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**Code of Wages, 2019**

**Introduction:**

The Code on Wages, 2019, has been notified on 08 August 2019. The provisions of the Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Payment of Bonus Act, 1965 and the Equal Remuneration Act, 1976, have been assimilated and subsumed in the Code. The Code provides for universal minimum wage across employments in organized and unorganized sector. The Code requires the Central Government to fix floor wage i.e. the least wage that must be paid and that the minimum rates of wages fixed by the appropriate Governments shall not be less than the floor wage. The Code prohibits gender discrimination in matters related to wages and recruitment of employees for the same work or work of similar nature done by an employee. Every employee, drawing wages not exceeding a monthly amount as notified by the Central or State Government, and having put in at least 30 days of work in an accounting year, will be entitled to an annual bonus at the rate of 8.33% of wages earned or Rs. 100, whichever is higher.

“Labour” as a subject is in the Concurrent List of the Constitution of India and under the Codes, the power to make rules is vested with the Central Government as well as the State Governments as appropriate Government.

The purpose of the Code is to –regulate wages and bonus payments in all employments –where any industry, trade, business, or manufacturing is carried out. Further the Code aims to promote equity & labour welfare at the same time sustainability of enterprises, thereby catalyzing economic growth and creation of employment opportunities.

The Code has 67 Sections spread out in 9 Chapters & 26 definitions of constantly used terms.

Following the common legislative pattern the Chapter –I of the Wage Code deals with its nomenclature, applicability and date from which the legislature would come in to force.

There are 26 definitions starting from 2(a) to 2(z). Section 3 of the Act states that there shall be no gender-based discrimination and section 4 of the Act prescribed the authority to decide whether a work is of same or similar nature for the purpose of ascertaining gender based discrimination.

**Some important definitions of the Act are :**

"Appropriate Government" Section 2(a) of the Act says that the appropriate Government in relation to an industry would be the concerned State Government except otherwise the enterprise is owned or controlled by the Central Government.

Section 2 (g) of the Act defines "contract labour" as a worker who is hired in connection with the work of an establishment directly or through a contractor and excludes a person who is regularly employed by the contractor for any activity of his establishment under an mutually accepted agreement/standard and gets periodical increment in the pay, social security coverage and other welfare benefits.

An "employee" within the meaning of section 2(k) refers to any person employed on wages by an establishment to do any 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, but does not include any member of the Armed Forces of the Union but excludes an apprentice engaged under the Apprentices Act, 1961.

An 'employers' in relation to the Wage Code means a person who employs one or more employees,

- a. Directly,
- b. Through any other person, or
- c. On behalf of other person, as
  - i. An Occupier of a factory
  - ii. Authority of any Government
  - iii. Legal representative of a deceased employer;

"same work or work of a similar nature" under section 2(v) means

- a. work in respect of which the skill, effort, experience and responsibility required are the same,
- b. when performed under similar working conditions by employees and the difference if any, between the skill, effort, experience and responsibility required for employees of any gender, are not of practical importance in relation to the terms and conditions of employment;

According to Section 2(y) of the Wage Code 'wages' as means all remuneration whether by way of salaries, allowances or otherwise that could be expressed in terms of money be payable to a person employed in respect of his employment or of work done in such employment.

The components of 'wages' are

- (a) Basic Pay,
- (b) Dearness Allowance and
- (c) Retaining Allowance (if any).

All other amenities, incentives, bonus etc are excluded unless they exceed 50% of wage [a +b+c above]. Otherwisw one-half, or the per cent, as may be notified shall be deemed as remuneration and shall be accordingly added in wages. Again if the employee receives remuneration in kind which does not exceed fifteen per cent of the total wages payable to him, the remuneration received in kind shall be considered while computing wage for the respective employee.

But while computing wage for the purpose of equal remuneration, the following shall be included

- (d) any conveyance allowance or the value of any travelling concession;
- (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;

## **MINIMUM WAGE** [Section 5 to Section 14]

The major issues that dealt with under chapter are:

1. **Payment of minimum rate of wages.** The mandate of the Code is that Minimum Wage as notified by the Appropriate Government must be paid to the employees.
- a. **Fixation of Minimum wages:** Minimum wages shall be fixed by the appropriate Government shall fix the rates of minimum wage for both in terms of : either on a. Time work in terms of hour, day or month and Piece work. This shall be based on skill required or characteristics of the work.
2. **Components of Minimum Wages:** Any minimum rate of wages fixed or revised by the appropriate Government may consist of--
  - a. A basic rate of wages and an allowance,
  - b. Cash value of the concessions
  - c. An all-inclusive rate
3. **Procedure for fixing and revising Minimum Wages:** The appropriate Government shall constitute a committee three parties and independent persons for the purpose, and notify their recommendations inviting comments. After considering the responses the appropriate Government would fix the rates of minimum wage. In this course the appropriate government shall also consult the concerned Advisory Board constituted under section 42 of the Code.
4. **Power of Central Government to fix floor wage.** The National Floor Level Wage rate is the Central Government notified lowest rate of wage for the respective geographical area. The Central Government after taking into account minimum living standards of a worker with the advice of the 'Central Advisory Board' and after consulting with the State Governments shall fix the National Floor Level wage rate. The National Floor Level Wage Rate may be different for different geographical areas.

5. **Wages of employees who works for less than normal working day.** Unless otherwise the employee is unwilling to perform work for the full day, even if the worker have actually worked less than the normal working hour, full daily wages as fixed by the appropriate government shall have to be paid by the employer to the worker concerned.
6. **Wages for two or more classes of work.** Daily wage shall be calculated on the basis of time respectively occupied in each such class of work. The total wage paid shall not be less than the minimum wage for the respective classes.
7. **Minimum time rate wages for piece work where minimum piece rate is not available.** The employer shall pay to such person wages at not less than the minimum time rate.
8. **Fixing hours of work for normal working day.** With the except in certain cases the appropriate government may fix the working hours of a normal day. While doing so, the appropriate government shall provide for weekly rest and overtime rates to be paid to the workers in case of work on the rest days.
9. **Wages for overtime work. In the case of work beyond the normal daily working hour** the employer shall pay him for every hour or for part of an hour so worked in excess, at the overtime rate which shall not be less than twice the normal rate of wages.

#### **PAYMENT OF WAGES** [Section 15 to 25]

The chapter deals with :

1. Mode of payment of wages.
2. Fixation of wage period.
3. Time limit for payment of wages.
4. Deductions which may be made from wages. Especially on account of :
  - a. Fines.
  - b. Absence from duty.
  - c. Damage or loss.
  - d. Services rendered.
  - e. Recovery of advances.

- f. Recovery of loans.
- 5. Chapter not to apply to Government establishments

#### **MODE OF PAYMENT OF WAGES**

Wage shall be paid in cash or by cheque or crediting the wages in the bank account of the employee or by the electronic mode.

#### **Fixation of wage period:**

The wage period could be a day, week, fortnight or monthly but should not exceed a month. Time limit for payment of wages.

Where the employees are engaged on:

- (i) Daily basis, at the end of the shift;
- (ii) Weekly basis, on the last working day of the week, that is to say, before the weekly holiday;
- (iii) Fortnightly basis, before the end of the second day after the end of the fortnight;
- (iv) Monthly basis, before the expiry of the seventh day of the succeeding month.

In case of sudden termination of work may be on account of retrenchment, dismissal etc, the wage should be paid within two working days from date of such retrenchment or dismissal.

**Deductions which may be made from wages.** The Code prohibits any deduction from wages except the following:

- a. Fines: Must be deducted from employees above 15 years of age and with proper notice showing act/omissions leading to fine and an opportunity to the employee to be heard. Fine shall not exceed 3% of the wage.
- b. Absence from duty
- c. Damage of goods/loss of money in his/her custody
- d. Supply of goods/services by the employers
- e. Recovery of loans and advances
- f. Interest on House/Building advance
- g. Deduction of Income Tax

- h. Contribution and deduction against advance from social security fund
- i. Payment towards Employees CO-operative Society
- j. Payment of membership fees to Trade Union with authorization
- k. Contribution to Prime Ministers Relief Fund with authorization
- l. Deduction by the Railway Authority on account of :
  - a. Acceptance of counterfeit coins/ notes
  - b. Failure to raise bill to collect fare/freight/ demurrage etc.

Total deductions shall not exceed fifty percent of wage

**PAYMENT OF BONUS** [Section 26 to 41]

The issues that are dealt under this chapter are:

1. Eligibility for bonus, etc.
2. Proportionate reduction in bonus in certain cases.
3. Disqualification for bonus.
4. Establishments to include departments, undertakings and branches.
5. Payment of bonus out of allocable surplus.
6. Computation of gross profits.
7. Computation of available surplus.
8. Sums deductible from gross profits.
9. Calculation of direct tax payable by employer.
10. Set on and set off of allocable surplus.
11. Adjustment of customary or interim bonus against bonus payable under this Code.
12. Deduction of certain amounts from bonus payable.
13. Time limit for payment of bonus.
14. Application of this Chapter to establishments in public sector in certain cases.
15. Non-applicability of this Chapter.

