

Gearing up for the
labour codes

15 September 2020



Subject matter experts

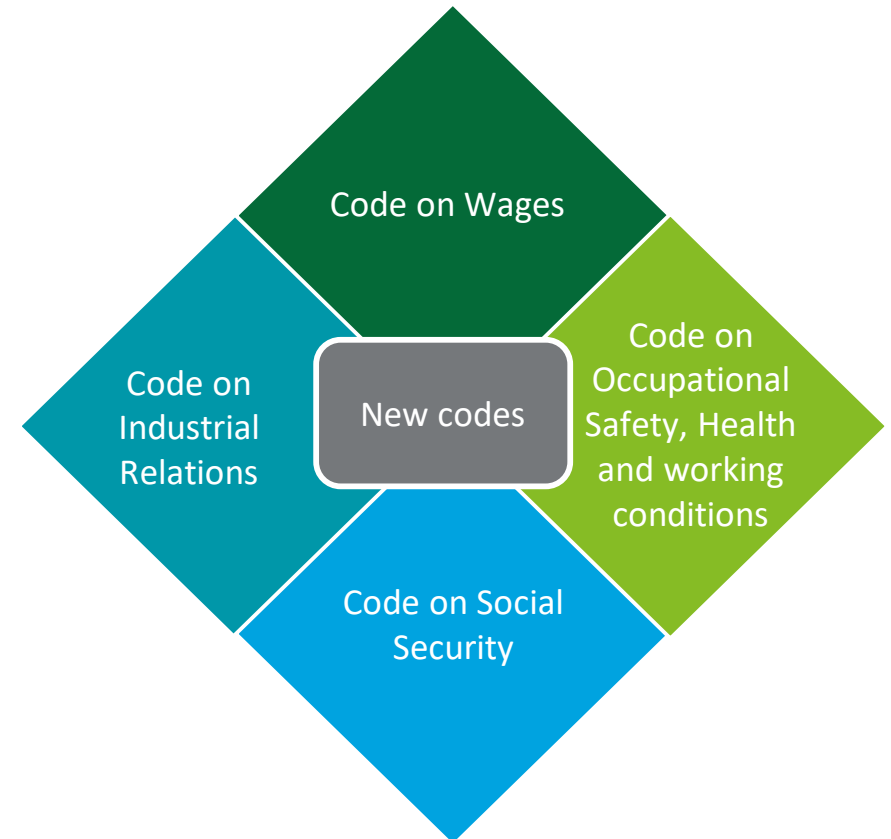
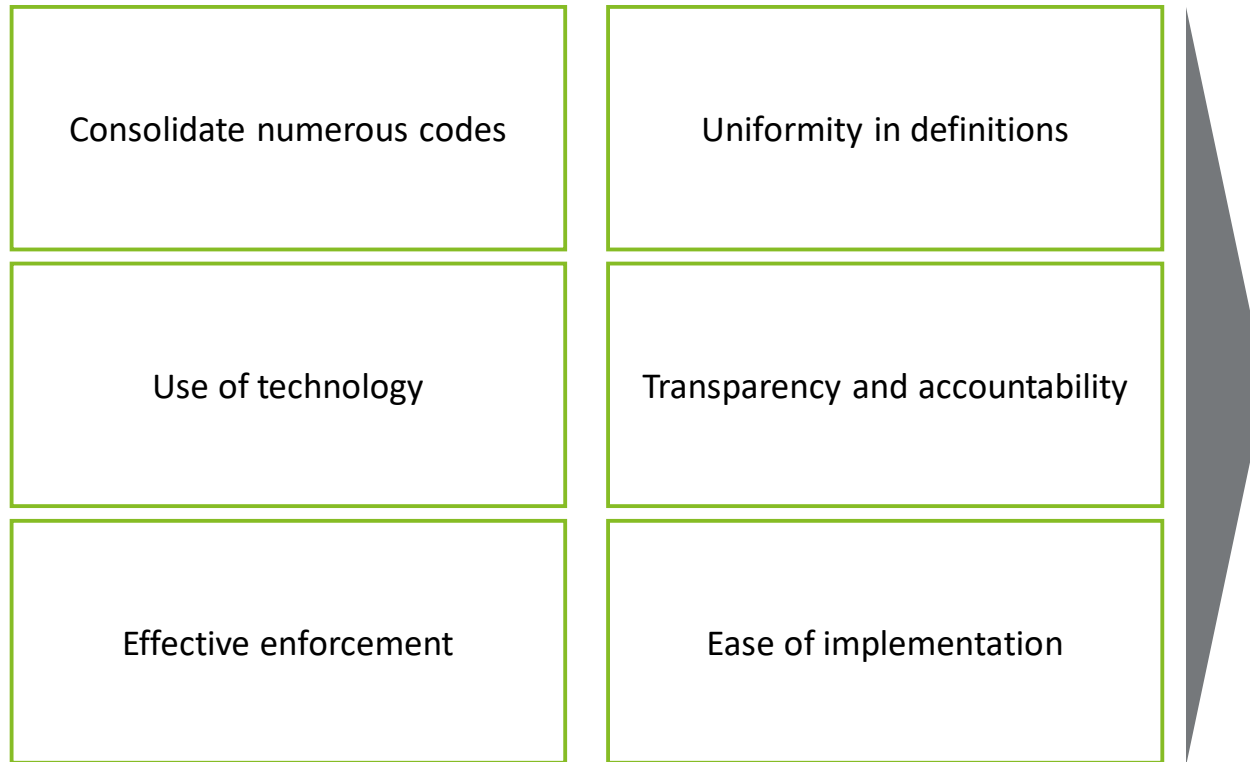
We will discuss..

