefits shall not be less than that of a permanent employee
- And shall be eligible for all benefits proportionately

Provisions under various chapters

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Employees' Provident Fund

Overview

- Covered under Chapter III of the Code - Sections 14 to 23;
- Applicability remains to establishments employing 20 or more employees, reference to schedule removed
- PF contribution rates to continue at 10% or 12%; EDLI contribution capped @1% of wages (max.)
- Principal employers entitled to recover contributions from contractor

Salient features

- Pension and EDLI Schemes not to be applicable to employees drawing salary beyond threshold;
- Limitation period of five years for initiation of inquiries and two years for concluding inquiries under the EPF scheme
- Private exempted PF Trusts to continue;
- 3 year initial exemption for new PF Trust

Implications

- Wider definition of wages – enhanced PF Contributions for employees drawing wages below threshold
- Higher PF contributions for IWs stemming from variable pay, higher equity compensation etc.
- Foreign nationals (IWs) on India payroll – impact on take home pay
- 3 years exemption clause – uncertainty for employers looking to apply for EPF Trust exemption/ defending the interim PF relaxation order
- Whether existing EPF Trusts to also obtain fresh exemption/ approval from the Government?

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Employees' State Insurance

Overview

- Covered under Chapter IV of the Code – Sections 24 to 52
- Provides for sickness, pregnancy related, disablement, dependents, medical treatment as also for funeral expense
- Applies to establishment with 10 or more employees
- Exemption of factories/ establishments belonging to Government/ local authority
- Contributions due on the last day of the wage period – rates to be notified;

Salient features

- Mandates all employees of covered establishments to be insured – onus on employer
- Recovery of expenses met by the Corporation from defaulting employer;
- Primary responsibility for payment of contributions on employer
- Schemes for gig, platform and unorganized workers to be framed;

Implications

- Definition of wages – impact on employee coverage for ESI
- Companies having own insurance scheme and currently exempted under ESI Act – whether exemption to be renewed once the code is made effective?
- Schemes for gig, platform and unorganized workers – higher cost on account of hiring such workforce

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Gratuity

Overview

- Dealt in Chapter V of the Code - sections 53 to 58;
- Wider definition of wages applicable;
- Continuous service of five years pre-requisite for entitlement – exemptions specified;
- Provisions under Payment of Gratuity Act (PoGA) carried into the Code

Salient features

- Individuals on fixed term employment included;
- Pro-rata gratuity payments;
- Continuity of exemptions to establishments;
- Compulsory insurance from IRDA regulated insurance company;

Implications

- Wider definition of wages - enhanced gratuity entitlements for regular employees
- Impact on accrued liability – need for revision?
- Treatment in books, disclosure requirement
- Higher cost on account of inclusion of benefits to FTEs

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Maternity Benefit

Overview

- Encapsulated in sections 59 to 72 contained in Chapter VI of the Code
- Common wage definition applies to these provisions;
- Benefits provided by the Maternity Benefit Act continued here

Salient features

- Maternity leave of 26 weeks;
- Insurance and maternity benefits mutually exclusive;
- Bar on employing women for six weeks post delivery, restriction on nature of work;
- Benefit to be calculated on average daily wages;
- Nursing breaks and crèche facility
- Provision of common crèche facility

Implications

- New definition of wages – does it increase or reduce benefit?
- No deduction from wages under certain circumstances;
- Communication to employees;
- Additional cost for provision of crèche – recourse to common crèche facility;
- Maintenance and display of records / provisions

Unorganised sector

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Benefits for Unorganised / Gig / Platform Workers

The Code on Social Security aims at extending the benefits to non-traditional workers too. The following types of welfare schemes are to be framed and notified:

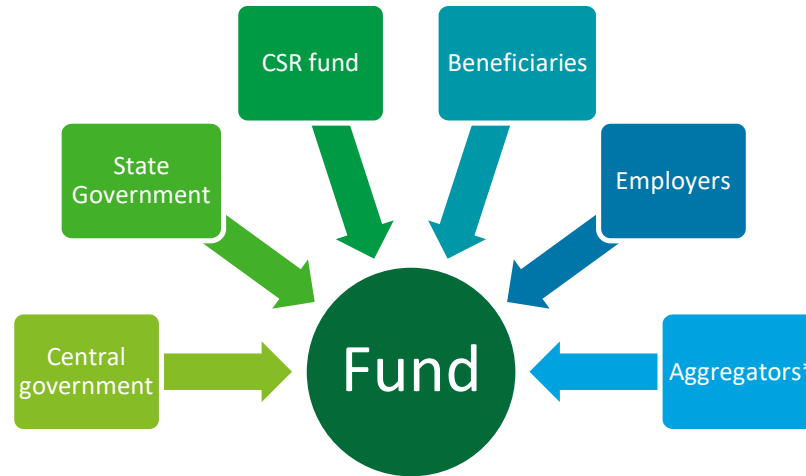
Unorganised workers

By the Central government

- life and disability cover
- health and maternity benefits
- old age protection
- Education
- any other benefit determined by the Central Government

