

THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE (OSHWC)



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 it to dynamic legislation as compared to the existing sectoral approach

INTRODUCTION

Occupational Safety, Health and Working Conditions Code, 2020(OSHWC) was introduced in Lok Sabha by Minister of State for Labour and Employment. It was re-introduced with new changes leading to withdrawal of Occupational Safety, Health and Working Conditions Code, 2019.

The Code subsumes 633 provisions of 13 major labour laws into one single Code with 143 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 applies on factories having 20 or more workers and manufacturing process is being carried on with the aid of power or 40 or more workers where manufacturing process is being carried on without the aid of power.
- Emphasizes on health, safety and welfare of the workers employed in various sectors like industry, trade, business, manufacturing, factory, motor transport undertaking, building and other construction work, newspaper establishments, audio-video production, plantation, mine & dock-work and service sectors.

- The Code **doesn't applies** to offices of Central Government, State Government and any ship of war or any nationality but at the same time it applies to contract labour employed through contractor in the offices where Central Government or State Government are principal employer.
- 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) electronically to the 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 **or** Contractors are responsible to provide welfare facilities **to inter-state migrant** 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 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 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
- The licence issued by the appropriate authority for inter-state migrant workers shall be made electronically containing all the particulars like the number of contract labour, nature of work for which contract labour is to be employed, responsibilities of contractor and such other particulars including the information relating to the employment of inter-State migrant workers.
- The contractor shall apply for amendment of licence along with security deposit in case if there is increase in number of the contract labour.

- Inter-state migrant work shall be provided with the facilities which are available to worker of that establishment including benefits under the Employees' State Insurance Act, 1948 or the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 or any other law for the time being in force and the facility of medical check-up as available to a worker.
- It shall be the complete responsibility of the employer to pay yearly journey allowances to every inter-state migrant worker a lump-sum amount of fare for to and fro journey to his native place from the place of his employment, in the manner taking into account the minimum service for entitlement, periodicity and class of travel.
- Employer in plantation to make provisions for necessary housing accommodation including drinking water, kitchen and toilet, health and recreational facilities, to every worker employed in the plantation (including his family), crèches facilities for plantations having more than 50 workers (including workers employed by any contractor), educational facilities for children of workers between 6 to 12 years age.

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.
- Elaborative provisions related to inter-state migrant workers, employers of plantations and liabilities of contractors has been inserted in considering it gives leverage to either sides.
- Considering Covid-19, the Central Government has reserved his power to make regulation for general safety and health of persons in the event of declaration of an epidemic, pandemic or disaster. This has not be effected by any other law for the time being in force.
- The Code has made maximum registration process to be initiated electronically and hence a minimum of physical contact exists.
- Key definitions like Wages, Banking Company & Core Activity of an Establishment has been inserted.
- Contrary to earlier provisions women workers are entitled to be employed in all establishments for all type of work including hazardous process subject to the conditions that the government may require the employer to provide adequate safeguards prior to their employment in hazardous or dangerous operations.

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.
- v. Offences committed by a Company shall hold each person liable who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business.

This code is expected to bring a major reform in terms of health and safety and welfare of workers employed. On the other hand it is also going to lessen the burden of employer by replacing multiple registrations and licenses into one common licence.

Overall, Code aims to empower both employees and employers. On one side it allows flexibility in hiring and retrenchment on other side it will expand the social security net for both formal and informal workers.

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

COMPARATIVE CHART - EARLIER VS NEW PROVISIONS

S.No	EARLIER PROVISIONS	NEW PROVISIONS
1	Few Key Terminologies like “Employee”, “Employer” and “Establishment” were defined inconsistently in various Acts and Rules	<ul style="list-style-type: none"> • New definition of Employee introduced with a wide coverage • New definition of Employer introduced covering Occupier of a factory • “Establishment” is now defined to include factory, newspaper establishment and plantation in which more than ten workers are employed.
2	Registration was required separately under all the previous labour laws.	One Electronic Registration for every Establishment covered under the Code.
3	Various returns required to be filed under different Acts	One Consolidated Return is required to be filed under ease of doing business.
4	The threshold for Appointment of Welfare Officer was 500 workers in a Factory	Now appointment of a Welfare Officer is mandatory for 250 workers in a Factory, mine, and Plantation.
5	No provision existed for mandatory welfare facilities to inter-state migrant workers	Provision made for mandatory welfare facilities to inter-state migrant workers.
6	No Provision existed for constitution of the National Occupational Safety and Health Advisory Board	Now Central Government shall constitute the National Occupational Safety and Health Advisory Board.
7	Annual leave with wages for one day on every 20 days of working by Employees/workers existed in previous Labour Laws	Annual leave with wages provision kept same in the Code.
8	The threshold for the Crèche facility was 30 Female workers / employees	Now threshold limit for crèche facility increased up to 50 number of female workers / employees
9	The threshold for the Canteen facility was 250 workers / employees	Now threshold for Canteen facility reduced up to 100 number of workers / employees
10	No provision for Women Employment during night shift.	New Clause introduced 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.
11	No Specific provision was there for Workers employed in Transport, Sales Promotion and Journalism	Special working hours and leave requirements specified in the code for Workers employed in Transport, Sales Promotion, and Journalism
12	No Specific provisions in all the previous Acts regarding Overtime with Consent	Now Overtime work can be taken by the employer with consent of worker/employee.
13	Threshold for Constitution of Safety Committee and appointment of Safety Officer was 1000 workers	Now there are following changes in the threshold for Constitution of Safety Committee and appointment of Safety Officer: <ul style="list-style-type: none"> • 500 workers in Factory • 250 workers in a building and other construction • 250 in a hazardous process • 100 workers in a mine.
14	Week Day off Provision existed in all the previous Acts	Code introduced the provision in a new manner: 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
15	No provisions were there for Leave encashment	Now provision has been made for entitlement of leave encashment.
16	Offenses and Penalties had less monetary fine and imprisonment duration	Now Stringent penalties with the comparatively high monetary amount and imprisonment period



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