- Introduction
- Overview of the Code on Wages and the Code on Social Security
- Analysis of various definitions and understanding their impact
- Areas of focus and possible challenges
- Practical case studies
- Next steps



Amalgamation of labour codes

Proposed new codes



Code on Wages and Code on Social Security

Evolution

2002

Second National Commission on Labour proposed for the amalgamation of various labour laws

2015

- Draft of the Code on Wages discussed in first tripartite meeting between the Central and State Govt., employers and representatives of trade unions
- Thereafter, placed for public consultation

2017

- Draft of the Labour Code on Social Security placed in the Ministry's website for consultations in March 2017
- First draft of the bill on the Code of Wages introduced in Lok Sabha and referred to the Parliamentary Standing Committee which submitted its report on **18 December 2018**
- Bill got lapsed owing to the dissolution of 16th Lok Sabha

2018

- **Revised draft of the** Labour Code on Social Security, 2018 prepared after considering comments of various stakeholders and placed in Ministry's website for information
- Consultation process with Employers' and Workers' organisations initiated

2019

- New bill on the Code on Wages, 2019 re-introduced in the Parliament (Lok Sabha) in July 2019 and after passage by both the houses received Presidential assent on **8 August 2019**
- **Updated version** of the Code on Social Security published for stakeholders comments in September 2019 and was introduced in the Lok Sabha in December 2019
- Referred to Parliamentary Standing Committee on Labour for examination which submitted its report in July 2020

Look forward

- The effective date of entry into force of The Code on Wages, 2019 – to be notified
- The Code on Wages (Central) Rules to be notified
- The bill on Code on Social Security likely to be taken up during the ongoing monsoon session of the Parliament



Overview of the codes

Code on Wages and Code on Social Security

Overview

Particulars	Code on Wages	Code on Social Security
Acts subsumed	4 legislations viz. <ul style="list-style-type: none">• Payment of Wages Act, 1936;• The Minimum Wages Act, 1948;• The Payment of Bonus Act, 1965 and• The Equal Remuneration Act, 1976	Subsumes 9 Acts including EPF Act, ESI Act, Gratuity Act, Maternity Benefit Act, Employees Compensation Act and the regulations governing building, construction and unorganized sector workers.
Applicability	<ul style="list-style-type: none">• Applies to all establishments, employees & employers as defined unless specifically exempt in the code• No concept of scheduled employment	<ul style="list-style-type: none">• Applies to all establishments, employees and employers;• Specific call outs provided for various provisions
Salient features	<ul style="list-style-type: none">• Covers all employees including managerial cadre;• Wage definition standardized;• Monthly recovery capped at 50%;• Penalties and prosecution enhanced;• Settlement time of dues shortened (2 days);• Time for preferring claims extended;• Role of inspector widened to include facilitation function	<ul style="list-style-type: none">• Organized sector coverage to be continued;• Gig / platform workers, fixed term employees, those in the unorganized sectors proposed to be covered;• 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