**Eligibility for bonus:** Every employee is eligible for bonus minimum 8.33% of wage or proportionate to allocable surplus if :

- a. His/her wage is below the wage-ceiling prescribed by the appropriate government
- b. Works at least thirty days in the establishment
- c. The employer starts operations before five years or earns profit.

**Proportionate reduction in bonus in certain cases:** In case the employee has not worked on all the days during the year and bonus is more than the minimum bonus i.e. 8.33%, the bonus shall be reduced proportionate to his/her absence.

While calculating absence from duty absence for following grounds shall be excluded:

- a. Lay off
- b. Leave with salary/wages
- c. Temporary disablement
- d. Maternity

**Disqualification for bonus:** An employee shall not be eligible for bonus in case of termination from employment on the grounds of :

- (a) Fraud; or
- (b) Riotous or violent behaviour while on the premises of the establishment; or
- (c) Theft, misappropriation or sabotage of any property of the establishment; or
- (d) Conviction for sexual harassment.

#### **ADVISORY BOARDS** [Sections 42]

Both the Central as well as respective the State Governments have to constitute Advisory Boards with the representation from Employers, Employees, Government and independent persons with expertise one of them shall be chairperson of the Board. One third of the total members shall be women. The purpose of the Boards would be to advise regarding:

- a. Fixation of Minimum Wage

- b. Proving increased employment opportunities for women as well as to recommend to what extent to which women may be employed various operations and establishments.

**PAYMENTS OF DUES: Claims and Audit:** [Section 43 to Section 50]

This chapter requires the employers to pay the dues to the employees as prescribed under this code. In case of failure of the employers the Firm/ or the proprietor of the establishment shall be responsible to pay. In the case of death of the employee, the nominee would receive the dues otherwise the dues to be deposited to prescribed organizations. The appropriate government shall appoint Authority and Appellate Authority for settling the claims. Claims could be raised by the employee, Trade Union or by Inspector cum Facilitator. In case of failure by the employer, claims could be recovered from the employers by the Collector as arrears of Land Revenue. In case of any dispute regarding the payment of Bonus, the dispute would be considered as Industrial Dispute. Accounts of the employers if audited by the C&AG or by Qualified Auditors shall be conclusive and the aggrieved party may appeal to the designated Appellate Authority.

**INSPECTOR -CUM- FACILITATOR** [Section 51]

Appropriate Government shall appoint 'Inspector-cum- Facilitator' to advise the employers regarding compliance as well as inspect establishments as may be assigned/ web based inspection schedule. The Inspector-Cum-Facilitator shall have powers to enter, inspect documents, seize documents etc

**OFFENCES AND PENALTIES** [Section 52 to section 56]

Courts not below the rank of Metropolitan/Judicial Magistrate of First Class shall try the cases under the code based on the complaints made the government/Authority/ employees/trade unions or Inspector-cum-facilitator. Appropriate Government may appoint an officer not below the rank of Joint Secretary to hold enquiry and impose penalty.

## Offences and Penalty

Committed by	Nature of Offence	Penalty	
		First Offence [in Five years]	Subsequent offence [within Five years]
Individual employer	Pays less amount than the actual due to an employee	Rs 50,000/-	Rs. 1,00,000/- with imprisonment up to three months
	Contravenes provision of the Code or any Rules made there under	Rs. 20,000/-	Rs. 40,000/- with imprisonment up to one month
	Non-Maintenance of Records necessary under the Code	Rs. 10,000/-	-----
Offences by Companies	Every person who, at the time the offence was committed was in charge of, and was responsible to the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly		
Individual responsibility	Any person fails to comply orders made by the designated officer shall be fined up to 20% of the respective maximum financial penalties in addition to the fine.		

## **MISCELLANEOUS** [Sections 57 to section 69]

### Highlights:

1. The chapter protects actions in accordance with the laid down procedure of the Code or taken on good faith.
2. The burden of proof lies on the employers. Further any contract agreement to do away with bonus shall be void.
3. The provisions of the code would prevail over any contravening law and judgments of the courts.
4. The appropriate Govt may delegate powers under this code to Officers.
5. If the employers proves that the offence committed by certain other person beyond his/her knowledge, shall be exempted,
6. Any property deposited by the employer to the appropriate govt shall attached primarily to discharge the liabilities of the employer towards the employees.
7. The provisions of the Code shall not apply to MGMREGA and Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948, or of any scheme made there under.
8. Sections 65 to sections 69 deals with powers of the Central Government and Respective State Government., power to remove difficulties and Repeal and saving

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