

CNK & Associates LLP

The Code of Wages, 2019 – A Synopsis

In Brief

The Code of Wages, 2019 received the President's assent on 8th August 2019. It allows the Centre to set a minimum statutory wage. This Code amends and consolidates the laws relating to wages and bonus and matters connected with it or incidental to it. This is a historic Code which will ensure statutory protection for minimum wages and timely payment of wages to organised as well as unorganised sector. This Code will prove to be a milestone as it will promote ease of living to every worker in the country.

Introduction

The Code of Wage Bill, 2019 was introduced in the last Lok Sabha on 10th August 2017 and was referred to Parliamentary Standing Committee which submitted its Report on 18th December 2018. Out of 24 recommendations made by the Standing Committee, 17 were accepted by the Government.

The Code of Wage Bill, 2019 has become an Act as it has received the President's assent on 8th August 2019. It is the first Code to become an Act out of the 4 codes- Code of Wages; Industrial Relations; Social Security and Occupational Safety, Health and Working Conditions which the Ministry of Labour and Employment has formulated.

The Code repeals the following Acts-

- ♦ the Payment of Wages Act, 1936,
- ♦ the Minimum Wages Act, 1948,
- ♦ the Payment of Bonus Act, 1965, and
- ♦ the Equal Remuneration Act, 1976

Journey

- 10th August 2017 – The Code of Wage Bill 2019 introduced in the Lok Sabha
- 18th December 2018 – Report submitted by the Parliamentary Standing Committee
- 30th July 2019 – The Code of Wage Bill 2019 passed by the Lok Sabha
- 2nd August 2019 – The Code of Wage Bill 2019 passed by the Rajya Sabha
- 8th August 2019 – Received assent of the President of India
- 21st August 2019 – Notified by the Central Government

Synopsis

Given below is a synopsis of the Code of Wages, 2019

▪ Applicability

This Act will extend to the whole of India and has been notified by the Central Government (CG) on 21st August 2019. However, the respective State Governments will have to pass necessary legislation corresponding to this Act.

▪ **Definition of “Wages”**

“Wages” means all remuneration whether by way of salary, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment.

It includes the following-

- a) basic pay;
- b) dearness allowance; and
- c) retaining allowance, if any,

Exceptions

- a) Any bonus payable under any law for the time being in force, which does not form part of the remuneration payable under the terms of employment;
- b) The value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government;
- c) Any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
- d) Any conveyance allowance or the value of any travelling concession; @
- e) Any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment;
- 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 @
- i) Any commission payable to the employee;
- j) Any gratuity payable on the termination of employment;
- k) Any retrenchment compensation or other retirement benefit payable to the employee or any *ex gratia* payment made to him on the termination of employment.

@ should be taken for computation of wages for the purpose of equal wages to all genders and for the purpose of payment of wages.

For calculating the wages under this clause, if payments made by the employer to the employee under clauses (a) to (i) exceeds –

♦ 50%, or

♦ such other % as may be notified by the CG,

of the all remuneration calculated under this clause, such excess amount should be deemed as remuneration and shall be accordingly added in wages under this clause

Explanation.—Where an employee is given any remuneration in kind in lieu of the whole or part of the wages payable to him, the value of such remuneration in kind which does not exceed 15% of the total wages payable to him, shall be deemed to form part of the wages of such employee.

▪ **Minimum Wages**

- ♦ No employer should pay to any employee wages less than the minimum rate of wages notified by the Government.
- ♦ Government will fix a minimum rate of wages —
 - ▲ for time work; or
 - ▲ for piece work.

▪ **Payment of Wages**

- ♦ All wages will be paid in current coin or currency notes or by cheque or by crediting the wages in the bank account of the employee or by the electronic mode
- ♦ The Government may notify that in specific industrial or other establishment in which wages will be paid only by cheque or by crediting the wages in his bank account.
- ♦ The employer should fix the wage period for employees either as daily or weekly or fortnightly or monthly. However, wage period should not be more than a month. Different wage periods may be fixed for different establishments.
- ♦ Wages should be paid on
 - ▲ daily basis, at the end of the shift;
 - ▲ weekly basis, on the last working day of the week, before the weekly holiday;
 - ▲ fortnightly basis, before the end of the 2nd day after the end of the fortnight;
 - ▲ monthly basis, before the expiry of the 7th day of the succeeding month.
- ♦ Wages should be payable within 2 working days of employees' removal, dismissal, retrenchment or his resignation.
- ♦ The Government may, provide any other time limit for payment of wages where it considers reasonable having regard to the circumstances under which the wages are to be paid.
- ♦ No deduction from the wages should be made except those as are authorised under this Code. The upper ceiling of deduction is 50% of the wage in any wage period. Where the total deductions exceed 50% of the wages, the excess may be recovered in such manner, as may be prescribed. If an employer commits default in depositing the deduction made from the employees' wages in the account of the trust or Government fund or any other account, as required, the employee shall not be held responsible for such default.
- ♦ The provisions relating to payment of wages will not apply to the Government establishments unless the Government applies such provisions to any Government establishments as may be specified by it by notification.

