

## **The Industrial Relations Code 2020**

### **INTRODUCTION**

The **Industrial Relations Code, 2020** provides a broader framework to protect the rights of workers to make unions, reduce the friction between employers, and workers and provide regulations for the settlement of industrial disputes.

The Industrial Relations Code, 2020 was enacted by the Central Government and with respect to the same, most of the State Labour Department has been publishing its draft rules, which will soon be implemented.

The Code has been introduced in order to amalgamate, simplify and subsume the following 3 central labour acts under one Code:

- i. The Trade Unions Act, 1926
- ii. The Industrial Employment (Standing Orders) Act, 1946
- iii. The Industrial Disputes Act, 1947

The Code has 104 sections spread in XIV Chapters and three schedules relating to the Standing orders, Unfair Labour Practice and Condition of Service for Change of which Notice has to be given respectively.

### **SCOPE & APPLICABILITY**

The Code is designed to consolidate & amend the laws regarding Trade Unions, conditions of employment in Industrial establishment or undertaking, and sleek settlement of industrial disputes. The code regulates the subsequent areas:

- Registration, Cancellation & Alteration of Name of Trade Union
- Constitution of Work Committee & Grievance Redressal Committee
- Incorporation of a Registered Trade Union
- Recognition of Negotiating Union
- Preparation of Standing Order
- Register of Standing Order
- Constitution of Industrial Tribunal
- Illegal Strikes and Lock-outs

- Procedure for Retrenchment and Re-employment of Retrenched Worker
- Compensation to Workers in case of Transfer of Establishment
- Prohibition of Lay-off
- Closure of an Industrial Establishment

### **OBJECTIVES**

- The Code is designated to safeguard the rights of employers and employees by providing easy labour reforms and facilitating ease of Doing Business.
- The object of the Code is to realize industrial peace and harmony as the ultimate pursuit in resolving industrial disputes and to advance the progress of the industry by bringing about the existence of harmony and cordial relationship between the employers and workers.

### **KEY DEFINITIONS**

- Industry means any systematic activity carried on by cooperation between an employer and for the production, supply or distribution of goods or services to satisfy human wants or wishes, whether or not:
  - i. any capital has been invested for the purpose of carrying on such activity
  - ii. such activity is carried on with a motive to make any gain or profit, but does not include:
  - iii. institutions owned or managed by organizations wholly or substantially engaged in any charitable, social or philanthropic service
  - iv. Any activity of the appropriate Government relating to the sovereign functions of the appropriate Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space any domestic service.
  - v. Any other activity as may be notified by the Central Government.
- **Employer** means a person who employs, whether directly or through any person, or on his behalf or on behalf of any person, one or more employees or workers in his establishment and where the establishment is carried on by any department of the Central Government or the State Government, the authority specified by the head of the department in this behalf or where no authority is so specified, the head of the department, and in relation to an establishment carried on by a local authority, the chief executive of that authority, and includes:

- i. in relation to an establishment which is a factory, the occupier of the factory,
  - ii. where a person has been named as a manager of the factory
  - iii. in relation to any other establishment, the person who, or the authority which has ultimate control over the affairs or the establishment and where the said affairs are entrusted to a manager or managing director, such manager or managing director; contractor and legal representative of a deceased employer.
- Employee means any person other than an apprentice engaged under the Apprentices Act, 1961 employed by an industrial establishment to do any skilled, semi-skilled or 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, but does not include any member of the Armed Forces of the Union.
  - Worker means any person except an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied and includes working journalists, and includes any such person who has been, dismissed, discharged or retrenched or otherwise terminated in connection with or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person:
    - i. who is subject to the Air Force Act, 1950, Army Act, 1950, or Navy Act, 1957
    - ii. who is employed in the police service, as an officer or other employee of a prison; or
    - iii. who is employed mainly in a managerial or administrative capacity
    - iv. who is employed in a supervisory capacity drawing a wage exceeding eighteen thousand rupees (INR 18,000) per month or an amount as may be notified by the Central Government from time to time.
  - **Trade Union** means any combination, whether temporary or permanent, formed primarily to regulate the relations between workers and employers or between workers and workers, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business and includes any federation of two or more Trade Unions.
  - **Retrenchment** means termination by the employer of the service of a worker for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include:

- i. voluntary retirement of the worker
  - ii. retirement of the worker on reaching the age of superannuation
  - iii. termination of the service of the worker as a result of the non-renewal of the contract of employment between the employer.
- Standing orders mean orders relating to matters set out in the First Schedule, wherein the standing orders are set to facilitate the standards at the plant level, to regulate industrial relations. This regulates the conditions of employment, grievances, misconduct etc. of the workers employed in the Industry.

**Definition for "Fixed Term Employment"** The IR Code introduces a new provision for "fixed term employment" which means and refers to the engagement of a worker on the basis of a written contract of employment for a fixed period provided that:

- His/her hours of work, wages, allowances and other benefits shall not be less than that of a permanent worker doing the same work or work of similar nature;
- He/she shall be eligible for all statutory benefits available to a permanent worker proportionately according to the period of service rendered by him/her even if his/her period of employment does not extend to the qualifying period of employment required in the statute; and
- He/she shall be eligible for gratuity if he/she renders service under the contract for a period of one year.

