

# Labour codes

Update and our value proposition

January 2021



# Introduction

**Labour codes** introduced by the government over the past year are significant steps towards the much-needed labour reforms in the country. In order to simplify the existing structure, Government has introduced 4 labour codes, which subsumes 29 existing labour laws, with an intent to amalgamate, simplify and rationalise the relevant provisions of the subsumed laws.

# 1

## **The Code on Wages, 2019**

Amends and consolidates the laws relating to **wages** and bonus and matters connected therewith or incidental thereto

# 2

## **The Social Security Code, 2020**

Seeks to amend and consolidate the laws relating to social security with the goal to extend social security to all employees and workers either in the organised or unorganised or any other sectors and for other incidental or related matters

# 3

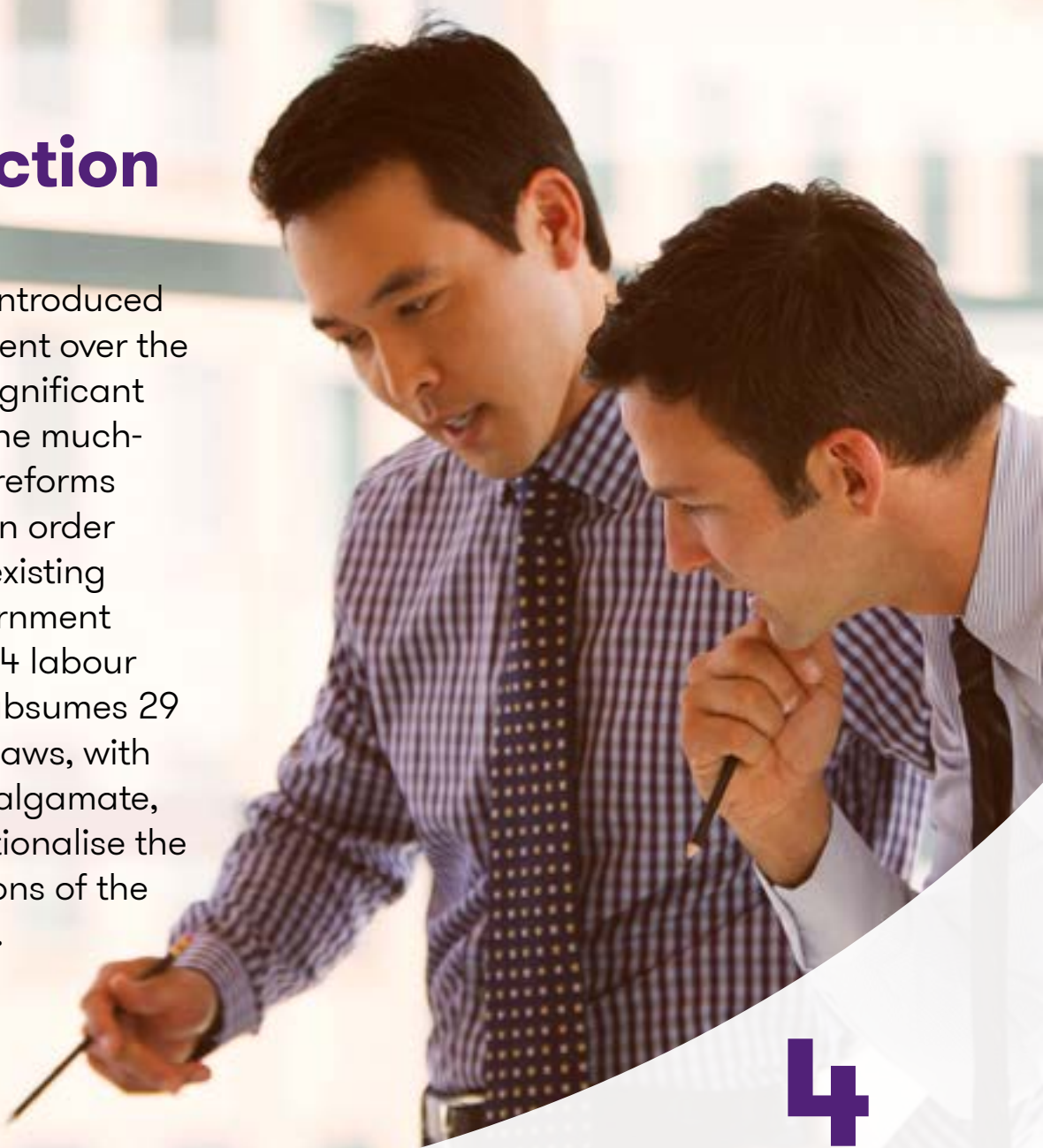
## **Industrial Relations Code, 2020**

Consolidates and amends the laws relating to trade unions, conditions of employment in industrial establishments, investigation and settlement of industrial disputes and for all other incidental or related matters

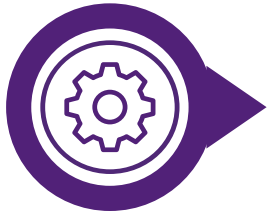
# 4

## **Occupational Safety, Health & Working Conditions Code, 2020**

Focused on consolidating and amending the laws regulating the occupational safety, health and working conditions of the persons employed in an establishment and for all other incidental or related matters



# Applicability



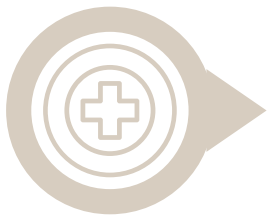
The Code on Wages, 2019



The Social Security Code, 2020



Industrial Relations Code, 2020



Occupational Safety, Health & Working Conditions Code, 2020

## Under existing laws

- Payment of Wages: Applicable to employees earning wages up to INR 24,000 per month
- Minimum Wages: Individuals in non-managerial roles in scheduled employments

- Employees' Provident Fund: 20 or more Employees
- Employees' State Insurance Corporation, Gratuity & Maternity Benefit: 10 or more Employees

- Applicable to Industrial Establishments and Trade Unions

- Applicable to all workers (except in supervisory role, managerial role) of industrial establishments

## Under the new codes

- Applicable to all employees and employers, irrespective of wage threshold

- Employee threshold: Remains same for EPF, ESI, gratuity and maternity benefits
