THE IMPACT OF INDIA'S NEW EMPLOYMENT LAWS ON BUSINESSES

75 Years

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INTRODUCTION

- New Codes
  - The Industrial Relations Code, 2020 (the "**IR Code**")

    It replaces:

    - the Industrial Disputes Act, 1947;
    - the Trade Unions Act, 1926; and
    - the Industrial Employment (Standing Orders) Act, 1946.
  - The Code on Social Security, 2020 (the "**SS Code**")

    It replaces nine (9) labour laws, including:

    - the Employees Provident Fund and Miscellaneous Provisions Act, 1952;
    - the Employees State Insurance Act, 1948;
    - the Maternity Benefit Act,1961; and
    - the Payment of Gratuity Act, 1972.

KEY CHANGES (IR CODE)

- <u>Prior government approval for termination of employees and for temporary or permanent closure of the establishment</u>

  - is required only if factories, mines and plantations employ at least three hundred (300) workmen on an average per working day for the preceding twelve (12) months. *The previous threshold was one hundred (100) workmen*.

  This will allow small and medium sized factories to terminate employees more quickly, subject to paying their benefits.

- <u>Standing orders will now extend to commercial establishments in the services sector as well</u>

  - if the establishment employs three hundred (300) or more workmen on any day of the preceding twelve (12) months. *The previous threshold was one hundred (100) workmen and only applied to certain types of establishments (such as factories)*.

  This will result in an administrative burden for establishments which are currently not covered by the Industrial Employment (Standing Orders) Act, 1946, as they will now have to compulsorily register standing orders.

KEY CHANGES (IR CODE)

- Worker re-skilling fund

  - The government to set up a fund for the benefit of terminated employees.
  - The employer has to contribute an amount equal to fifteen (15) days' last drawn wages to the fund, immediately before the termination of employment.
  - The fund will credit the contribution to the employee's account within forty-five (45) days of the job loss.

  This will result in an additional payout for the employer.

- Trade unions

  - A trade union having more than 51% workers as members will now be the negotiating union. In case no trade union has more than 51% workers as members, a negotiating council will be set up in the manner prescribed under the SS Code.

  This will make the negotiation process between trade unions and managements more streamlined.

KEY CHANGES (SS CODE)

- Registration by employer

  - Compulsory registration for every eligible establishment.

  A single unified registration will provide for administrative ease.

- Government's ability to stay the SS Code's application

  - The government can defer the application of the provisions of the SS Code for a period of three (3) months in the event of a national disaster, pandemic or endemic.

  This will provide temporary relief to employers from incurring extra costs for social security contributions in times of a crisis.

- Gratuity for fixed-term employees

  - Gratuity will be payable on a *pro rata* basis even if the employee has not completed five (5) years of service.

  This will result in an additional burden on employers.

KEY CHANGES (SS CODE)

- <u>Employees' State Insurance</u>

  - Establishments can implement the scheme voluntarily.

  - Compulsory for establishments which carry out hazardous or life-threatening operations, irrespective of the number of employees.

  The scope of applicability of the scheme has been expanded. This will be beneficial for employees in shops and commercial establishments with less than ten (10) employees (which are currently not covered by the scheme).

- <u>Social security for gig workers</u>

  - Any person employed outside of the traditional employer-employee relationship now categorised as gig workers and platform workers, i.e., a food delivery boy or a hired professional.

  - The government will form social security schemes for gig and platform workers.

  Workers in the unorganised sector will get social security benefits.

PENALTIES FOR NON-COMPLIANCE

Considerable enhancement in penalties with a compounding provision

- IR Code: The penalties under the IR Code range from one (1) to three (3) months of imprisonment and INR10,000 (Indian Rupees Ten Thousand) to INR1,000,000 (Indian Rupees One Million) of fine. Subsequent violations have penalties ranging from three (3) to six (6) months of imprisonment and INR50,000 (Indian Rupees Fifty Thousand) to INR2,000,000 (Indian Rupees Two Million) of fine.

- SS Code: Penalties range from six (6) months to three (3) years of imprisonment and fine of INR50,000 (Indian Rupees Fifty Thousand). Subsequent violations have penalties ranging from two (2) to three (3) years of imprisonment and fine of INR300,000 (Indian Rupees Three Hundred Thousand).

- Compounding: Offences can be compounded for a sum of 50% of the maximum fine provided for the relevant offence where it is punishable by fine only and for a sum of 75% where it is punishable by imprisonment of a term of not more than one (1) year or with fine.

PROVISIONS THAT ARE UNCHANGED

<u>The provisions that remain unchanged</u>

- Notice of termination or retrenchment and payment of compensation, upon completion of one (1) year of continuous employment.
- Compensation for transfer of undertaking, if not done on a continuous basis.
- Provisions on lay-off (temporary closure) and permanent closure of industrial establishment.
- Gratuity for permanent employees upon completion of five (5) years of continuous employment.
- Provisions on contributions to the schemes of the Employees Provident Fund Organisation and to the Employees' State Insurance Corporation.
- Maternity benefit for pregnancy, abortion, medical termination of pregnancy, tubectomy, miscarriage, adoption and illness arising out of these.
- Compensation to employees for fatal accidents and serious bodily injuries.
- Fourteen (14) days' notice to be given before strikes and lockout.

Thank You

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