**Worker Re-skilling Fund:** The IR Code introduces provisions for re-skilling of workers for the first time for those workers who have been laid-off so that they are able to secure employment again. The IR Code states that the fund shall consist of the following:

- The contribution of the employer of an industrial establishment of an amount equal to fifteen days wages last drawn by the worker immediately before the retrenchment, or such other number of days as may be notified by the Central Government, for every retrenched worker in the case of retrenchment only; and
- The contribution from such other sources as may be prescribed by the appropriate Government.

The fund shall be utilised by crediting fifteen days wages last drawn by the retrenched worker to his account, within forty-five days of retrenchment in the manner as may be prescribed.

## **CONSTITUTION OF WORK COMMITTEE**

An Industrial Establishment having or employed 100 or more workers during 12 months, may be required to constitute a Work Committee to promote protective measures for securing and preserving sensible relations between the employer and workers.

## **GRIEVANCE REDRESSAL COMMITTEE**

An Industrial Establishment having 20 or more workers shall constitute one or more Grievance Redressal Committees with a maximum of 10 members for resolution of disputes arising out of individual grievances.

## **REGISTRATION OF TRADE UNION**

- Any seven or more members of a trade union by subscribing their names, apply for registration of the Trade Union.
- At least ten per cent of the workers or 100 workers, whichever is less, must be members of the Trade Union on the date of making an application for registration.
- Registered Trade Union shall continue to have at least ten per cent of the workers or one hundred workers, whichever is less, wherein a minimum of seven members are engaged or employed in an industrial establishment or industry with which it is connected.
- If the name of the Trade Union proposed to be registered is identical to an existing registered Trade Union, alteration of the name is required as asked by the Registrar of Trade Union.
- Registered Trade Union shall be a body incorporated by the registered name, having a common seal and perpetual succession with the power to hold property.

## **RECOGNITION OF NEGOTIATING TRADE UNION**

- For a Registered trade union, there shall be a negotiating union or council to negotiate with the employer of the Industrial Establishment.
- Where only one Trade Union of workers is registered in an industrial establishment then the employer of such industrial establishment shall recognize such Trade Union as the sole negotiating union of the workers.
- In case of more than one Trade Union of registered workers in an Industrial Establishment then at least fifty-one per cent or more of workers on the muster roll of that Industrial Establishment will be recognized as the sole negotiating union by the employer.

## **STANDING ORDERS**

Industrial Establishment having or employed 300 or more workers on any day during 12 months, must prepare the standing orders on the following matters:

- Classification of workers
- Manner of intimating to workers for hours of work holidays, pay-days and wage rates
- Shift Working
- Attendance
- Conditions and procedure of leave and holidays
- Requirement to enter premises by certain gates, and liability to search.

The employers will be required to prepare a draft of standing orders, based on the Central Government model standing order, within 6 months from the code start date, in consultation with recognized bargaining unions or members of the negotiating council concerning the same and it must be certified by the certifying officer.

## **STRIKES AND LOCK-OUTS**

Every person employed in an Industrial Establishment is prohibited from strikes and lock-out, in breach of contract concerning the following conditions, namely:

- 60 days advance notice of strikes and lock-out to the employer
- Strike may be held only after fourteen days of giving such notice before the expiry of the date of strikes and lock-out specified in any such notice.

## **CHANGE IN THE CONDITIONS OF SERVICE**

The employer is required to send a notice of change in the conditions of service of its workers and employees concerning the following matters, namely:

- wages, compensatory and other allowances
- contribution paid, or payable, by the employer to any provident fund or pension fund or for the benefit of workers under any law for the time being in force
- hours of work and rest intervals
- leave with wages and holidays
- starting, alteration, or ending of the shift operating otherwise than by standing orders
- classification by grades
- withdrawal of any customary concession or privilege or modification in usage

- introduction of recent provisions for discipline, or alteration of existing rules, except in so far as they are provided in standing orders
- Rationalization, standardization, or improvement of plant or technique that is likely to lead to retrenchment of workers any increase or reduction in the no of persons employed or to be employed in any occupation or process or department or shift, not occasioned by circumstances over which the employer has no control.

### **RETRENCHMENT**

- The Code provides procedures for the retrenchment of workers and the re-employment of the retrenched worker.
- The Employer shall either give three months' notice or pay the retrenched worker instead of the notice period.
- Where any worker is retrenched and the employer proposes to take into his employment any person within one year of such retrenchment, an opportunity will be given to the retrenched workers who are citizens of India to offer themselves for re-employment.

### **LAY-OFF**

Lay-off is the inability of an employer from giving employment to a worker due to multiple factors such as shortage of coal, power, or breakdown of machinery. Non-seasonal industrial establishments (i.e. mines, factories, and plantations) with 50 to 300 workers are required to:

- pay 50% of basic wages and dearness allowance to a worker who has been laid off
- give one month's notice or wages for the notice period to the retrenched worker
- non-seasonal industrial establishments with at least 300 workers are required to take prior approval from central or state government before lay-off, retrenchment or closure.

### **CLOSURE**

- Any Employer intending to close an Industrial Establishment is required to serve 60 days' advance notice to the Government.
- Provision for compensation to those workers who are in a continuous period of service not less than one year in case of Closure of Industrial Establishment.

### **EXEMPTIONS**

The Code provides that the central or state government may exempt any new establishment or a class of new establishments from all or any provisions of the Code in the public interest.

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