Labor Codes for NGOs & How to be Ready (Part 1)

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> Thank you Sharad from Saathi Development Services for sharing this resource with us.

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Session Layout

- Need for compliance with social security (SS) laws
- Labor Codes-Overview
- Code on Wages 2019 - before and now & Actions to consider by NGOS
- Code on Social Security 2020 - before and now & Actions to consider by NGOs (to be continued in Session 2)

Why Comply with Other Laws?

Section 12AB(5) of Income Tax Act states:

- The CIT may cancel the registration certificate based on due process in law for non-compliance of requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects.
- The above provision is also applicable when granting registration, renewal, conversion of provisional to regular registration, change in objects, etc.

Labor Codes Overview

- 29 existing labor laws have been consolidated under four new codes with an intent to amalgamate, simplify, and rationalize the relevant provisions of the subsumed laws.
- All Codes have been notified from 21.11.2025.

The Four Codes:

1. **The Code on Wages, 2019:** Amends and consolidates the laws relating to wages and bonus.
2. **Industrial Relations Code, 2020:** Amend and consolidate the laws relating to social security with the goal to extend social security to everyone in organised, unorganisedand any other sectors
3. **The Social Security Code, 2020:** Consolidates and amends the laws relating to trade unions, conditions of employment in industrial establishments, investigation and settlement of industrial disputes
4. **Occupational Safety, Health & Working Conditions Code, 2020:** Focussed on consolidating and amending the laws regulating the occupational safety, health and working conditions of the persons employed in an establishment

Comparison: Before vs. Under the Codes

	Before Codes	Under the Codes
No of statutes	29 laws, 1436 Rules	4 Codes, 351 Rules
Registration	8	1 (10 digit LIN on SSP merging multiple regns)
License	4	1 (5 year validity)
Returns	31	1 (electronic)-digital integration on Shram Suvidha portal

	Before Codes	Under the Codes
Composition of Offences & Improvement Notices	-	Iintroduced
Inspection mode	Onsite paper audit	Inspector cum Facilitator-Risk based digital inspection
Grievance redresseal	Multiple tribunals	Unified facilitation centres (single window service)

What will change under Labor Codes

- Consolidation of all labor laws.
- Making labor laws relevant/contemporary to better handle current needs and complexities (some labor laws are over 100 years old).
- Universal coverage except where specifically exempted.
- Uniform definition, interpretation, and implementation across all matters of labor.
- Use of technology/digitization—transparency and accountability for both establishments and regulator.
- Effective enforcement—web-based audits, third-party audits, stricter penalties for non-compliance. Inspector cum facilitator model.
- Compounding of offences and Improvement Notices to remove hardships for genuine defaults.
- Final outcome: Ease of doing business.

The Code on Wages, 2019

Subsumed Legislations

The Code on Wages, 2019 subsumes the following:

1. The Payment of Wages Act, 1936
2. The Minimum Wages Act, 1948
3. The Payment of Bonus Act, 1965

4. The Equal Remuneration Act, 1976

Provisions Prior to Code on Wages

- Minimum Wages Act 1948: Centre & states fix minimum wage to prevent exploitation and ensure fair remuneration for employees working in scheduled employments. Revised at least once every 5 years. Time/piece rate for 4 defined categories of workers i.e. unskilled, semi-skilled, skilled and highly skilled based on cost of living and skill set. Lays down provisions on equal pay, working hours & rest, OT.
- Payment of Wages Act 1936: makes employer responsible for wage payment applicable to specified industries, timely payment- less than 1000 employees by 7th /1000 and above employees by 10th, threshold for coverage-employees with gross wages (all remuneration) upto Rs.24k/month, fixation of Wage period, deductions, mode of payment, wages payout on termination, grievance redressal.
- Payment of Bonus Act 1976: Profit is basis for applicability with 20 or more employees. Wage threshold for statutory bonus-upto 21k/month (basic+DA) having worked 30 days with 7k as wage ceiling. Min and max bonus between 8.33% and 20%. This statutory bonus distinct from discretionary bonus.
- Equal Remuneration Act 1976: Equal pay for equal work, no gender discrimination in recruitment, employment, promotion, training etc, prohibit women employment

