

Labour Codes and Its Impact on MSME Sector

Dr G. MANJUNATH., KLS, Phd
Additional Labour Commissioner
Government of Karnataka
KASSIA, BENGALURU
28TH Sep 2021

MSME Sector and The Industrial Relations Code, 2020

- *An Act to consolidate and amend the laws relating to Trade Unions, conditions of employment in industrial establishment or undertaking, investigation and settlement of industrial dispute and for matters connected therewith or incidental thereto.*
- *The Industrial Disputes act, 1947*
- *The Industrial Employment (SO) Act, 1946*
- *Trade Unions act, 1926*

Highlights

- ***FTE*** – means the engagement of a worker on the basis of a written contract of employment for a fixed period.
- ***Works committee*** – 100 or more workers- duty of WC is to promote measures for securing and preserving amity and good relations between the employer and workers...
- ***Grievance Redressal Committee***- 20 or more workers
- ***Recognition of Negotiating Union or Negotiating Council***

- ***STANDING ORDERS*** – 300 and above workers
- Model standing order
- Deemed standing order
- Group of employers may submit Collective SO
- Disciplinary proceedings to be completed in 90 days.
- Power to exempt – conditionally or unconditionally

Key - issues

- Lay-off, (>300 workers)
- retrenchment and (>300 workers)
- Closure (>300 workers)
- Notice of change and Power of appropriate Govt. to exempt

Miscellaneous

- Worker Re-skilling Fund
- Labour Courts and other deleted
- Only Industrial Tribunals and NIT
- No reference by the Govt for adjudication
- Vol. reference of disputes to Arbitration
- Removal of Public Utility Services
- Power to exempt – New industrial establishment or new undertaking

MSME SECTOR AND CODE ON WAGES, 2019

- ***An Act to amend and consolidate the laws relating to wages and bonus and matters connected therewith or incidental thereto.***
- ***Payment of wages act***
- ***Minimum wages act***
- ***Payment of Bonus act***
- ***Equal remuneration act***

Key-highlights

- *ESTABLISHMENT* -means any place where any industry, trade, business, manufacture or occupation is carried on and includes Government establishment;
- *FACTORY* -means factory as defined under the Factories Act.

Substantial compliance under the Code

- Employer shall **NOT** discriminate among employees on the ground of gender with regard to wages in respect of the same work or work of a similar nature done by any employee.
- Employer shall **NOT** make any discrimination on the ground of sex while recruiting any employee for the same work or work of similar nature and also in the conditions of employment.

Substantial compliance under the Code

- Employer shall pay minimum rate of wages notified by the appropriate Government.
- Employer shall pay **overtime rate** which is twice the normal rate of wages
- Employer shall pay all wages in current coin or currency notes or by cheque or by crediting the wages in the bank account of the employee or by electronic mode.
- Employer shall pay wages payable **within two working days** of removal, dismissal, retrenchment or resignation of an employee

Substantial compliance under the Code

- Employer shall **PAY** to every employee drawing the prescribed wages and who has put in at least 30 days of work an annual minimum bonus at the rate of 8.33% of the wages earned & max 20%
- Bonus payable under this code by an employer to his employees shall be paid by crediting it in the bank account within a period of eight months from the close of the accounting year. (Provi for time extension)
- Every Employer shall **PAY** all amounts required to be paid under this Code to every employee employed by him. (43)

Burden of Proof

- When a claim is made before any authority against the employer for:
 - Non-payment of equal remuneration
 - Non-payment of bonus
 - Less payment of wages
 - Less payment of bonus
 - Making un-authorized deductions from the wages of an employee
- Then the burden of prove that the said dues have been paid shall be on the Employer.

MSME SECTOR AND OSH CODE, 2020

- *An Act to consolidate and amend the laws regulating the occupational safety, health and working conditions of the persons employed in an establishment and for matters connected therewith or incidental thereto.*
- *13 labour laws are repealed*

Substantial compliance

- Every employer SHALL-
- Register his establishment
- Within 30 days inform closing of an establishment
- Certify that payments of all dues to the workers are made
- Send notice of commencement and cessation of operations
- To send notice of any accident causing death/bodily injury
- To send notice in certain dangerous occurrences
- Certain diseases (as in III Schedule) Duties are also cast on manufacturers, designers, importers, suppliers, architects, Project engineers.
- Duties of employees and rights of employees is provided (But not workers)
- However, every worker shall undergo medical examination

Substantial compliance

- Every employer SHALL-
- Afford all facilities for safety & occupational health survey
- Constituting Safety committee and safety officers
- Maintain such health and working conditions
- Provide and maintain welfare facilities/welfare officer
- Adequate & Standard Canteen for workers if >100 workers are employed, including contract workers
- Rest-rooms for male, female and transgender workers
- Facility of crèche wherein >50 workers are employed.

Silent features

- Third party audit and certification for 'start up establishment'
 - Women workers allowed to work during night shifts, but with her consent (7pm -6am)
 - Special powers of CICUMF/ICUMF (Appeal lies in the High Court)
 - Powers to order prohibition of any building and other construction work site.
-
- Jurisdiction of the civil courts barred
 - Power of the app. govt to exempt establishments from all or any of the provisions of this code

Contract labour & ISMW

- 'Work specific license' will be issued.
- Work to be carried out based on the 'work order' as specified in the license.
- Validity is 5 years
- Every contractor to intimate the Government of the work order received. Failure to intimate leads to cancellation of the license.
- Contract labour shall be deemed to be employed by the PE if the Contractor doesn't obtain license.
- Registration of PE not provided under the code
- ISMW Registration and licensing is not provided under the code.

MSME SECTOR AND CODE ON SOCIAL SECURITY, 2020

- ***An Act to amend and consolidate the laws relating to social security with the goal to extend social security to all employees and workers either in the organized or unorganized or any other sectors and for matters connected therewith or incidental thereto.***
- ***9 labour laws are repealed***

Important Definitions

- Agent
- Aggregator
- Employee- definition varies in accordance with the chapters in the code-also a person declared to be an employee by the app. Govt.
- Fixed Term Employment
- **Gig worker** – ‘a person who performs work or participated in a work arrangement and earns from such activities outside of traditional employer-employee relationship’
- Manufacturing process- includes development of software
- **Platform work** – ‘an employment form in which organisations or individuals use an online platform to access other organisations or individuals to solve specific problems or to provide specific services in exchange for payment.

Substantial Compliance

- Every establishment SHALL register under this code
- Contributions by the employer under the EPFS/PF/IF.
- All employees to be insured.
- Gratuity SHALL be payable to an employee-
- On termination of his contract period under FTE
- Employer SHALL arrange to pay the amount of gratuity within 30 days from the date it becomes payable.
- Simple interest.
- Compulsory insurance to be obtained by an employer

Substantial Compliance

- No Employer SHALL knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy.
- Employer SHALL be liable for the payment of maternity benefit...
- Employer's liability to pay MB in case of death of a woman.
- Nursing breaks/creche facility
- Role/powers of IcumF in MB cases.

Substantial Compliance

- Every Employer SHALL report accidents, injury, death and occupational diseases.
- Employer's liability to pay compensation



Social Security for gig workers

- Social security schemes for gig workers and platform workers
 - life and disability cover
 - Health and maternity benefits
 - Old age protection
 - Any other benefits as determined by CG

The role of aggregators in the scheme/manner of administration/sources of funding to be decided.





Dr. G. MANJUNATH, KLS, PhD

Additional Labour Commissioner

Government of Karnataka

Email id: manju_alc@yahoo.co.in

Website: <http://drmanjunathg.in/>