

THE CODE ON SOCIAL SECURITY, 2020

INTRODUCTION

The preamble of the Code on Social Security 2020 designates the code as 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 organised or unorganised or any other sectors and for matters connected therewith or incidental thereto. Generally speaking the Code is enacted to amend and consolidate the laws relating to social security with the goal to extend social security to all employees and workers. The Social Security Code is designed to replace the following enactments:

1. The Employee's Compensation Act, 1923;
2. The Employees' State Insurance Act, 1948;
3. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952;
4. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959;
5. The Maternity Benefit Act, 1961;
6. The Payment of Gratuity Act, 1972;
7. The Cine-Workers Welfare Fund Act, 1981;
8. The Building and Other Construction Workers' Welfare Cess Act, 1996;
9. The Unorganised Workers' Social Security Act, 2008.

The Code comprises of 164 Sections divided in 14 Chapters. The Chapters are:

The Code also has seven Schedules as:

1. The First Schedule: Applicability [See sections 1(4), (8) and 152 (1)]
2. The Second Schedule: List of persons who are employees within the meaning of third proviso to clause (26) of Section 2 [See sections 2(26), 74(3), (5), 132 and 152(2)]
3. The Third Schedule: List of Occupational Diseases [See sections 2 (5), 36(1), 74 (1), (3), (5), 131(5), 132 and 152(2)]

4. The Forth Schedule: List of Injuries Deemed to Result in Disablement [See sections 2(55), (56), 76(1) and 152(1)]
5. The Fifth Schedule: Matters that may be provided for in the Scheme [See sections 15(2) and 152(1)]
6. The Sixth Schedule : Factors for working out lump sum equivalent of compensation amount in case of permanent disablement and death [See sections 75, 76(1) and 152(1)]
7. The Seventh Schedule: Classification of Aggregator [See section 114(4)]

The Social Security code defines various terms such as, aggregator, gig worker, platform worker, unorganised worker (home based worker and self based workers). Further, the definition of the employee has been widened to include maximum number of employees and workers.

The Social Security Code provides the social security and protection to the workers in the unorganized sector to ensure access to health care and to provide income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner by means of rights conferred on them and schemes framed, under this Code. This article aims to summarize some of the important provisions introduced by the Social Security Code.

SALIENT FEATURES OF THE CODE

GIG WORKERS

Gig worker is the new concept introduced in the code. The code defines gig worker as 'a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship'. Normally a gig worker means a person who performs a job temporarily or someone who takes up part time jobs on hourly basis. The concept of gig workers has been introduced for the first time under the ambit of labour laws. It was the need of the hour to define such category of workers that consists of a large number of freelancers which work on temporary basis.

PLATFORM WORKERS

The code defines platform worker as “a person engaged in or undertaking platform work”. Most commonly platform based work is where workers earn money by providing specific services or to solve specific problems through online platform [4] such as amazon, flipkart etc.

UNORGANISED WORKER

Generally unorganized workers means a home-based worker, self-employed worker or a wage worker in the unorganised sector.

BENEFITS TO UNORGANISED WORKER, GIG WORKERS AND PLATFORM WORKERS

As there were no specific legislation for the unorganised workers, they cannot claim significant benefits like minimum wages, hours of work, overtime, leave etc. The new code introduced the same opportunities and protections which is given to the other employees (government employees and private sector employees) under various labour laws in India.

The Code provides right to the Central Government and State Government to frame and notify the social security schemes for such workers on the matters related to life and disability cover, accident insurance, health and maternity benefits, old age protection, crèche. The schemes may be funded by the combination of Central Government, State Government, aggregators, beneficiaries of the scheme, or funded from corporate social responsibility.

The code places an obligation on the Central Government to constitute the National Social Security Board for the welfare of the unorganised worker as well as for the gig workers and platform workers and can recommend and monitor the schemes for such worker. The Central Government will setup and administer the social security fund for the welfare of such workers.

The code also gives the right to the government to setup helpline and such facilitation centre etc. for such workers. This will encourage the youth to participate in such jobs and can avail the given benefits.

REGISTRATION

The code provides the compulsory registration of the every unorganised worker, gig worker and platform workers to avail the benefit of the concerned scheme framed under this code, subject to the fulfilment of the following conditions: (a) he has completed sixteen years of age or such age as may be prescribed by the Central Government; (b) he has submitted a self-declaration containing information prescribed by the Central Government.

Every eligible worker is to make an application for registration in such form along with such documents including Aadhaar number as may be prescribed by the Central Government.

EMPLOYEE PROVIDENT FUND

The code has revised the applicability of the Employees Provident Fund Scheme ("EPF"). The EPF will apply to the establishment employing 20 or more employees. The Central Government may establish the Provident fund where the contribution paid by the employer to the fund shall be 10% of the wages for the time being payable to each of the employees (whether employed by him directly or by or through a contractor), and the employee's contribution shall be equal to the contribution payable by the employer. 2.6.2 An employee can contribute more than 10 %, subject to the condition that the employer is not be under an obligation to pay more than 10 %, Provided that the Central Government may by notification, modify the rate from 10% to 12%.

EMPLOYEES STATE INSURANCE (ESI)

ESI scheme will apply to establishment employing 10 or more employs. It is also be applicable to an establishment, which carries on such hazardous or life threatening occupation as notified by the Central Government, even a single employee is employed. The code covers the gig workers and platform workers under the ESI scheme.

If the employer fails to pay ESI contributions, the ESIC (employees state insurance corporation) may pay the benefits to the employee and recover it from the employer

the capitalized value of the benefit, including the contribution amount, interest and damages, as an arrear of land revenue or otherwise.

GRATUITY

Gratuity is applicable to every factory, mine, oilfield, plantation, port and railway company; and every establishment in which 10 or more employees are employed, or were employed, on any day of the preceding 12 months, shall pay gratuity to their eligible employees. Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years, Provided further that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement or expiration of fixed term employment.

In case of working journalist, the gratuity shall be payable on the termination of employment after continuous service of three years.

The Social Security Code entitled the fixed term employees (i.e. employed for a fixed duration) to receive gratuity on pro rata basis, based on the term of their contract.

MATERNITY BENEFIT

No woman shall work in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy.

Every woman shall be entitled to the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence.

Every woman shall be entitled to maternity benefit if she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than eighty days in the twelve months immediately preceding the date of her expected delivery.

The maximum period for which any woman shall be entitled to maternity benefit shall be twenty-six weeks of which not more than eight weeks shall precede the expected date of her delivery.

In addition to maternity benefit in terms of paid leaves, every woman is entitled to medical bonus of up to INR 3,500 (if pre-natal confinement and post-natal care is not provided by employer)

In case of miscarriage, or medical termination of pregnancy, a woman shall, be entitled to leave with wages at the rate of maternity benefit, for a period of six weeks immediately following the day of her miscarriage.

CONCLUSION

The enactment of the Code on Social Security, 2020 has made understanding of the scope and ambit of social security laws easier by consolidating the preexisting laws. The Code also defined the various terms like gig workers and platform workers which were not previously defined. The Code will help in increasing employment opportunities by engaging workers on temporary basis and also providing them with the social security.

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