Definitions and their impact

Code on Wages / Code on Social Security

Definition of wages

Meaning and inclusions	Specified exclusions	Conditional inclusions	Value of remuneration in kind
<p>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 –</p> <ul style="list-style-type: none">• Basic pay;• Dearness allowance; and• Retaining allowance, if any.	<ul style="list-style-type: none">• <i>Statutory bonus payable but not forming part of remuneration;</i>• <i>Value of house accommodation and utilities (such as light, water, medical attendance, etc.);</i>• <i>Employer contribution to provident fund / pension together with accretions;</i>• <i>Conveyance allowance or value of travelling concession;</i>• <i>Sum paid to defray special expenses due to nature of work;</i>• <i>House rent allowance;</i>• <i>Remuneration payable under any award settlement;</i>• <i>Any overtime allowance;</i>• <i>Any commission payable;</i>• Any gratuity payable on termination;• Any retrenchment comp/ benefit payable or ex gratia payment made	<p>Where the aggregate of specified exclusions as highlighted:</p> <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• & shall accordingly be added under this clause <p>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</p>	<p>Where an employee is given remuneration in kind</p> <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 <p>Shall be deemed to form part of wages of such employee.</p>

Code on Social Security

Key definitions and implications

Employer

Means a person who employs directly or through any person or on behalf of any person one or more employees in his establishment
Includes a **Contractor** and legal representative of the deceased employer.

Employee *exclusion specified

Any person (other than an apprentice) employed on wages by the establishment to do any 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 and also includes a person declared to be an employee by the appropriate government

*Provided that for the purposes for Chapter III 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, respectively, for said Chapters and such other persons or class of persons as the Central Government may, by notification specify to be employee for the purposes of either of such Chapters, or both. 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 or class of persons as the Central Government, or as the case may be, the State Government may add to the said Schedule, by notification, for the purposes of that Government;

Chapters III , IV and VII refer to Employees' Provident Fund, Employees' State Insurance and Employee's Compensation respectively

Contractor

In relation to an establishment means a person, who—
(i) undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment through contract labour; or
(ii) supplies contract labour for any work of the establishment as mere human resource and includes a sub-contractor;

Code on Social Security

Key definitions and implications

Gig worker

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

Fixed term employment

Means the engagement of an employee on the basis of a written contract of employment for a fixed period
Can the conditions in proviso be brought into the contract leading into exclusion of such employees?

Platform work

Means a form of employment in which organizations or individuals use an online platform to access other organizations or individuals to solve specific problems or to provide specific services in exchange for payment.

Unorganized worker

Means a home based worker, self-employed worker or a wage worker in the unorganized sector and includes a worker in the organized sector who is not covered by the Industrial Disputes Act, 1947 or Chapters relating to Provident fund, State Insurance, Gratuity, Maternity Benefit and Compensation under this Code.

- Reference to employee count in definition of unorganized sector as against Chapter references for unorganized worker

Definition of wages / employer / employee

Points for consideration



Code on Wages and Code on Social Security

Employer obligations under the codes

Particulars	Code on Wages	Code on Social Security
Responsibilities	<ul style="list-style-type: none"> Ensuring payment of minimum and overtime wages Payment of wages within the timelines prescribed – for monthly wage period – before seventh of the succeeding month, for wages paid on a fortnightly basis – by second day after end of the fortnight; for dismissed/ resigned employees wages to be settled within 2 working days: Adhering to the limits specified for deductions from wages Complying with the limits relating to working hours and provide days of rest as specified 	<ul style="list-style-type: none"> Timely deposit of PF, ESIC contributions for employees and social security cess with respect to building and other construction workers Timely payment of gratuity & maternity benefit and compensation in case of any accident Social security for unorganized workers including audio visual workers, beedi workers, gig workers, etc. Reporting of fatal accidents and serious bodily injuries Reporting of employee vacancy(ies) to career centres
Records/ Registers	Maintenance of employee registers in prescribed form electronically/ otherwise	Maintenance of records and registers in prescribed form electronically/ otherwise
Wage Slips	Issuance of wage slip in prescribed form and manner to each employee	Issuance of wage slips in electronic forms/ otherwise
Notice display	Display of notice on the notice board at prominent place of the establishment	Display notices at work places in prescribed manner/ format
Filing of returns	-----	File returns electronically/ otherwise to the prescribed authority in manner/ period as may be prescribed
Payment of dues on death	In death cases, dues to be paid to the person nominated or to be deposited with the specified authority (being deputy chief labour commissioner (central)) within 3 months/ 6 months	Payment of dues to the eldest surviving member/ nominee/ legal representative of the employee

