

Labor Codes for NGOs & How to be Ready (Part 2)

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Layout of Session

- Code on SS (continued)
- OSHWC Code
- Other standalone laws that coexist

The Code on Social Security, 2020

Subsumed Legislations

- The Employee's Compensation Act, 1923
- The Employees' State Insurance Act, 1948
- The Employees' Provident Funds and Miscellaneous Provisions Act, 1952
- 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
- The Unorganised Workers' Social Security Act, 2008

Chapter Layout in Code

- Chapter 1: Preliminary
- Chapter 2: Social Security Organization
- Chapter 3: EPF
- Chapter 4: ESIC
- Chapter 5: Gratuity
- Chapter 6: Maternity Benefit
- Chapter 7: Employee Compensation
- Chapter 8: SS for construction workers
- Chapter 9: SS for unorganized, gig and platform workers
- Chapter 10: Finance & Accounts
- Chapter 11: Authorities, Compliance, Recovery
- Chapter 12: Offences and Penalties
- Chapter 13: Employment information and Monitoring
- Chapter 14: Misc

First Schedule of SS Code - Applicability

Definition of **Establishment** means:

- a place where any industry, trade, business, manufacture or occupation is carried on.
- or a factory, motor transport undertaking, newspaper establishment, audio- visual production, building and other construction work or plantation; or
- a mine, port or vicinity of port where dock work is carried out.

- **Employees' Provident Fund (EPF):** Every establishment in which **20 or more** employees are employed.
- **Employees' State Insurance Corporation (ESIC):** Every establishment in which **10 or more** persons are employed (other than a seasonal factory).
- **Gratuity:** Every shop/establishment in which **10 or more** employees are employed (or were employed on any day of the preceding 12 months).

- **Maternity Benefit:** Every shop/establishment in which **10 or more** employees are employed (or were employed on any day of the preceding 12 months).
- **Employees Compensation:** Applies to employers and employees to whom Chapter 4 (ESI) does not apply and are mentioned in the Second Schedule.

Key Provisions in the Code

- Calculation of EPF, ESI and Gratuity as per definition of Wages. This is the biggest change.
- EPF coverage is universal, not restricted to Schedule 1 establishment.
- EPF and ESI threshold for coverage and wage ceilings unchanged. Be on the lookout.
- In ESI one employee in hazardous/life threatening occupations entails ESI registration
- EPF Contribution is 10% for employer and higher than 10% for employee
- EDLI contribution upto 1% of wages plus one fourth of 1% as admin charge
- ESIC covers every establishment, not restricted to factories, shops etc. and extends to all districts in the country (not notified areas presently). Inlaws and dependent siblings added as beneficiaries.
- Presumption as to employment injury-Commute related accident considered employment related and Occupational disease defined in ESI Chapter
- Opt in/opt out possible for EPF/ESI with conditions i.e. 5 year lock in, majority of employees agree, all filings and dues paid and approval by CPFC/ESIC DG with 60 days decision window
- Govt working on one UAN and common ECR for EPF and ESIC since Wage definition is uniform now
- Mandatory insurance of gratuity
- New category of flexi hiring introduced-'Fixed term employee (FTE)'. FTE is defined as engagement with written contract of employment for a fixed period provided that—hours of work, wages, allowances and other benefits shall not be less than that of a permanent employee doing same/similar work; and shall be eligible for all benefits, under any law for the time being in force, available to a permanent employee
- State rules may decide maximum period for FTE and maximum no. of FTE
- Gratuity eligibility for FTE upon 1 year of service. Continuous service for 240/190 days for 6/5 day working week. For six months count, period reduced proportionately. Service beyond 6 months will be considered as 1 year.