By the state government

- provident fund
- employment injury benefit
- housing
- educational schemes for children
- skill upgradation of workers
- funeral assistance
- old age homes



* Contribution by aggregators to range from 1% to 2% of annual turnover. Contribution shall not exceed 5% of amount payable to gig workers

Gig workers and platform workers

By the Central government

- life and disability cover
- accident insurance
- health and maternity benefits
- old age protection
- crèche
- any other benefit determined by the Central Government

Requirements

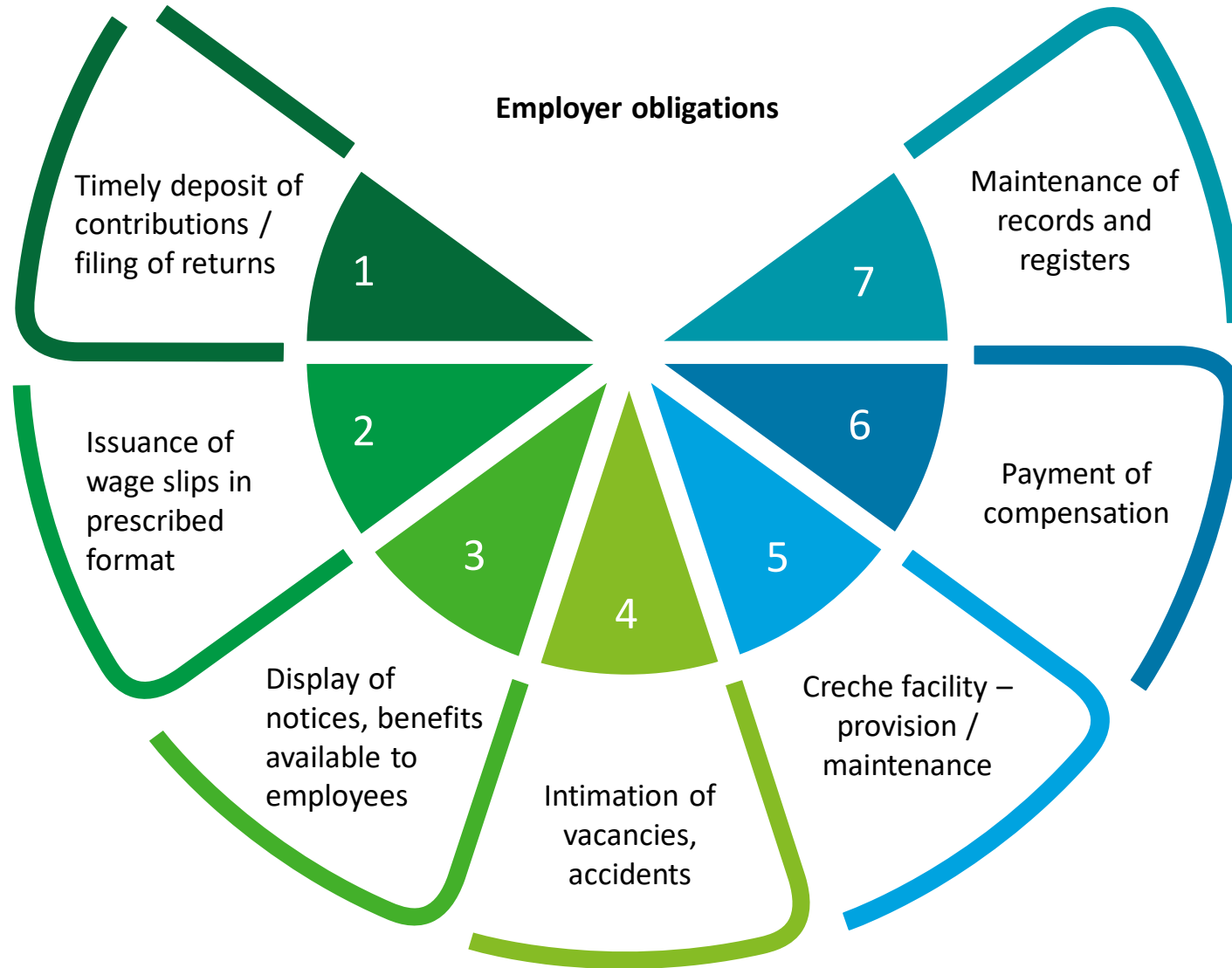
- Every unorganised worker / gig worker / platform worker is required to register himself/ herself (to have completed 16 years of age)
- Form for registration and documents (including Aadhaar number) to be prescribed
- Registered workers eligible to claim benefits under the applicable scheme