Chapter Layout in Code

- Chapter 1: Preliminary
- Chapter 2: Minimum Wages
- Chapter 3: Payment of Wages
- Chapter 4: Payment of Bonus
- Chapter 5: Advisory Board
- Chapter 6: Payment of Dues, Claims and Audit
- Chapter 7: Inspector cum Facilitator
- Chapter 8: Offences and Penalties
- Chapter 9: Misc

Key Provisions: Definitions & Coverage

- **Employee:** A person employed on wages by an establishment to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward.
- **Worker:** Same as above but does *not* include those employed mainly in a managerial/administrative capacity, or supervisory capacity drawing wages exceeding Rs. 15k per month.
- **Coverage:** No wage threshold for payment of wages now vs. upto 24k/month earlier for organized/unorganized sector
- **No Wage Threshold:** No wage threshold for payment of wages now (vs. up to 24k/month earlier).
- **Minimum Wage & National Floor Wage:** Central govt. to fix minimum wage as floor wage (time (by hour, day or month) or piece rate) based on geography, nature of work and skill set. State govts. cannot fix wage less than the Floor wage. Applicable to all establishments as against scheduled employments. Revision once in 5 years. Minimum wage to be fixed as per definition of Wages

Key Provisions: Definition of 'Wages'

Section 2(y)-Wages means all remuneration i.e. salary, allowance or otherwise expressed in money or capable of being so expressed payable if terms of employment fulfilled. It has 4 parts:

1. Inclusions:

- Basic pay
- Dearness allowance
- Retaining allowance

2. Exclusions (11 items):

- stat bonus
- value of house accommodation & amenities as per Govt order

- PF/pension contribution
- conveyance allowance/travelling concession
- sums to defray special expenses given the nature of employment
- HRA
- sums paid under a court award
- OT
- commission
- gratuity payable on termination
- retirement benefits/retrenchment compensation/ex gratia on termination.

3. Conditional Inclusion:

- total Exclusions excluding (j) and (k) if it exceeds 50% of total remuneration will be added back to Wages

4. Remuneration in Kind:

- Value of remuneration in kind up to 15% of total wages will be considered as Wages. This is perquisites/fringe benefits.

Meaning and Inclusions	Exclusions

<table>
<tr><td>means all remuneration payable by way of salary, allowances or otherwise; expressed or capable of being so expressed in terms of money and includes:a) Basic pay) Dearness allowance) Retaining allowance</td><td rowspan="2">Exclusions (11)
bonus payable but not forming part of remuneration
House rent allowance
Value of house accommodation and utilities (light, water, medical attendance or amenity)
Remuneration payable under any award/settlement between parties or court order
Employer contribution to provident fund/pension fund
Sum paid to defray special expenses due to nature of work
Conveyance Allowance/travelling concession
Any Commission payable with accretions
Any Overtime Allowance
Any gratuity payable on termination- Any retrenchment compensation/retirement benefit./ex gratia on termination
Exclusions capped at 50% of total remuneration
(except gratuity and retrenchment compensation)</td></tr>
<tr><td></td></tr>
<tr><td colspan="2">Remuneration in kind to the extent it does not exceed 15% of total wages shall be included in wages</td></tr>
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Illustrations: Calculation of Wages

Scenario 1

Total remuneration:

Type	Amount (INR)
Basic	8,000
HRA	4,000
Special allowance	6,000
Conveyance	2,000
Overtime	3,000

Type	Amount (INR)
Commission	2,000
Total	25,000

Specified exclusions:

Type	Amount (INR)
HRA	4,000
Conveyance	2,000
Overtime	3,000
Commission	2,000
Total	11,000

Calculation of wages:

Type	Amount (INR)
Basic	8,000
Special Allowance	6,000
Conditional inclusion (if specified exclusions exceeds 50% of total remuneration, i.e., INR 12,500)	-
Total (lower of inclusions or 50% of total remuneration)	14,000

Wages: INR 25,000 - INR 11,000 = INR 14,000 (i.e., total remuneration (-) exclusions)

Scenario 2

Total remuneration:

Type	Amount (INR)
Basic	8,000

Type	Amount (INR)
HRA	4,000
Special Allowance	4,000
Conveyance	4,000
Overtime	3,000
Commission	2,000
Total	25,000

Specified exclusions:

Type	Amount (INR)
HRA	4,000
Conveyance	4,000
Overtime	3,000
Commission	2,000
Total	13,000

Calculation of wages:

Type	Amount (INR)
Basic	8,000
Special Allowance	4,000
Conditional inclusion (if specified exclusions exceeds 50% of total remuneration, i.e., INR 12,500)	500
Total (lower of inclusions or 50% of total remuneration)	12,500

Wages: INR 25,000 - INR 13,000 + INR 500 = INR 12,500 (i.e., total remuneration (-) exclusions (+) inclusions)

Sample calculation for exclusion from Wages-typical NGO comp	Per month
Basic	50000
HRA-50% of Basic	25000
Special Allowance-25% of Basic	25000
Er PF-12% of Basic	6000
Gross Salary	106000
Gratuity-4.81% of Basic	2405
EL-18 days on Basic	2466
CTC	110871
Calculation of Wages	
Exclusions	
HRA	25000
Er PF	6000
Conveyance	
Total exclusions	31000
Exclusion % of CTC	28

Key provisions in the Code

- Payment of Wages: on monthly basis by 7th of following month through cheque/electronic method as specified and other methods. Timelines for daily, weekly and fortnightly basis also specified
- Wage Period-employer to fix and cannot be more than one month
- Full and final wages within 2 working days for removal, resignation
- Deduction from Wages are specified and cannot be more than 50% of wages for a wage period. No unauthorized deductions permitted.
- Types of deductions-Fines, absence from duty, damages, recovery of advances/loans, recovery of taxes. These are defined and detailed in Code

- Payment of Bonus-8.33%-20% of Wages as statutory bonus when employes worked for 30 days. Wage limit Rs.21k presently but respective Govts to decide the threshold
- Equal treatment of Gender: No discrimination on the basis of gender in matters related to wages, recruitment and conditions of employment (Chapter I). Gender inclusive employment policies for all including TG. Emoluments i.e.conveyance allowance, travel concession, HRA, OT and award through court will be considered for computing equal wage for all genders
- Mandatory issue of Wage Slip to all employees-digital or paper . Format to be specified in state rules
- Uniform limitation of 3 years (from 6m-24m in various laws) for claims relating to wages, bonus, etc.
- Register & Records-persons employed, muster roll, wages etc.
- Display on the notice board abstract of this Code, category-wise wage rates of employees, wage period, day/date and time of payment of wages, name and address of the Inspector-cum-Facilitator having jurisdiction.
- Contractor and legal representative of deceased employer included in definition of employer-expanded scope defining employer
- Appointment of Inspector cum Facilitators under Code to advise/support and digitally inspect under the Code
- Higher penalties for offence-much higher than at present-Rs.1 lakh and imprisonment
- National and State Advisory Board on wage matters

Applicability of Payment of Bonus to NGOs

NGOs are **not covered** under Payment of Bonus Chapter 4, Section 41(1)(e) if they are:

- Indian Red Cross Society or similar institutions;
- Universities and other educational institutions;
- Institutions including hospitals, chambers of commerce, and social welfare institutions established not for purposes of profit.