- Retrospective applicability of gratuity prior to 21.11.25 based on new definition of Wages to cast additional liability on employer
- ICAI guidance is to recognize such increased liability due to new definition of wages for gratuity and EL immediately as vested past service costs or amortized over remaining vested period as per GAAP AS-15
- Vacancy notification on career centres-except where employment is for less than 90 days and establishment has less than 20 employees
- Adhaar only proof for registration and availing benefits under SS code
- Transitional period to be allowed for compliance under SS Code
- 5 year limitation for EPF inquiry for dues/applicability by authorities, inquiry to be completed within 2 years. Unlimited lock back period removed.
- New category of beneficiaries: Platform workers, gig workers, unorganized workers. Coverage-16-60 years, 90 days engagement in 12 months to be registered for SS benefit. Social security fund with 1-2% (capped at 5%) of turnover as contribution by employers/aggregators.
- Schemes for life, disability, health, maternity, and pension benefits for gig and platform workers through setting up of SS Fund
- All types of worker-organized, unorganized, self employed under SS coverage envisaged
- National and State Social Security Boards to be established
- Registration/deemed regn for EPF/ESI via Shram Suvidha portal within LIN

Fixed Term Employee (FTE) & Gratuity

- **FTE Definition:** Engagement with a written contract for a fixed period. Hours, wages, allowances, and benefits shall not be less than that of a permanent employee doing similar work. They are eligible for all statutory benefits available to permanent employees.
- **Gratuity for FTE:** Eligibility upon **1 year of service**.
- **Continuous Service:** 240 days (6-day week) or 190 days (5-day week). Service beyond 6 months will be considered as 1 year.
- **Retrospective Applicability:** Gratuity prior to 21.11.2025 may be based on the new definition of Wages, casting additional liability.
- **Accounting:** ICAI guidance is to recognize increased liability immediately as vested past service costs or amortized over the remaining vested period (AS-15).

Gig & Platform Workers

- **New Beneficiaries:** Platform workers, gig workers, and unorganized workers are covered.
- **Registration:** Age 16-60 years, with 90 days engagement in 12 months. Aadhaar is the only proof required.
- **Social Security Fund:** Funded by 1-2% of turnover (capped at 5%) from employers/aggregators. Schemes will cover life, disability, health, maternity, and pension.

Sample Comp Structure: Before vs. After New Wage Definition

Component	Before New Definition	After New Definition
Basic	50,000	50,000
HRA	25,000 (50% of Basic)	25,000
Special Allowance	25,000 (25% of Basic)	1,000
Conveyance	-	23,880
Gross Salary	106,000	106,000
Er PF	6,000 (12% of Basic)	6,120 (12% of Wages)
Gratuity Provision	2,405 (4.81% of Basic)	2,453 (4.81% of Wages)
EL Provision	2,466 (18 days on Basic)	2,515 (18 days on Wages)
CTC	110,871	110,968
Take Home	100,000	99,800
Exclusion % of CTC	28%	50%

Note: In the "After" scenario, exclusions are capped at 50%. The structure is tweaked (shifting Special Allowance to Conveyance/others) to manage the 50% limit.

Action Points under SS Code for NGOs

- Revisit HR classification-regular/permanent, FTE, contract, consultant.
- Understand impact on EPF, ESI, Gratuity, EL based on definition of Wages
- Applicability of ESI to NGOs
- Consider keeping PF ceiling wages at Rs.15k for EPF
- Consider funding of incremental gratuity and EL under current insurance policy once retrospective applicability clarity emerges
- Examine both SS code and CoW while tweaking comp structure
- Balance employee taxation (TDS) and take-home pay due to possibly higher SS benefits
- EPF and ESI thresholds may get revised, fixed more than 8-10 years ago
- Mandatory funding of gratuity if provision only is being made
- Same employment terms for FTE plus Gratuity as for regular employee
- Opt in/opt out permitted for establishments under EPF and ESI but with strict procedures

The Occupational Safety, Health and Working Conditions Code, 2020 (OSHWC)

Subsumed Legislations

- The Factories Act, 1948
- The Plantations Labour Act, 1951
- The Mines Act, 1952
- The Working Journalists and other Newspaper Employees Act, 1955
- The Contract Labour (R&A) Act, 1970
- The Motor Transport Workers Act, 1961
- The Inter-State Migrant Workmen Act, 1979
- The Working Journalist Act, 1958
- The Beedi and Cigar Workers Act, 1966

- The Sales Promotion Employees Act, 1976
- The Cine Workers and Cinema Theatre Workers Act, 1981
- The Dock Workers Act, 1986
- The BOCW Act, 1996

Provisions prior to OSH code

- Contract Labor (R&A) Act 1970-applies to establishment employing 20 or more contract labor or contractor engaging 20 or more contract labor in past 12 months.
- Registration by establishment/ license by contractor.
- Rules for wages, working hours, welfare provisions etc

