

23rd Current Issues in Retirement Benefits (CIRB) Seminar

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Labour Codes – Legal Perspective

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Agenda



- 01** What has changed?
- 02** The concept of 'Wages'
- 03** Impact on Stakeholders
- 04** Leave Encashment
- 05** Worker Classification

WHAT HAS CHANGED

Overview of the Labour Codes & their Implementation Status

Code on Wages, 2019

Repeals the Minimum Wages Act, 1948, Payment of Wages Act, 1936, Payment of Bonus Act, 1965, and the Equal Remuneration Act, 1976.



Business agnostic and applicable to all employees.

- An establishment has been defined as any place where any industry, trade, business, manufacture or occupation is carried on (including Government establishment).
- Minimum floor wages to be fixed for all workers. Regulation in payment of wages applicable to all establishment and all employees.

Definition of wages standardized and minimum wages to all.

- Inclusions and exclusions now clearly defined for determination of 'wages' of an employee. Exclusions cannot exceed 50% of the total remuneration, all exclusions in excess of 50% to be considered as 'wages'.

Payment upon separation and permissible deductions.

- Employees to be paid their due within 2 days from their separation. Employers only permitted to make permissible deductions from wages paid to all employees.

Code on Social Security, 2020

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

Extended coverage recognizing modern work arrangements.

- Home based workers (i.e., remote workers), workers in unorganized sector, gig workers and platform workers (associate with aggregators) now eligible for social security benefits, including PF, ESI, maternity benefit, etc. However, the SS Code enables and requires the framing of social security schemes for these categories.

Determination of benefits.

- PF, ESI, maternity benefit, etc. to now be calculated based on the new definition of wages.

Voluntary coverage.

- Voluntary coverage under PF and ESI, including option to revoke voluntary coverage based on majority employees' agreement.

Revised gratuity eligibility for fixed term employees.

- FTE now eligible to pro-rated gratuity, subject to 1 year of employment. Parity with permanent employees on all other benefits.

Limitation period for claims.

- Proceedings for non-payment of PF/ESI dues to be initiated within fixed limitation period of 5 years.

Embargo on benefits reduction.

- Employers not allowed to restructure compensation for reducing social security obligations.

Single window registration and return.

- Unified registration requirements, with single channel enforcement. Streamlined compliances across all social security legislations.



The Industrial Relations Code, 2020

Repeals the Trade Unions Act, 1926; the Industrial Employment (Standing Orders) Act, 1946; and the Industrial Disputes Act, 1947.



Widened definition of 'industry'.

- Includes all systematic employer-employee activities, excluding only charitable services, sovereign functions, domestic service industries, or any other industry as may be notified by the Central Government.

Constitution of GRC.

- Mandatory grievance redressal committee in all industrial establishments with 20 or more workers with equal employer-worker representation.

Elevated thresholds.

- Thresholds applicable for certification of standing orders, closure, and permission for retrenchment increased to 300 workers.

Trade unions to now be recognized.

- Mandatory recognition of trade unions by industrial establishments for negotiation with employers.

Reskilling funds.

- Employers to make contributions equivalent to 15 days' last drawn wages of the retrenched worker to the worker re-skilling fund.

The Occupational Safety, Health and Working Conditions Code, 2020

Repeals *inter alia*, the Factories Act, 1948; the Contract Labour (Regulation and Abolition) Act, 1970; the Working Journalist and other News Paper Employees (Conditions of Service and Miscellaneous Provision) Act, 1955; the Sales Promotion Employees (Conditions of Service) Act.



Enhanced threshold of applicability for factories.

- Applicable to factories employing 20 or more workers (with aid of power) or 40 or more workers (without aid of power).

Prohibition on engagement of contract workers.

- 'Core' and 'Non-core' functions now defined. Prohibition on engagement of contract workers in core functions.

Expanded coverage for inter-state migrant workers.

- Now includes inter-state migrant workers directly recruited by employers, subject to wage threshold of INR 18,000.

Consent for overtime.