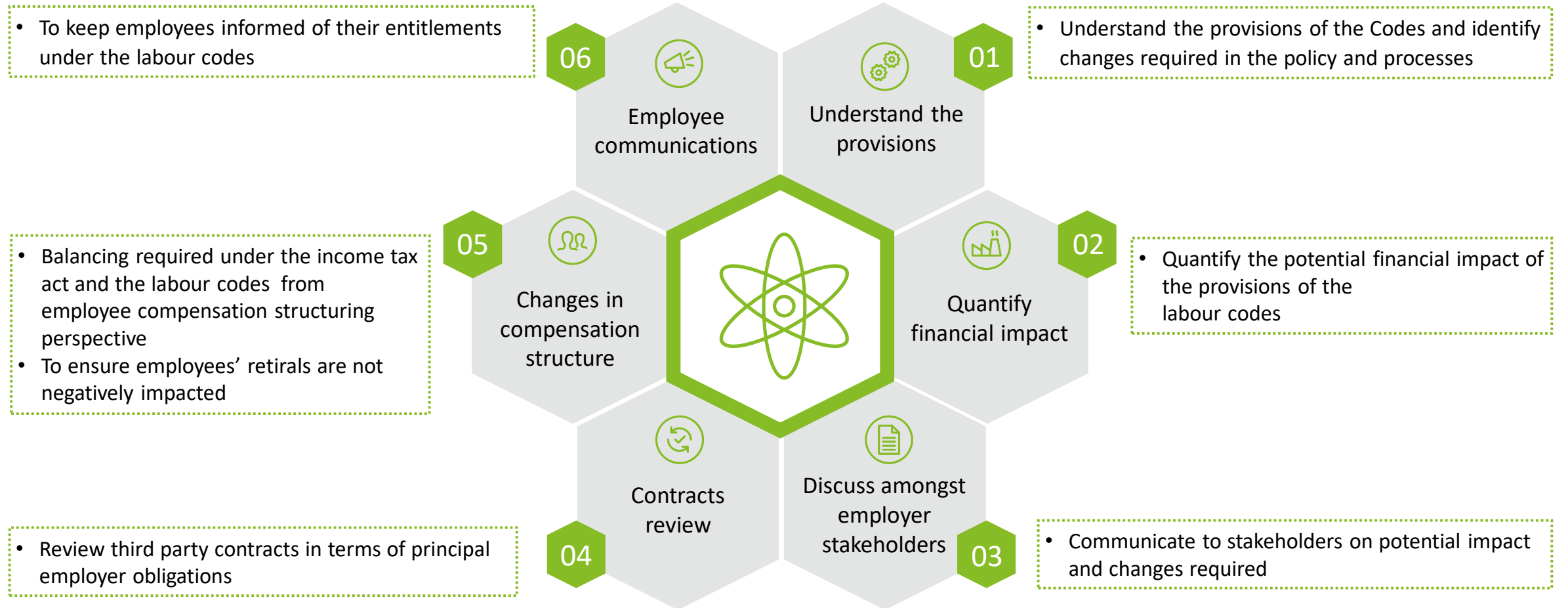
Code on Wages and Code on Social Security

Offences and penalties

Code on Wages		Code on Social Security
Payment of wages less than the prescribed amount <ul style="list-style-type: none"> • First instance: Fine up to INR 50,000 • Second and subsequent commission (within 5 years from the date of first or subsequent offence): Imprisonment up to three months and/or fine up to INR 100,000 	Failure to pay/ deposit employees contributions deducted from employees' wages <ul style="list-style-type: none"> • 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 	
Offence by employer	under Code on Wages	under Code on Social Security
<ul style="list-style-type: none"> • Non-maintenance/ improper maintenance of records • Failure to pay any contribution liable to be paid under the Code 	Fine up to INR 10,000	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
<ul style="list-style-type: none"> • Non-compliance/ contravention of any other provision or rules • Deducts employers contribution, reduces wages, penalizes woman employee, fails to pay gratuity, maternity benefit, cess, fails to produce records 	<ul style="list-style-type: none"> • First instance: Fine up to INR 20,000 • Second and subsequent commission (within 5 years from the date of first or subsequent offence): Imprisonment up to one month and/or fine up to INR 40,000 	<ul style="list-style-type: none"> • First instance: Fine up to INR 50,000 and imprisonment of up to One year • Second and subsequent instances: Fine of INR 300,000 for failure to pay charges, cess, gratuity, maternity benefit or compensation and imprisonment between two to five years
<ul style="list-style-type: none"> • Non-compliance of the provisions of the Code after the timelines under the directions from Inspector cum Facilitator, including failure to produce documents to Inspector cum Facilitator 	Prosecution proceedings may be initiated after providing opportunity of being heard; No opportunity provided to the employer if violation of the similar nature is repeated within a period of 5 years from the first instance	<ul style="list-style-type: none"> • 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
<ul style="list-style-type: none"> • Fails to submit returns, obstructs executive officer, fails to pay compensation, send a statement of fatal accident 	Not specifically included under code on wages	<ul style="list-style-type: none"> • Fine up to INR 50,000
<ul style="list-style-type: none"> • Dishonestly makes a false return, report, statement or information to be submitted 	Not specifically included under code on wages	Imprisonment up to six months