Action Points for NGOs

- Coverability of MW and PoW provisions to NGOs
- Review comp structure for compliance with definition of Wages-
    - (a) Before reshuffling refer to state specific final CoW rules
    - (b) In case of ambiguity on comp elements as between inclusion or exclusion, guiding principles can be (a) refer to judicial pronouncements and (b) examine whether the element is fixed or variable
- Adherence to National Floor wage
- FnF
- No threshold for payment of wages
- No unauthorized deduction from wages
- Wage payout by 7th mandatory
- Equal remuneration for all gender
- Focus on compliance-stiff penalties and documentation-registers and display of details

The Code on Social Security, 2020

Subsumed Legislations

The Code on Social Security, 2020 subsumes:

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

EPF & Misc Provisions Act 1952

- Inclusion: Employee Provident Fund scheme (EPF) 1952, Employee Pension Scheme (EPS) 1995 and Employee Deposit Linked Insurance Scheme (EDLI) 1976 under EPF & MP Act, 1952 managed by EPFO
- Applicability: 20+ employees (including employees through contractor unless it has a separate code) for establishment specified in Schedule 1. Voluntary coverage with 10% contribution. NGOs are under EPF since 1.4.2015 by law. In house/Exempted PF trusts allowed if the return is equal or higher than paid by EPFO with compliances
- Eligibility: All employees (full/part time) worked more than 30 days in a year. Once an employee always an employee, once an establishment always an establishment.
- Excluded Employee: employee whose remuneration exceed statutory PF wage ceiling (Rs. 15,000) provided h/she is not member of EPFO. For coverage, both coverable and excluded nos considered. Employees drawing less than Rs 15,000 per month are mandatorily members.
- EPF Scheme: Employer and employee contribution 12 per cent each of Basic pay, DA plus retaining allowances. Courts have ruled EPF applicable to fixed allowances but not implemented, It is an E(80C for contribution)-E(return by way of interest 8.25% for 24-25 but Rs.2.5 lakhs PA and above ee contribution taxable) -E (withdrawal except >50k<5 years) scheme.
- EPS: Minimum 10 yeas of contributory service and attaining 58 years of age (reduced pension from 50-57 yrs with 10 years contribution and deferred pension beyond 58) whether in service or superannuated. Form 10D for pension fixation. 6 type of EPS pension-superannuation, disabled, widow/child pension, orphan, nominee, dependent parents pension. Pension calculation-Pensionable Salary (average of last 60 months) X Pensionable Service)/70. Eg. If 35 years of services at PF wages, monthly pension will be Rs.7.5k (15000X35/70). Pension once fixed does not change. Provide life certificate annually in November of each year for continuation. Scheme certificate when service more than 10 years and not attained 58 years but left employment.
- EDLI: Insurance benefit min-max Rs. 2.5-Rs.7.0 lakhs in case of death while in service to nominee/legal heir
- 12% employee share to EPF, 12% employer share-8.33% for EPS capped at Rs.1250/- per month and balance plus 3.67% to EPF, EDLI contribution (0.5% with cap of Rs.75/- per month plus admin cost) and EPF admin charges (0.5%) paid by employer. Employer total

contribution is 13%. Can restrict contribution to Rs.15k i.e. PF wage ceiling for employees even if comp is more than 15k. Employer share can be restricted to 15k as per law.

- Central Govt contributes 1.16% to EPS capped at Rs.15000/- (Rs.174/- per month)
- UAN-12 digit for all previous and current member IDs
- Final PF withdrawal: Composite claim form replaces Form 19 (PF withdrawal),10C (EPS withdrawal) and 31(partial Withdrawals/advances) filed online without attestation of employer. 75% EPF withdrawal within 2 month of unemployment, balance after 12 months of continuous unemployment. Claims are to be settled within 20 days. EPS withdrawal after 3 years of unemployment
- EPF advance/partial withdrawal-merged into 3 categories (Essential, Housing & Special) with 12 months minimum contribution
- EPF Deposit: within 15 days of close of month online only and submit Electronic Challan cum Receipt (ECR) which captures both payment and filing. Non deposit by 15th entails interest and penalty. Member will earn interest if there is default by employer
- E nomination by members in Form 2 mandatory for member for nominees to avail claims.
- While separate challans can be generated, now payment for a reporting period is single which creates problem for FC and NFC payments.
- EPF Joiner to after 1.9.2014 if wages exceeds Rs 15k cannot be member of EPS. Entire 12% employer share will go to EPF.
- Form-11-self declaration from new employees.
- Annual filing in Form 3A and 6A by 30th April for a FY based on monthly ECR data.
- Inoperative (inactive) account-when no contributions received for 36 months (3 years) after a member stops working, retires, permanently moves abroad, or passes away, at which point it stops earning interest. Interest earned upto 58 years regardless of employment status. After 7 years, transferred to SCWF. Inoperative account situation will arise if you have not transferred to new MID after a job change.