- Overtime only allowed upon express consent of the workers. Overtime wages to be paid at twice the ordinary rate of wages.

Leave encashment.

- Mandatory encashment of leave upon separation of the workers due to any reason. 30 days of carry-forward, workers entitled to encashment of leave in excess of 30 days of accumulation, and upon demand.

Mandatory appointment letter and health checks.

- Employer's obligated to provide appointment letters to all employees.

Status of Implementation of the Codes



- All four Central Labour Codes were brought into force on **21 November 2025**, replacing 29 central labour laws.
- Final Central Rules under all four Codes were notified 8 May 2026.
- Labour being a Concurrent List subject, states must independently notify their own rules, progress remains uneven in this regard.
- **A few states have notified final** rules under the Labour Codes with majority states having only notified draft rules; however, ground-level enforcement is still catching up

IMPACT ON STAKEHOLDERS

Key Areas of Impact on Employers and Employees

Key areas of impact on Employers



Meaning of 'worker'.

- Supervisory employees earning > ₹18,000/month and managerial roles excluded. Sales promotion employees now included.

Contract labour.

- Prohibition on engaging contract labour in core activities (with limited exceptions). Requires rethinking organizational design.

Compliance costs.

- Payroll restructuring to align with uniform wage definition; additional contributions for gig/platform workers under Social Security Code. Expanding the base for gratuity calculation beyond basic salary and DA. If specified excluded components (e.g., HRA) exceed 50% of CTC, at least 50% will be deemed wages. Remuneration in kind up to 15% treated as wages. Implications for leave encashment, bonus, maternity, retrenchment, etc. will need to be re-evaluated.

Operational flexibility.

- Higher threshold (300 workers) for layoffs and closures offers more flexibility but requires robust processes and documentation.

Safety and welfare investments.

- Mandatory health checks, appointment letters, and workplace safety upgrades may increase short-term costs but reduce long-term risks.

Reskilling fund.

- Re-skilling fund to be set up; employers to contribute 15 days' wages for retrenched workers.

Administrative simplification

- Single registration and return systems with deemed approvals will ease compliance over time.

Key areas of impact on Employers



Union Impact.

- New union recognition and bargaining provisions may increase collective bargaining demands.

Grievance redressal committee.

- Mandatory for industrial establishments with 20+ workers. Must include equal worker representation and women members. Decisions require majority approval and agreement from over half of worker representatives.

Unpaid wages timeline.

- Employers must clear unpaid wages within 2 days of termination, resignation, or closure. This is a major shift and will require payroll adjustments.

Gig workers.

- Central Government will introduce social security schemes for gig workers. Interaction with existing State-level laws will need careful review.

Fixed term employees.

- Formal recognition allowing employers to choose type of employment based on operational requirements.

Work-from-home recognized.

- Cost savings for both employees and employers.

Certified standing orders.

- Mandatory for establishments with 300+ workers (previously 100). State-level exemptions (e.g., IT/ITES) will need to be checked.

Key areas of impact on Employees



Enhanced protection.

- Universal minimum wage, timely payment, and equal pay provisions strengthen financial security.

Social security expansion.

- Gig and platform workers gain access to PF, ESI, and gratuity for the first time; portability of benefits improves continuity.

Workplace safety & inclusivity.

- Annual health check-ups, formalisation through appointment letters, and gender-inclusive policies (night shifts for women with safeguards) improve working conditions, together with mandatory women representation in grievance redressal committees.

Job security and benefits.

- Fixed-term employees now enjoy parity in benefits with permanent staff.

Remote work.

- Employee flexibility to work remotely now recognised.

Access to grievance redressal.

- Industrial establishments are required to constitute Grievance Redressal Committees, creating an internal pre-litigation dispute management mechanism. Further, employees also empowered to raise safety concerns through the Safety Committee.

Key areas of impact on Employees



Re-skilling benefits.

- The re-skilling fund is not just a benefit concept; it is set up as a statutory mechanism linked to retrenchment.

Protection from deductions.

- All employees protected from illegal deductions from wages and full and final settlement.