- New inclusions: Unorganised sector workers, gig workers and platform workers

- Applicable to Industrial establishments and Trade Unions
- Employer includes contractors and legal representatives of deceased employer

- Applicable to all establishments

# Overview

While the codes have received the President's assent, the date of implementation is yet to be notified

## Commonality between the codes



Uniformity in definition of wages, with specified exclusions. Specified exclusions shouldn't exceed 50% of gross pay



All aspects related to registrations, filing, inspection, calling on information etc. to be completely online



Intent of the law is not to punish, but to give all possible opportunities to the eligible establishments for making all non-compliance good

## More to come

- Notification of effective date of implementing the codes by centre and state
- Notification of relevant rules and schemes under the codes
- Roadmap for financing the social security requirements of unorganised sector
- Appointment of appellate authority, industrial tribunals, etc.
- Compliance structure, timelines, formats for registers, etc. under various codes



# New definition of wages



## Meaning and inclusions

Covers all remuneration payable by way of salaries, allowances or otherwise; expressed or capable of being so expressed in terms of money and includes:

- Basic pay
- Dearness allowance
- Retaining allowance



## Exclusions

### Specified exclusions

- Statutory bonus payable but not forming part of remuneration
- Value of house accommodation and utilities (light, water, medical attendance, etc.)
- Employer contribution to provident fund/pension together with accretions
- Conveyance allowance or value of travelling concession
- Sum paid to defray special expenses due to nature of work
- House rent allowance
- Remuneration payable under any award settlement
- Any overtime allowance
- Any commission payable
- Any gratuity payable on termination
- Any retrenchment comp/benefit

**Specified exclusions capped at 50% of total remuneration (excluding amount towards gratuity and retrenchment compensation/benefit)**

Remuneration in kind to the extent it does not exceed 15% of total wages shall be included in wages

## Some practical considerations

1

Whether performance bonus/bonus forming part of employment contract are wages?