Chapter Layout in Code

Chapter 1: Preliminary

Chapter 2: Registration

Chapter 3: Duties of Employer and Employee

Chapter 4: Occupational Safety and Health

Chapter 5: Health, Safety and Working Conditional

Chapter 6: Welfare provisions

Chapter 7: Hours of Work and annual leave with wages

Chapter 8: Maintenance of Registers and Records

Chapter 9: Inspector cum Facilitators

Chapter 10: Special provisions of employment of women

Chapter 11: Contract labor and ISMW etc

Chapter 12: Offences & Penalties

Chapter 13: Misc

Key Provisions (OSHC Code)

- **Employer Duties:** Ensure no hazards causing injury/occupational disease, comply with OSH standards, annual health examination, safe working environment, disposal of

hazardous waste, issue appointment letters. No charges to employees for safety/health.

- **Working Hours:** Max 8 hours per day, but spread over permitted up to 12 hours (with rest interval). Max 6 days per week.
- **Overtime (OT):** OT for work beyond 8 hours at **2X the wage rate**. Max 125 hours in a quarter (Delhi proposed 144 hours).
- **Rest Interval:** 30 minutes after every 5 hours.
- **Weekly Holiday:** One paid holiday.
- **Comp off** for work on weekly holiday must be availed within 2 months.
- **Welfare:** Cleanliness, hygiene, ventilation, drinking water, lighting, toilets. Canteen (100+ employees) and Crèche (50+ employees) mandatory.
- **Appointment Letter:** Mandatory with specified terms (wages, deductions, OT).
- **Women Employment:**
 - **Night Shift:** Consent required for working between 7 PM and 6 AM with safety measures.
 - **Hazardous Jobs:** Permitted with consent and safety measures (except pregnant women).

Contract Labor Provisions

- **Applicability:** Every establishment employing **50 or more** contract labor (previously 20).
- **Core Activity Prohibition:** Employment of contract labor in "core activity" is prohibited.
- **Core Activity Definition:** Any activity for which the establishment is set up and includes any activity essential to such activity.
- **Non-Core Activity:** Sanitation, security, canteen, loading/unloading, courier, gardening, housekeeping, laundry, transport, and intermittent activity.
- **Test for Core Activity:**
 1. Is it incidental/necessary for the industry?
 2. Is it of perennial nature (sufficient duration)?
 3. Is it ordinarily done through regular workers?
 4. Is it sufficient to employ a considerable number of whole-time workers?
- **Exceptions:** Contract labor permitted in core activity if:
 - Normal functioning ordinarily requires a contractor.
 - Activities do not require full-time workers for the major portion of the day.

- Sudden increase in volume of work needs to be accomplished in specified time.

Leave & Other Provisions

- **Earned Leave (EL):** 1 day for every 20 days worked (eligible if worked 180 days in calendar year).
- **Leave Encashment:** Carry forward up to 30 days; excess can be encashed. Even the 30 days CF is eligible for encashment if desired by the worker.
- **Inter-State Migrant Workers (ISMW):** Earnings up to Rs. 18k/month. Entitled to journey allowance (to and fro fare) once a year and portability of benefits (PDS).

Action Points under OSHWC Code for NGOs

- Prohibition of contract labor in core activity.
- Implement health, safety, and welfare provisions as per OSH standards.
- Issue mandatory appointment letters.
- Annual Health checkup (refer to state rules).
- Review EL provisions for compliance with both OSH Code and State Shops & Establishments Act.
- Leave calendar should be the calendar year, not financial year.

The Industrial Relations Code, 2020

Subsumed Legislations

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

Definition of Industry

"Industry" means any systematic activity carried on by co-operation between an employer and worker (whether such worker is employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not,—

(i) any capital has been invested for the purpose of carrying on such activity; or

(ii) such activity is carried on with a motive to make any gain or profit, but does not include —

(i) institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or

(ii) 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; or

(iii) any domestic service; or (iv) any other activity as may be notified by the Central Government;

Key Impact Areas

- **Concept of fixed-term employment**

Introduced with benefits not be less than of a permanent worker

- **Conditions for strikes and lockouts prescribed**

No strikes and lock outs without giving proper notice in compliance with the norms laid down in the code

- **Standing orders**

Required in establishments where 300 or more workers are employed

- **Retrenchment, lay-off and closure provisions**

Not to be applicable if workers are <300; lay-off related provisions will not be applicable if workers are <50

- **Grievance redressal committee mandatory**

5 To be set up where 20 or more workers employed, requires proportionate representation

- **Recognition of Trade Unions**

All possible efforts have been made in order to provide recognition to the Trade Unions in India.

