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Consultants and Actuaries

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Topic to be covered:

The Code on Wages Bill, 2019

Contents:

[Background](#)

[Changes](#)

[Comments](#)

[Contact Us](#)

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Background

- The Code on Wages, 2019 was introduced in Lok Sabha by the Minister of Labour on July 23, 2019. This Bill was originally introduced on August 10, 2017.
- It is said to be a historic Bill which aims to transform the existing labour laws into more accountable and transparent ones which is the need of the hour.
- It seeks to regulate wages and bonus payments in all areas of employment where any trade, business, or manufacturing is carried out.
- The Code replaces the following four laws: (i) the Payment of Wages Act, 1936, (ii) the Minimum Wages Act, 1948, (iii) the Payment of Bonus Act, 1965, and (iv) the Equal Remuneration Act, 1976.
- The Code on Wages, 2019 has been passed in Lok Sabha on July 30, 2019 and in Rajya Sabha on August 02, 2019.
- **This Bill will become effective once it gets notified/gazetted after receiving Presidential approval.**
- This new legislation covers definition of wages, reducing categories for minimum wages, web-based randomised computerised inspection scheme, statutory protection for minimum wage and timely payment of wages.
- Definition of wages under section 2 (y) has one proviso after clause (k) which sets minimum limit for wages to be 50% of total remuneration (CTC).

Changes

Wages definition is the key change in this legislation which may impact the costs of many organisations and take-home salary for employees.

Definition of Wages - Section 2(y):

"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, and includes,—

- (i) basic pay;
- (ii) dearness allowance; and
- (iii) retaining allowance, if any,

but does not include—

- (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:

Provided that, for calculating the wages under this clause, if payments made by the employer to the employee under clauses (a) to (i) exceeds one-half, or such other per cent. as may be notified by the Central Government, of the all remuneration calculated under this clause, the amount which exceeds such one-half, or the per cent. so notified, shall be deemed as remuneration and shall be accordingly added in wages under this clause:

Provided further that for the purpose of equal wages to all genders and for the purpose of payment of wages, the emoluments specified in clauses (d), (f), (g) and (h) shall be taken for computation of wage.

Explanation: Where an employee is given in lieu of the whole or part of the wages payable to him, any remuneration in kind by his employer, the value of such remuneration in kind which does not exceed fifteen per cent of the total wages payable to him, shall be deemed to form part of the wages of such employee;

As per the first proviso which is stated after clause (k), exclusions stated in clause (a) to (i) cannot exceed 50% of total remuneration. This implies, wages cannot be less than 50% of total remuneration. So, Basic Salary + DA should be minimum 50% of CTC.

In Private Sector companies, where generally Dearness Allowance and Retaining Allowance is not paid separately as part of salary, this implies that Basic Salary should be minimum 50% of CTC.

This Act is applicable to whole of India. This Legislation will come into force once it gets Presidential approval and is notified/gazetted by the Central Government.

Comments

- Proviso to Wages Definition (requiring Basic + DA to be minimum 50% of CTC) is a new introduction in wage definition and this is expected to bring a landscape change as to how industry structures its pay packages.
- At present many organisations have salary structure where basic salary ranges from 20% to 40% of CTC. After implementation of this new Wage Code, companies will be required to change salary structure to comply with this legislation.
- If Basic Salary is increased from earlier level to 50% of CTC, it can have impact on employer and employees, some of which are listed below:
 - May result into higher contribution to Provident Fund/ NPS to ensure enhanced social security benefit.
 - Increased PF/ NPS contributions will lead to reduction in take-home salary and at the same time, a reduction in tax liability as NPS contribution by employer is exempt without any monetary ceiling.
 - This will lead to increased cost to company for benefits which are linked to Basic salary, for example employer's contribution to EPF, EPS, EDLI, ESIC will increase, based on respective regulations upper monetary ceiling.
 - In case of Gratuity benefit, cost is also likely to increase significantly as benefit is linked to Basic + DA salary with no monetary ceiling on salary for calculation of benefit. So, if Basic salary increases due to change in salary structure, liability is likely to increase significantly and will result into Actuarial Loss under the accounting standard.
 - Companies where leave encashment is calculated on Basic salary, will observe significant increase in cost.
 - With this, we can observe that take-home salary may get reduced for employees, but Government has tried to increase retirement benefits of employees to ensure better social security to them.

Points which may require clarification after this Wage Code:

- Whether this will supersede definition of wages under various other acts, for example definition of wages under PF, Gratuity act and *most importantly Income Tax Act* etc.
- How should ESOP/ performance linked incentive bonus etc. be treated considering this proviso to clause (k).
- First proviso as stated after clause (k), of section 2 (y) also talks about 50% or such other per cent *as may be notified by the Central Government*. It is pertinent to see whether the Government may come up with some higher percentage in future.
- Applicable notification date of this wage code (once gazetted).

Companies should review their HR Policy to revalidate benefits and salary structure in compliance to this Wage Code.

Reference

The Code on Wages, 2019:

https://labour.gov.in/sites/default/files/184_2019_LS_Eng.pdf

Press Release from GOI (Lok Sabha):

<http://pib.nic.in/newsite/PrintRelease.aspx?relid=192386>

Press Release from GOI (Rajya Sabha):

<http://pib.nic.in/newsite/PrintRelease.aspx?relid=192463>



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