▪ **Payment of Bonus**

Eligibility

Bonus should be paid annually to every employee by his employer, who-

- ♦ draws wages which do not exceed such amount per month as determined by notification, by the Government,
- ♦ who has put in at least 30 days work in an accounting year.(AY)

Calculation

- ♦ 8.33% of the wages earned by the employee or
- ♦ Rs, 100
whichever is higher

Bonus should be paid whether or not the employer has any allocable surplus (AS) during the previous AY.

In any AY, if the AS exceeds the amount of minimum bonus payable to the employees, the employer should, in lieu of such minimum bonus, be bound to pay to every employee in respect of that AY, bonus which should be an amount in proportion to the wages earned by the employee during the AY, subject to a maximum of 20% of such wages.

In case where the wages of the employee exceeds the per month amount as notified by the Government, the bonus should be calculated as if the wages were-

- ♦ amount determined by the Government; or
- ♦ minimum wage fixed by the Government

whichever is higher

Proportionate reduction in bonus in certain cases

Where an employee has not worked for all the working days in an AY, the minimum bonus, if such bonus is higher than 8.33% of the salary or wage of the days such employee has worked in that AY, should be proportionately reduced.

Computation of number of working days

An employee will be deemed to have worked in an establishment in any AY also on the days on which,—

- ♦ he has been laid off under an agreement or as permitted by standing orders under the Industrial Employment (Standing Orders) Act, 1946, or under the Industrial Disputes Act, 1947, or under any other law applicable to the establishment;
- ♦ he has been on leave with salary or wages;
- ♦ he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- ♦ the employee has been on maternity leave with salary or wages, during the AY

Disqualification for Bonus

An employee will be disqualified from receiving bonus under this Code, if he is dismissed from service for the following-

- ♦ fraud; or
- ♦ riotous or violent behaviour while on the premises of the establishment; or
- ♦ theft, misappropriation or sabotage of any property of the establishment; or
- ♦ conviction for sexual harassment.

Payment of bonus out of AS

The bonus shall be paid out of the AS which will be-

- ♦ 60% in case of a banking company and
- ♦ 67% in case of other establishment

of the available surplus.

Computation of available surplus

The available surplus in respect of any AY will be the gross profits (**GP**) for that year after deducting the following sums as prior charges –

- ♦ depreciation admissible in accordance with the provisions Section 32(1) of the Income-tax Act or in accordance with the provisions of the agricultural income-tax law, for the time being in force;
- ♦ any direct tax which the employer is liable to pay for the AY in respect of his income, profits and gains during that year;
- ♦ any other sums in respect of the employer as may be prescribed by the CG.

The available surplus in respect of the AY commencing on any day in a year after the commencement of this Code and in respect of every subsequent AY will be the aggregate of—

- ♦ the GP for that AY after deducting the sums referred to in above; and
- ♦ an amount equal to the difference between—
 - ▲ the direct tax in respect of GP of the employer for the immediately preceding AY; and
 - ▲ the direct tax, in respect of the GP of the employer for the preceding AY after deducting the amount of bonus which the employer has paid or is liable to pay to his employees in accordance with the provisions of this Code for that year.

Calculation of direct tax payable by the employer

Any direct tax payable by the employer for any AY should be, subject to the following provisions, be calculated at the rates applicable to the income of the employer for that year, namely:—

- ♦ in calculating such tax no account should be taken of,—
 - ▲ any loss incurred by the employer in respect of any previous AY and carried forward under any law for the time being in force relating to direct taxes;
 - ▲ any arrears of depreciation which the employer is entitled to add to the amount of the allowance for depreciation for any succeeding AY or years under Section 32(2) of the Income-tax Act;
- ♦ where the employer is a religious or a charitable institution to which the provisions of Payment of Bonus do not apply and the whole or any part of its income is exempt from the tax under the Income-tax Act, then, with respect to the income so exempted, such institution shall be treated as if it were a company in which the public are substantially interested within the meaning of that Act;
- ♦ where the employer is an individual or a Hindu undivided family, the tax payable by such employer under the Income-tax Act should be calculated on the basis that the income derived by him from the establishment is his only income;
- ♦ where the income of any employer includes any profits and gains derived from the export of any goods or merchandise out of India and any rebate on such income is allowed under any law for the time being in force relating to direct taxes, then, no account should be taken of such rebate;
- ♦ no account shall be taken of any rebate other than development rebate or investment allowance or development allowance or credit or relief or deduction in the payment of any direct tax allowed under any law for the time being in force relating to direct taxes or under the relevant annual Finance Act, for the development of any industry