ESI Act

- Employees State Insurance (ESI) is a self-financing health insurance scheme for Indian workers in notified areas. Ambiguity regarding applicability to an establishment but charitable medical and educational institutions run by trust, societies etc covered. The fund is managed by the Employees’ State Insurance Corporation under ESI Act 1948.

Applicability: mandatory for organizations with 10 or more employees.

- Eligibility: All the employees (full time / part time) working for more than 30 days in a year eligible.
- Employee with ‘gross salary’ upto Rs 21,000 per month are mandatorily covered. Other employees can be covered through group Mediclaim scheme.
- Employee with gross salary exceeds Rs.21k/month will be excluded at end of contributory period. (April-Sep, Oct-March)
- Contribution-Contribution by employer is 3.25 per cent and employee contribute 0.75 per cent of gross wages. Employees earning daily average wage up to Rs.176 are exempted and their ESI contribution made by employer.
- Contribution deposited through online/offline challan by 15th of following month.
- Half yearly Return of Contribution-12th May (Oct-March contributory period) and 12th Nov (April-Sep) every year in Form 5.
- Registration of insured person and family and issue of ID
- Benefits:
  - Medical-IPD and OPD treatment, drugs and supplies, diagnostics
  - Sickness- medical treatment and attendance and need absence from work upto 91 days
  - Maternity- periodic payments to insured woman for specified period of abstention from work due to confinement, miscarriage or sickness out of pregnancy, pre-mature birth of child
  - Disablement-Permanent or Temporary
  - Dependent- monthly pension payable to the eligible dependents of an insured person who dies due to employment injury or occupational disease
  - Funeral-A lump sum payment not exceeding Rs. 10,000/-

Maternity Benefit Act 1961

- Paid leave for 26 weeks-8 weeks prenatal and 18 weeks postnatal (2017 amendment from 12 weeks) during maternity period for upto two children.
- Applicable when 10+ employees.
- Minimum 80 days work by woman employee in past 12 months for eligibility.
- 12 weeks for more than 2 children and adoption for child below 3 months, 2 weeks for tubectomy, 6 weeks for miscarriage and MTP and additional 1 month in case of illness

certified by medical practitioner.
- Creche facility if employee strength above 50. 2 nursing breaks at work until child is 15 months old

Payment of Gratuity Act 1972

- Applicability- applicable to establishments with 10 or more employees in past 12 months.
- Eligibility: Section 4(1), gratuity shall be payable to an employee on superannuation, termination, resignation after he has rendered five years continuous service (4 years and 240 days for 6 day working and 4 years 190 days for 5 day working) or more or on death/permanent disablement (5 year rule not applicable in such cases)
- Calculation: Last drawn salary (basic salary plus dearness allowance) X number of completed years of service X 15/26.
- Gratuity ceiling: Rs.20 lakhs for all employments (Rs.25 lakhs for central govt employees)
- Due for payment within 30 days, prosecution and penalty for delay.
- Gratuity contribution: 4.81% of basic pay as per employment contract
- Funding/insurance of gratuity liability
- Taxability of Gratuity: Nil for Govt employees. For private employees least of the 3 (a) actual gratuity (b) Rs.20 lakhs as the case maybe or © gratuity as per formula.

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