2

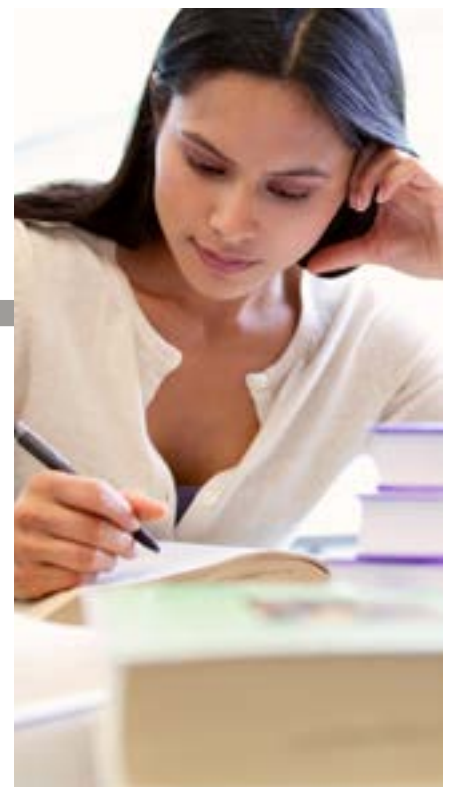
How to value benefit in kind such as stock awards, car, etc.?

3

How will the cost analysis be done for calculation of wages for gratuity, maternity benefits, leave encashment, ESIC, etc.?

4

Whether wage determination will be done on monthly or annual basis?





# Wages - Illustrations

## Scenario 1

### Total remuneration

Type	Amount (INR)
Basic	8,000
HRA	4,000
Special allowance	6,000
Conveyance	2,000
Overtime	3,000
Commission	2,000
<b>Total</b>	<b>25,000</b>

### Specified exclusions

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

### 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)	-
<b>Total (lower of inclusions or 50% of total remuneration)</b>	<b>14,000</b>

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
HRA	4,000
Special allowance	4,000
Conveyance	4,000
Overtime	3,000
Commission	2,000
<b>Total</b>	<b>25,000</b>

### Specified exclusions

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

### 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
<b>Total (lower of inclusions or 50% of total remuneration)</b>	<b>12,500</b>

Wages - INR 25,000 - INR 13,000 + INR 5,00 = INR 12,500 {i.e., total remuneration (-) exclusions (+) inclusions}

# Key impact areas



## The Code on Wages, 2019

- 1 Widened coverage:** No wage threshold for employees, definition of employer includes 'contractor' and 'legal representative of deceased employer', etc.
- 2 New definition of 'wages':** Applicable to all employees; specified exclusions and conditional inclusions specified, cap on benefits in kind
- 3 Timeline for full and final settlement:** Two days from the date of removal/resignation/retrenchment/dismissal
- 4 Stringent penal implications:** Introduced for non-maintenance of registers and records under the Code of Wages, 2019
- 5 Payment of wages and deductions:** Payment vide cheque, online mode; no unauthorised deductions allowed from the wages



## The Social Security Code, 2020

- 1 Voluntary coverage:** Opt in/opt out of social security schemes
- 2 Introduction of new category of beneficiaries:** Platform workers, gig workers, fixed-term employees, etc.
- 3 Introduction of the concept of holding the 'officer in charge':** Who will be held responsible for any default in relation to payment of gratuity and contribution towards ESI
- 4 Increase in quantum of gratuity payment:**
  - New category of employees introduced i.e. 'Fixed term workers' rendering services for less than 5 years;
  - Working period of 3 years for journalists introduced;
  - Gratuity payable to the contract labourers as well, in line with eligibility criteria are set out in the Code