Aggregators - Ride sharing services, Food and grocery delivery services, Logistic services, e-Market place (both market place and inventory model) for wholesale/ retail sale of goods and/or services (B2B/B2C), Professional services provider, Healthcare, Travel and hospitality, Content and media services and any other goods and services provider platform

Employer obligations and penalties

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Employer obligations and compliance requirements



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Offences and Penalties

Failure to pay/ deposit employees contributions deducted from employees' wages



- Fine INR 100,000 and imprisonment between one to three years
- For second and subsequent offence: Imprisonment up to 2 years and fine of 2 lakhs

- Non/ improper maintenance of records
- Failure to pay any contribution liable to be paid under the Code



- First instance – Fine INR 50,000 and imprisonment up to six months
- Second and subsequent instances: Fine of INR 300,000 and imprisonment between two to five years

Contravention of any other provision
Deducts employer's contribution, fails to pay gratuity, maternity benefit, cess, fails to produce records



First instance: Fine up to INR 50,000 and imprisonment of up to One year
Second and subsequent instances: Fine of INR 300,000 and imprisonment between two to five years

Non-compliance of the provisions of the Code after the timelines under the directions from Inspector cum Facilitator



- Fine up to INR 50,000 and/or imprisonment of 1 year;
- No opportunity provided to the employer if violation of the similar nature is repeated within a period of 5 years from the first instance

Fails to submit returns, obstructs executive officer, fails to pay compensation, send a statement of fatal accident/ Dishonestly makes a false return



- Fine up to INR 50,000
- Imprisonment up to six months

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

(Select one of the options flashing on the right panel to respond)

- Review of salary structure and impact analysis
- Review of compliances and timelines
- Review of policies and processes
- All of the above

Challenges and Next steps

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Challenges

Few of the challenges foreseen under the Social Security Code are as under:



Definition of wages – what positions can companies adopt to determine consistency in retiral benefits?



Decisions to be taken around impact on CTC Vs Take home Vs retirals of employees



Updating systems and processes – to reflect the new processes and updated policy documents etc.

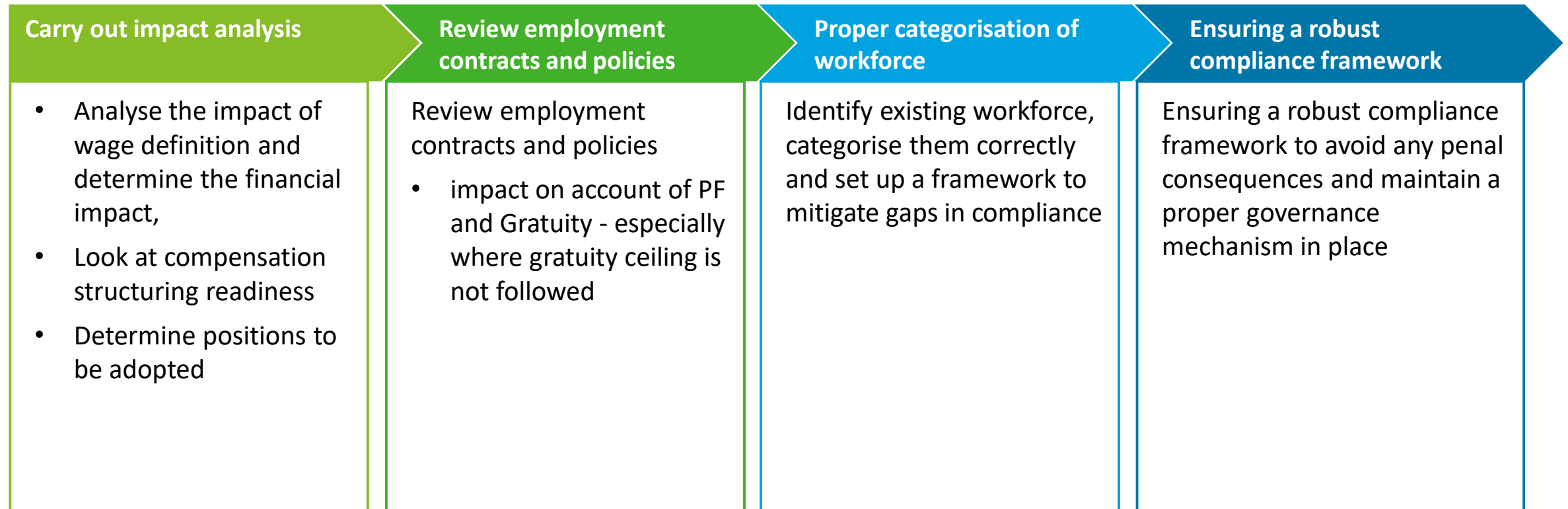


Proper contractor compliance and payment of necessary dues to the contractor

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Action items/ Next steps

How to be prepared to implement the Code?



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