Standing orders for service sector.

- Better protection to employees of service sector through mandatory adoption of model standing orders and certification requirement in case of deviations.

WAGES

Definition, Interpretation and
Employer Actions on Salary Structuring Rebalancing

Interpretation of the definition of ‘wages’



All remuneration payable whether by way of salaries, allowances, or otherwise and includes –
Basic pay + Dearness Allowance + Retaining Allowance (if any)

Specified exclusions	Conditional inclusions	Value of remuneration in kind
Statutory bonus;	If aggregate of specified exclusions exceeds 50% or such other per cent as may be notified – excess included in wages.	Where an employee is given remuneration in kind in lieu of either the whole or a part of the wages payable to him – value of such remuneration that does not exceed 15% of the total wages payable to him – deemed to form part of wages of such employee.
Value of house accommodation or other amenity;		
Employer’s PF contribution;		
Conveyance allowance;		
Sum paid to defray special expenses;		
HRA;	Does not include Gratuity and Retrenchment compensation; retirement benefit or ex-gratia paid upon termination	
Remuneration under any award or settlement;	Conveyance allowance / value of travel concession, HRA, overtime allowance & remuneration payable under any award / settlement to be considered for equal wages across genders	As per clarifications issued by the Ministry of Labour and Employment in its FAQs dated 30 December 2025, allowances and payments paid to employees as reimbursements on the submission of invoices/bills do not constitute “wages” and, accordingly, are not relevant for determining whether a particular component falls within the inclusions to, or exclusions from, the definition of wages.
Overtime Allowance;		
Commissions;		
Gratuity; and		
Retrenchment compensation; retirement benefit or ex-gratia paid upon termination		

List of Inclusions and Exclusions

Components highlighted in bold under 'Exclusions' shall be totaled, and any portion of the such components exceeding 50% of total remuneration shall be added back to 'wages'.



Inclusions	Exclusions	Not Wages	Compensation in lieu of Wages
Basic Salary	House Rent Allowance	Genuine Reimbursements	Car Lease Benefit
Dearness Allowance	PF (Employer's share)	ESOPs (if in addition to total remuneration)	ESOPs (if paid in lieu of total remuneration)
Special/Retaining Allowance	EPS (Employer's share)	Variable Pay	
Internet Allowance	Commissions	Joining/Relocation Bonus	
Basic Salary	Conveyance Allowance	PF (Employee's share)	
Shift Allowance	Travelling Concessions	EPS (Employee's share)	
Higher Education Assistance Allowance	Overtime	Medical Reimbursements	
Leave Travel Allowance	Statutory Bonus	Higher Education Assistance Reimbursements	
Telephone Allowance	Gratuity	Rewards, Recognitions, etc.	

Illustration

Consider that an employee is paid remuneration of INR 18,000, split into the following components:

Components	Amount (INR)
Basic	12,000
HRA	3,000
Conveyance	3,000
Total	18,000



In such scenario, the determination of 'wages' shall be:

Purpose	Computation as per old law (INR)	Computation under the codes (INR)	Remarks
Determination of wages	15,000	12,000	Conveyance is not a part of wages under the code; but was included under the Payment of Wages Act, 1936
Minimum wages	15,000	12,000	HRA & Conveyance are both excluded under the Wage Code. This component must be higher than or equal to the prescribed minimum wages.
Equal remuneration	18,000	18,000	No change
Payment of statutory bonus	12,000	12,000	No change
Gratuity	12,000	12,000	No change
EPF	12,000	12,000	No change
ESI	15,000	12,000	HRA & Conveyance are both excluded under the Wage Code.
Maternity Benefit	18,000	12,000	

LEAVE ENCASHMENT

Provisions under the OSH Code, 2020 and their interaction with
States Shops and Establishments Acts

Overview of Leave Encashment Provisions under the OSH Code, 2020



Annual leave entitlement

- Workers entitled to 18 days of annual leave with wages per calendar year.
- Applicable to all employees categorised as 'workers' under the labour codes.

