

THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2019

July 23, 2019

Introduced in Lok Sabha

October 9, 2019

Referred to Standing Committee

February 11, 2020

Standard Committee Report

What's the need of OSHWC Code?

46%

Deductions in registration & licenses related compliance; resulting in a consolidated database centrally

20

times higher workplace deaths in India as compared to those of Britain

21%

Reduction of prior laws, resulting in to dynamic legislation as compared to the existing sectoral approach

INTRODUCTION

Occupational Safety, Health and Working Conditions Code, 2019 (OSHWC) was introduced in Lok Sabha by Minister of State for Labour and Employment. *However, the bill is currently pending with Lok Sabha and waiting for its enactment.*

The Code proposes to subsume 633 provisions of 13 major labour laws into one single Code with 134 provisions. The laws to be subsumed are:

- i. The Factories Act, 1948
- ii. The Contract Labour (Regulation and Abolition) Act, 1970
- iii. The Mines Act, 1952
- iv. The Dock Workers (Safety, Health and Welfare) Act, 1986
- v. The Building & Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996
- vi. The Plantations Labour Act, 1951
- vii. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
- viii. The Working Journalist and other News Paper Employees (Conditions of Service and Miscellaneous Provision) Act, 1955
- ix. The Working Journalist (Fixation of rates of wages) Act, 1958
- x. The Cine Workers and Cinema Theatre Workers Act, 1981
- xi. The Motor Transport Workers Act, 1961
- xii. The Sales Promotion Employees (Conditions of Service) Act, 1976
- xiii. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966

SCOPE

- The Code emphasises on health, safety and welfare of the workers employed in organisation having 10 or more workers in various sectors like industry, trade, business, manufacturing, factory, motor transport undertaking, building and other construction work, newspaper establishments, audio-video production, plantation, mine and dock-work and service sectors.
- The Code sets up occupational safety boards at the national and state level to advise the central and state governments on the standards, rules, and regulations to be framed under the Code.
- The Code creates special provisions for certain classes of establishments such as factories, mines, dock workers, and constructions workers. These include separate provisions on licenses, safety regulations, and duties of employers.
- The Code consists of schedules which includes list of industries involved in hazardous process, list of matters where standards are to be followed with respect to health and safety of workers, and list of notifiable diseases for which communication shall be made to concerned authorities.

LICENSE AND REGISTRATION

Establishments covered by the Code are required to register within 60 days (of the commencement of the Code) with registering officers, appointed by the central or state government. Further, some establishments such as factories and mines, and those hiring workers such as Beedi and Cigar workers, may be required to obtain additional licenses to operate.

KEY HIGHLIGHTS

- The Code aims at lessening the burden of the employers as it would replace multiple registrations under various enactments to one common registration, one licence and one return which will ultimately create a consolidated database centrally and will be helpful under ease of doing business.
- The workplace should be kept free from hazards that cause or likely to cause injury or occupational disease to the employees.
- Employers are required to conduct free annual health check-up for their employees.
- Employers are required to ensure the disposal of hazardous and toxic waste including e-waste.
- Issuance of appointment letter to every employee on their appointment in the establishment.
- Workers / Employees are entitled to receive overtime amount at the rate of twice the wage.
- Employers instead of Contractors are responsible to provide welfare facilities to workers.
- Employers are required to provide facilities such as ventilation, humidification, potable drinking water, adequate lighting, creche, washing facilities, bathing places, locker rooms etc.
- The Code makes mandatory provisions for the employers to provide a safe working environment and trying to cover the risk of unfortunate incidents arising in the course of employment.
- The Code bars civil courts from hearing matters under the Code. The only judicial recourse for a person aggrieved is to file a writ petition before the relevant High Court.
- Central Government shall constitute a National Occupational Safety and Health Advisory Board to discharge the functions conferred on it by or under this Code and to advise to the Central Government on the matters relating to standards, rules and regulation to be framed under this Code.
- The State Government shall constitute a Board to be called the State Occupational Safety and Health Advisory Board to advise the State Government on such matters arising out of the administration of this Code as may be referred to it by the State Government.
- The appropriate government may require constitution of safety committees in certain establishments, and for a certain class of workers. The committees will comprise of representatives of the employer and the workers. However, the number of employer representatives cannot exceed the employee representatives. These committees will function as a liaison between employers and employees.

WAGES NOT DEFINED

The Code refers to “Wages” in provisions relating to overtime work and calculation of leave. However, it does not define the term. Different laws contain varying definitions of the term ‘wages’. It’s unclear as to which definition of ‘wages’ will apply to the Code.

OFFENCES AND PENALTIES

- i. Obstructing discharge of duties of Inspector, imprisonment upto 3 months & fine upto INR 1 lakh
- ii. An offence that leads to the death of an employee will be punishable with imprisonment of up to two years, or fine up to INR 5 lakhs, or both.
- iii. Where penalty is not specified, the employer will be punished with a fine between INR 2 - 3 lakhs.
- iv. If employee violates provisions of the Code, fine upto Rs 10,000.

KEY CHANGES

- The limit of female workers for the purpose of creating creche facility for the children below 6 years of age, would increase to 50 female workers from 30 currently.
- As per The Factories Act if any establishment has 500 or more workers than occupier should appoint welfare officers but post implementation of this Code, limit shall be reduced to 250 employees.
- The establishment employing 100 workers will be responsible to provide canteen facility, reduction from current limit of 250.
- Provisions have been made for the employment of female employees for working beyond 7 pm till 6 am with their consent and conditions relating to safety, holiday, working hours.
- Workers cannot be required to work for more than 6 days / week and will be entitled to one day off for every 20 days of work & one day off every week.
- Workers employed in Transport, Sales Promotion and Journalism have special work hour and leave requirements specified.
- Employer in construction business cannot hire workers with defective vision, deafness, or a tendency for giddiness, if there’s risk of accident.

Once bill is passed, it would be more appropriate to say what all differences have been brought by summing up the 13 major Acts into one Code.

Furthermore, clarifications and procedures will be established by Rules and Regulations made under this Code by Central and State Government.



Author: Aditi Sinha (Senior Associate, Regulatory Compliance, Lawrbit)

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JAIPUR

KNOWLEDGE CENTRE: 32, Gopal Tower, Dadu Marg, GopalBari, Jaipur - 302001



AHMEDABAD

A2/512, Palladium Complex, Corporate Road, Prahladnagar, Ahmedabad, Gujarat - 380015



MUMBAI

WeWork Chromium, JVLR, Opp. L&T Business Park, Andheri, Mumbai - 400076

GET IN TOUCH WITH US

+91-9560-83-4141 | info@lawrbit.com | www.lawrbit.com

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