Set on and set off of AS

For any AY –

- ♦ if the AS exceeds the amount of maximum bonus payable to the employees then, the excess (subject to a limit of 20% of the total salary or wage of the employees employed in the establishment in that AY), will be carried forward for being set on in the succeeding AY and so on up to and inclusive of the 4th AY to be utilised for the purpose of payment of bonus in such manner as may be prescribed by the CG.
- ♦ there is no available surplus or the AS in respect of that year falls short of the amount of minimum bonus payable to the employees, and there is no amount or sufficient amount carried forward and set on as mentioned above which could be utilised for the purpose of payment of the minimum bonus, then, such minimum amount or the deficiency, as the case may be, will be carried forward for being set off in the succeeding AY and so on up to and inclusive of the 4th AY in such manner as may be prescribed by the CG.

In any AY any amount has been carried forward and set on or set off, then, in calculating bonus for the succeeding AY, the amount of set on or set off carried forward from the earliest AY should first be taken into account.

Adjustment of customary or interim bonus against bonus payable under this Code

In any AY,

- ♦ an employer has paid any puja bonus or other customary bonus to employee; or
 - ♦ an employer has paid a part of the bonus payable under this Code to an employee before the date on which such bonus becomes payable,
- then, the employer will be entitled to deduct the amount of bonus so paid from the amount of bonus payable by him to the employee under this Code in respect of that AY and the employee will be entitled to receive only the balance.

Deduction of certain amounts from bonus payable

In any AY if an employee is found guilty of misconduct causing financial loss to the employer, then, the employer is allowed to deduct the amount of loss from the amount of bonus payable by him to the employee in respect of that AY only and the employee will receive the balance, if any.

Time limit for payment of bonus

- ♦ Bonus will be paid by crediting it in the bank account of the employee by his employer within a period of 8 months from the close of the AY
- ♦ On an application made by the employer and for sufficient reasons, the Government may, by order, extend the said period of 8 months to such further period or periods as it thinks fit up to a maximum of 2 years.
- ♦ If there is a dispute regarding payment of bonus pending before any authority, such bonus will be paid, within a period of 1 month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute
- ♦ If, there is a dispute for payment at the higher rate, the employer should pay 8.33% of the wages earned by the employee as per the provisions of this Code within a period of 8 months from the close of the AY

Exceptions

Provisions regarding the payment of bonus will not apply to, *inter alia*, employees employed in Life Insurance Corporation of India, Indian Red Cross Society or any other institution of a like nature including its branches, Reserve Bank of India, etc.

However, the provisions regarding the payment of bonus will apply to such establishments in which 20 or more persons employed or were employed on any day during an AY.

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Our Offices in India

Mumbai

Mistry Bhavan, 3rd Floor,
Dinshaw Vachha Road, Churchgate
Mumbai 400020
Tel No. +91 22 6623 0600

Mumbai (Suburban Office)

501/502, Narain Chambers,
M.G. Road, Vile Parle (East)
Mumbai 400 057
Tel No:+91 22 6457 7600/01/02

Ahmedabad

'Hrishikesh',
2nd Floor, Vasantbaug Society,
Opp. Water Tank, Gulbai Tekra
Ahmedabad 380 006
Tel. No. +91 79 2630 6530

Bengaluru

96, 7th Cross,
Domlur,
Bengaluru 560 071
Tel. No.+91 80 2535 1353

Chennai

Kochu Bhavan
Ground Floor, Old No 62/1, New No 57,
McNichols Road, Chetpet
Chennai 600 031
Tel No. +91 44 4384 9695

New Delhi

Suite 1101,
KLJ Towers, NSP
New Delhi 110 034
Tel No.+91 11 2735 7350

Vadodara

C-201/202, Shree Siddhi Vinayak Complex,
Faramji Road, Alkapuri,
Vadodara 390 005
Tel. No. +91 265 234 3483

Our Overseas Office

Dubai

Suite#17.06 Dubai World Trade Centre
Shaikh Zayed Road, Dubai, P.O.Box.454442
Tel. No. +971 04 355 9533