Carry forward of unutilised leave

- Unutilised annual leave accumulates and carries forward to the subsequent calendar year.
- Carry forward capped at a maximum of 30 days.

Mandatory encashment

- If accumulated leave exceeds 30 days in a calendar year, leave in excess of 30 days must be mandatorily encashed at year-end.

Voluntary encashment on demand

- Workers may demand encashment of any number of accumulated and unutilised annual leave at the end of a calendar year.
- This right exists irrespective of whether the 30-day cap has been reached.

Illustration

The illustration below will provide further clarity on the manner of accumulation and encashment:

Year	AL Granted	AL Available	AL Used	AL Left	AL Encashed	AL Lapsed	AL Carried Forward
Year 1	18	18	5	13	0	0	13
Year 2	18	18+13=31	5	26	0	0	26
Year 3	18	18+26=44	5	39	9	0	30
Year 4	18	18+30=48	5	43	13	0	30
Year 5	18	18+30=48	5	43	13	0	30
Year 6	18	18+30=48	5	43	13	0	30
Total leave encashed if employment ceases at the end of Year 6					48 (in the course of employment) + 30 (upon cessation of service) = 78		

However, the leave entitlement of employees not categorised as workers, and the casual and sick leave entitlements of all employees, will continue to be governed by the applicable State shops and establishments legislations read with their employment contracts/policies.

‘WORKER’ CLASSIFICATION

Definition and interpretation of ‘worker’ under the new Labour Codes framework

Definition and interpretation of 'workers'



Worker

- “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 sales promotion employees.
- Excludes:
 - a) managerial,
 - b) administrative and
 - c) supervisory employees drawing wages in excess of INR 18,000 per month or such other sum as may be notified by the government.

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ABOUT APEKSHA

Apeksha is a Partner in the Corporate practice, with a core specialization in Labour and Employment Laws. Apeksha showcases remarkable proficiency across diverse facets of employment and labour laws. Her expertise encompasses critical areas such as reductions in the labour force, employee transfers, workplace harassment, enforceability of restrictive covenants, trade unions, workplace investigations and the implications for directors and principal officers under various statutory labour enactments.

Apeksha is also a key player in Trilegal's transaction advisory team, providing invaluable counsel to clients intending to establish businesses in India. Her scope includes advising on employment and labour compliances, conducting due diligence, and addressing employment aspects in commercial transactions, mergers, acquisitions, disposals, private equity investments, takeovers, and restructurings.

Apeksha's prowess extends to complex employment law issues, covering workforce structuring, contentious senior management exits, closures, employee transfers, integrations, workplace harassment, employee investigations and the enforceability of non-competes and restrictive covenants. Her role also involves addressing trade unions, director and officer liabilities, compensation structuring, and designing incentive schemes. Apeksha's advisory portfolio also includes immigration matters where, among other issues, she navigates criteria for visa grants, immigration rules for expatriates, and liaises with immigration agents on Foreigner Regional Registration Office (FRRO) registration and protocols.

Apeksha Mattoo is exceptionally well-regarded by her clients, for the quality of her work, her responsiveness to clients' needs, and the excellent service culture she fosters. Her extensive relationships and impeccable reputation within the industry have led to clients often specifically requesting her by name.

Some of her key clients include Bechtel Global Corporation, Boston Consulting Group (BCG), Logos, Boston Scientific, IMC Trading B.V., Alchemy, Heineken, Citibank N.A., Saudi Arabian Airlines, RMZ Group, Government of Singapore Investment Corporation (GIC), Phillip Morris International, Lockton Corporation, National Investment and Infrastructure Fund etc.

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CREDENTIALS

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PUBLICATION

- Understanding the Post Pandemic Ways of Working [Indian Labour Laws: Post Pandemic Ways of Working - Trilegal](#)
- Labour Codes – Will it or Won't it [Labour Law in India: Impact of New Labour Codes? - Trilegal](#)
- Practical Insights for GCCs to Navigate India's Complex Labour Laws [Navigating labour laws in India for Global Capability Centres \(trilegal.com\)](#)

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