## Occupational Safety, Health and Working Conditions Code, 2020

- 1 Concept of core and non-core workers:** Employment of contract labour in core activities of any establishment is prohibited (with certain exceptions)
- 2 Canteen and crèche facility:** Mandated for specified establishments
- 3 Special provisions for women:** Consent of female employees required for working before 6 am and after 7pm along with other safety measures
- 4 Concept of leave rules and leave encashments introduced**
- 5 Free annual health check-ups:** Mandated for specified employees of specified establishments



## Industrial Relations Code, 2020

- 1 Concept of fixed-term employment:** Introduced with benefits not be less than of a permanent worker
- 2 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
- 3 Standing orders:** Required in establishments where 300 or more workers are employed
- 4 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
- 5 Grievance redressal committee mandatory:** To be set up where 20 or more workers employed, requires proportionate women representation

# Key areas for consideration



## From employers' and employees' perspectives



- 1 **Payroll function:** Review payroll policy(s) with regard to monthly disbursements, full and final settlement, recoveries, loans and advances, etc.
- 2 **HR function:** Detailed review of the following aspects with regard to the various categories of employees:
  - Terms of employment/engagement
  - Compensation structure
  - Maternity benefit
  - Statutory bonus
  - Retirement/social security benefits (provident fund, gratuity and leave encashment);
  - Working hours, overtime, etc.
- 3 **Impact on P&L account:** To estimate the financial impact both from an employer and employee perspective
- 4 **Adoption and adherence of the occupational safety and health standards**

## From contract labour perspective



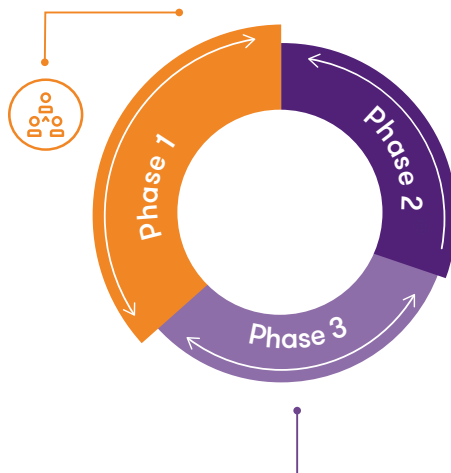
- 1 Evaluate restructuring current manpower with fixed-term employment in those industrial establishments where contractual manpower is already engaged
- 2 Revisiting of contractual aspects relating to:
  - Working hours
  - Nature of work for different types of workers/employees engaged
- 3 Policy framework for newer concepts, such as gig workers and platform workers, and obligations as an aggregator considering the applicable provisions under the Labour Codes
- 4 Obligations on establishment to pay contractor before wages payment due dates. Also, obligation towards bonus, gratuity, other benefits due to contract employees where contractor defaults

# Our value proposition

Organisations to divide their strategy in three phases to gauge preparedness and ensure a smooth transition

### Detailed assessment, i.e., comparing existing with new provisions

- Review compensation structure and benefits
- Review existing HR processes and policies
- Review employment and other contracts
- Map/compare the prescribed guidelines under the codes as applicable
- Presentation before the management and stakeholders



### Transition

- Assist in revising compensation structure, policies, contracts, etc.
- Assist in putting plan in place for transition to new codes
- Assist in creating the process ownership structure and align internal department, management and other stakeholders

### Implementation and compliance

- Assist in compliances under new codes
- Provide handholding support over a fixed period
- Assist with implementing any change in provisions, clarifications, notified after the effective date



# Why Grant Thornton Bharat?

Transitioning to a new legislative framework is not a one-time activity but a journey. At Grant Thornton Bharat, we are well equipped to assist our clients as we navigate through this change in legislation, which will impact employers across industries.



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