Code on Wages / Code on Social Security

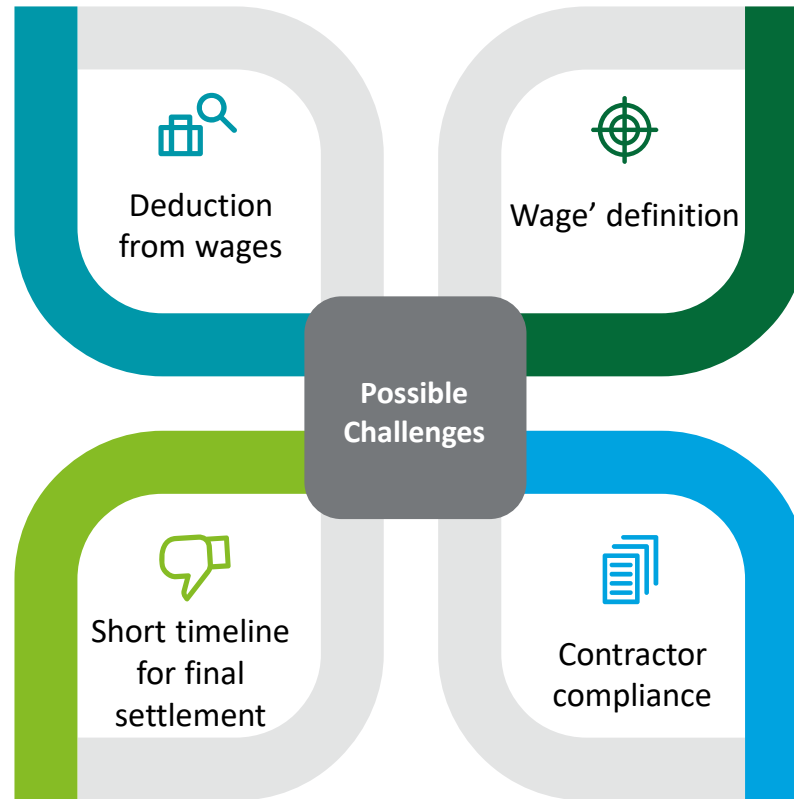
Areas of focus



Code on Wages / Code on Social Security

Possible challenges

Capping deduction from wages upto a maximum of 50% of the total wages during a wage period.



Interpreting wage definition and computation of wages for employees whose salary fluctuates on a month on month basis

Adherence to the settlement timelines prescribed for resigned employees

Proper contractor compliance and payment of necessary dues to the contractor



Impact of change in “wage” definition case studies

Computation of wages

Impact of new wage definition

Example

Particulars	Amount (in INR per month)
Basic salary	12,000
Uniform and Washing Allowance	3,000
Statutory bonus	3,000
House Rent Allowance	3,000
Conveyance/ Travelling Allowance	3,000
Special allowance	6,000
Total	30,000

Amount of Wages

- Wages as per the current Minimum Wages Act (Basic + Special Allowance + HRA): INR 21,000
- Wages as per the current Payment of Wages Act (Basic + Special Allowance + HRA): INR 21,000
- Wages as per the current Payment of Bonus Act (Basic + DA + cash allowances): INR 27,000
- Wages as per the current EPF Act (Basic (including special Allowance) + DA + retaining allowance + other allowances*): INR 24,000
- Wages as per the current Payment of Gratuity Act (last drawn basic + DA): INR 12,000
- Wages as per the current Maternity Benefit Act: (Basic + cash allowances + incentive bonus): INR 27,000
- Wages as per the current ESIC Act: (Basic + cash allowances excluding bonus): INR 27,000
- **Wages as per the Code – INR 18,000 (Basic + Special Allowance)**

*As per SC ruling on Vivekananda Vidyamandir & Ors.