- **Reskilling Fund**

Re-Skilling fund for retrenched employee. Employer to deposit 15 days wages for retrenched employees

Key Takeaways

- NGOs cannot be in denial on applicability of SS laws now
- Expanded coverage of labor laws for NGOs-minimum wages, ESI, Payment of Wages. If not exempted specifically like IR Code, Payment of Bonus, all acts are applicable to NGOs
- Provisions in new Labor Codes are substantive, rules are being framed for implementation of Codes
- Since labor is a concurrent subject, centre and states formulate rules that cannot supersede Labor Codes
- During this transition period, existing rules and regulations under the old acts remain in force to the extent that they are not in conflict with the new Labor Codes' provisions.
- Draft Central rules for all codes prepublished on 30th Dec for public comments invited within 45 days. Rules by States are in draft stage/inviting comments. Full implementation likely by April 2026
- While most SS laws are repealed, the EPF&MP Act is in force
- Examine passing on incremental costs to running grants and donor negotiations for new business proposals with incremental costs going forward
- HR and finance process reengineering and expanded coverage would require increased manpower with the new Codes.
- Compliance framework and stiff Penalties since everything is web based and integrated
- Review and revision of HR Manual after final rules formally issued but provisions in Codes as notified will apply
- Engage with your teams on orientation of codes including finalization of comp and benefits.
- While making preparation for implementation, maintain status quo for some time. Look out for guidance from Ministry of Labor and Employment
- Be consistent in approach once the course of action is finalized

Compliance Checklist under Labor Codes

Wage Code	SS Code	OSH Code
Employee classification	EPF, Gratuity,EL-Basis	Hours and days of Work per week (5/6 days)
Definition of Wages	EPF contribution %	Max hours per day
Revisit and revise comp structure	EDLI contribution %	Leave calendar
Minimum Wages (both central & state for multi state orgs)	ESI coverage pan India	CL/SL (not as per codes)
Payment of Wages timelines	Opt in/opt out EPF & ESI	EL eligibility and carry forward. Also consistency of OSH and S&E Act for EL
FnF	Flexi hiring through FTE	Appointment Letter
Deductions from Wages specified	Gratuity for FTE >1 year	Annual health checkup
Equal remuneration for all gender	Retrospective application of Wages for Gratuity	Health & Working conditions
	Compulsory insurance of Gratuity	Welfare provisions
	Vacancy notification on career centre	OSH standards
	Availing SS services	Prohibition forengaging contract labor in core activity
	ISMW	Wage Slip

Other SS Laws - Coexisting

Shops & Establishment Act (State Act)

- **Applicability:** Based on coverage of charitable institutions within the definition of 'Establishment' in the respective State Act.
- **Regulates:** Working hours, holidays, leaves (EL, CL, SL), OT, etc.

- **Earned Leave:** Varies by state. Generally min 240 days for eligibility, 1 EL for 20 days worked, accumulation/carry forward rules apply.

Professional Tax (PT)

- **Levied by:** State/UT on persons earning income.
- **Exempt States:** Delhi, UP, Rajasthan, HP, Uttarakhand, Arunachal Pradesh, Haryana.
- **Compliance:** Registration required in each state for multi-state operations.
Deduction/deposit based on income slabs.

Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act 2013

- **Mandate:** Safe environment policy, Internal Complaints Committee (ICC) if employees >10.
- **Inquiry:** To be completed in 90 days.
- **Reporting:** Annual report to district authority (if >10 employees) and in Directors Report (for companies).

Apprentices Act 1961

- **Mandatory:** Establishments with **30 or more** employees must engage apprentices (2.5% - 15% of workforce).
- **Voluntary:** If strength is 4-29.
- **Training:** 6 months to 4 years.
- **Stipend:** Provided during training. Reimbursement available under NAPS-2 (25% of stipend capped at Rs. 1500/month).
- **Status:** Apprentice is not a worker; labor laws are not applicable.