Code on Social Security

Impact of the new employee definition – Illustration

Pay Components		Existing Laws (INR per month)	Social Security Code (INR per month)
Basic Wages	A	14,000	14,000
House Rent Allowance	B	6,000	6,000
Conveyance Allowance	C	6,000	6,000
Special allowance	D	4,000	4,000
Wages to be considered for EPF purposes		24,000* (A+C+D)	18,000^ (A+D)

*contributions can be restricted to INR 15,000

Wages to be considered for ESIC purposes

30,000 (A+B+C+D)**

**Employee would not be covered under the current ESIC provisions

^If wage ceiling notified by the Central Government for the chapters on EPF & ESIC are same as the current ceiling (of INR 15,000 & INR 21,000 respectively), then such a person may not be regarded as an employee for EPF purpose but may get covered for ESIC purposes as per employee definition under the social security code

The Code on Social Security

Impact of the new wage definition on Gratuity / Maternity benefit – Illustration

Pay Components		Existing Laws (INR)	Social Security Code(INR)
Cost To Company		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	72,000
Statutory Bonus	F	1,00,000	1,00,000
Special allowance	G	1,02,400	88,000
Total wages to be considered for Gratuity		4,80,000	5,68,000
			+Adj for exclusion as per definition i.e. 32,000
Understanding the impact for an employee with 7 years of service			
Monthly Wages		4,80,000/12	50% of total remuneration i.e. 600,000/12
Monthly wages for gratuity purpose		40,000	50,000
Formulae for gratuity		Last drawn pay / 26 * 15 * no of years of service	Last drawn pay / 26 * 15 * no of years of service
Total Gratuity Amount		1,61,538	2,01,923
Total wages to be considered for Maternity Benefit		12,00,000 or 1,00,000 p.m.	6,00,000 or 50,000 p.m.

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

Code on Wages / Code on Social Security

Timely payment of wages

- Foresight LLP is into consulting business and uses DustBunnies Private Limited (DBPL) for housekeeping services.
- Foresight LLP makes salary payment to its employees on a monthly basis. DBPL makes wage payment to its employees on a fortnightly basis.

Implications under the Codes:

- Foresight LLP & DBPL will be regarded as “employer” thereby responsible towards employees for wages and contributions
- Time limit for payment of wages/ contributions:
 - Foresight LLP (monthly basis) – before the expiry of the seventh day of the succeeding month. For January, Foresight LLP would be required to pay wages by 7 February.
 - DBPL (fortnightly basis) – before second day after the end of the fortnight:
 - For the fortnight 1 January to 15 January : wages to be paid by 17 January and
 - For the fortnight 16 January to 31 January: wages to be paid by 2 February
 - Contributions deducted from employees wages to be remitted to the authorities within the timelines to be specified in schemes.

Question

- What happens when Foresight LLP pays DBPL within the prescribed timelines and yet DBPL still does not pay wages to its employees? Where a claim for non-payment of wages is made by the employee, burden of proof of payment of wages would be on whom Foresight LLP or DBPL?
- Who would be finally responsible for non-remittance of contributions - Foresight LLP or DBPL?



Next steps

Actions to be triggered

From an employer standpoint

- Will the changes in the wage definition have a hit on the financial statement?
- Will extension of coverage for overtime impact your P&L?
- What would be the exposure?
- Steps required to meet the additional cost

- How do your current policies, process and procedures map with the requirements in the labour codes?
- Have you built in the technology solutions expected for compliance envisaged in the codes?



- Is your current compensation structure built primarily on tax efficiency?
- Will the provisions under the labour codes necessitate a revisiting?
- What will be the effect of the new wage definition on quantum of provident fund contributions and gratuity entitlements?

Code on Wages / Code on Social Security

Wish-list

- Clearly laid down provisions backed up by practical illustrations leaving no room for ambiguity
- Review widening of coverage of the Codes (for e.g. applicability of overtime, working hours)
- Clear transition provisions to ensure seamless changeover
- Vesting responsibility on contractor for compliances
- Clarity on fixed term employment and its applicability
- Would there be any flexibility in applying provisions relating to work from home and gig workers given these are new concepts

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[Redefining priorities for global mobility, rewards, and talent \(Respond, recover, thrive\)](#)

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