

The Occupational Safety, Health and Working Conditions Code, 2020

A year after the Code on Wages, 2019 (**Wage Code**), received the President's assent, the Parliament has taken the next step towards consolidating various Central labour legislations into comprehensive labour codes. The Parliament passed three labour codes viz. the Occupational Safety, Health and Working Conditions Code, 2020 (**OSH Code**), the Code on Social Security, 2020, and the Industrial Relations Code, 2020, (collectively with the Wage Code, the **Labour Codes**) on September 23, 2020, for the purpose of consolidating and harmonising India's vast array of Central labour legislations, with the ultimate objective of propelling ease of doing business in the country.

The OSH Code consolidates Central laws that govern occupational safety, health and working conditions. To this end, the OSH Code subsumes the following 13 legislations, which will stand repealed once the OSH Code is implemented:

1. The Factories Act, 1948 (**Factories Act**);
2. The Mines Act, 1952 (**Mines Act**);
3. The Dock Workers (Safety, Health and Welfare) Act, 1986;
4. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (**BOCW Act**);
5. The Plantations Labour Act, 1951 (**Plantation Act**);
6. The Contract Labour (Regulation and Abolition) Act, 1970 (**CLRA**);
7. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (**ISMW Act**);

8. The Working Journalist and other Newspaper Employees (Conditions of Service and Miscellaneous Provisions) Act, 1955 (**Journalists Act**);
9. The Working Journalist (Fixation of Rates of Wages) Act, 1958;
10. The Motor Transport Workers Act, 1961;
11. Sales Promotion Employees (Condition of Service) Act, 1976 (**Sales Promotion Act**);
12. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966; and
13. The Cine Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981 (**Cine Workers Act**).

The stated objective of the OSH Code is to consolidate and amend the laws regulating occupational safety, health and working conditions of persons employed in an establishment and for matters connected therewith or incidental thereto.

The OSH Code was passed by both the Houses of Parliament on September 22, 2020, and September 23, 2020, respectively, and received the President's assent on September 28, 2020. The OSH Code will be brought into force once the appointed date for its implementation is notified by the Central Government. It may be noted that the Government is empowered to bring into force the various provisions of the OSH Code in a staggered manner, meaning that different provisions of the OSH Code could come into effect on different dates. It may be noted that the rules and schemes under each of the Labour Codes will also have to be drafted and adopted for the proper implementation of the Labour Codes.

The key aspects of the OSH Code have been summarised below.

This Client Alert sets out the key aspects of the OSH Code. This is accompanied by an Client Alert on the Code on Social Security, 2020, and the Industrial Relations Code, 2020. You may also refer to our [Insight](#), setting out key aspects of the Code on Wages, 2019.

A. Definitions:

At the outset, it may be noted that the definition of various terms used across the current labour legislations in India have been made uniform to a certain degree, under the Labour Codes, and the confusion brought about by varying definitions in the current regime has, to some extent, been addressed under the Labour Codes.

i. 'Employee' and 'worker'

In alignment with the definition of 'employee' across all Labour Codes, the definition of 'employee' under the OSH Code, includes any person employed on wages by an establishment, either directly or through a contractor, to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical or any other work, as well as those persons declared to be an employee by the appropriate Government. The definition of an employee under the OSH Code, specifically includes those persons employed through a contractor.

The OSH Code also introduces the concept of 'worker', and similar to the other Labour Codes, it covers those individuals who are captured within the scope of the term 'employee', but excludes: (i) persons employed in a supervisory capacity whose monthly salary is INR 18,000 or more; and (ii) persons who are employed mainly in managerial and administrative capacity. Working journalists and sales promotion employees have also specifically been brought within the scope of the definition of 'worker'.

Under the revised definition of employee and worker, management and supervisory employees, who may have been workers for the purpose of the Factories Act, would now specifically be excluded. Further, under the Factories Act, any individual who was connected in any capacity with the manufacturing process in a factory would have been considered a worker. However, now only those individuals who satisfy the qualifications set out under the definition of 'worker' under the OSH Code would be considered as workers in a factory.

Under the OSH Code a duty has been cast on the employer to issue a written form of an appointment letter to all employees, which was earlier mandated under very limited circumstances. The Central Government can also prescribe rules governing health, safety and working conditions for all employees and implication of these rules vis-à-vis State Government orders under the local shops and establishments legislations would have to be assessed by the employers, in order to see if any changes would have to be made in their respective HR practices to comply with such rules.

ii. 'Contract labour' vis-à-vis 'Contractor' and 'Employer'

The meanings of the terms 'contract labour', 'contractor' and 'employer' have also been aligned under the Labour Codes, bringing about uniformity.

Under the OSH Code, contract labour means a worker who will be deemed to be employed in connection with the work of an establishment, when he is hired in or in connection with such work by or through a contractor, whether with the knowledge of the principal employer or not. To avoid any ambiguity, the definition of contract labour brings within its ambit inter-state migrant workers.

Interestingly, the definition of 'contract labour' specifically excludes a worker (other than a part-time worker), who is regularly employed by the contractor for any activity of his establishment on *mutually accepted standards of conditions of employment on a permanent basis*, and gets periodical increments in pay, social security coverage and other welfare benefits in accordance with the law. This exclusion provides clarity on the ambit of contract labour, as compared to the existing definition under the

CLRA, and would provide flexibility to employers in engaging different types of workforce structure as is suited to their needs.

The definition of ‘contractor’ too reflects this position as it now includes contractors who supply contract labour for any work of the establishment as *mere human resource*. The OSH Code defines a contractor, in relation to an establishment, to mean a person who: (a) undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour, or (b) supplies contract labour for any work of the establishment as a mere human resource, and includes a sub-contractor.

This has been a long-standing demand of the industry to differentiate outsourcing services from a mere manpower supply arrangement. This clarification is beneficial for principal employers to ensure that they are not made liable for defaults of another employer, merely because the latter provides them services with the assistance of their regular workforce.

Further, the OSH Code has expanded the definition of ‘employer’ to cover persons who employ employees directly or through any person, and also legal representatives of a deceased employer. Additionally, the definition also clarifies that the head of the department, occupier/ manager of a factory, or person having ultimate control over the affairs of the establishment (where such affairs are entrusted to a manager or managing director, such manager or managing director) are all covered within the ambit of the term employer. The implication of this broadened definition would have to be assessed by the employers since there are various duties cast on them under the OSH Code and it may not necessarily be limited to contract labour, and to that extent, the rules that are to be framed by the appropriate Government would need to be further analysed to understand the scope of the broadened definition of ‘employer’.

iii. ‘Factory’ and ‘Establishment’

The OSH Code will apply to all establishments where 10 or more workers are employed. This would also bring within its fold commercial establishments such as IT/ITeS establishments, which would also be

required to comply with the provisions of the OSH Code.

Even factories, which employ 10 or more workers, are, for the purposes of obtaining a registration under the OSH Code, considered as establishments.

The OSH Code further provides that where, under any existing law in force in a State, immediately before the commencement of the OSH Code, the number of workers specified is more or less than the threshold prescribed under the OSH Code, then the existing threshold prescribed under the State law will prevail in that State, until amended by the competent legislature. The onus is now on employers to assess if any state-specific regulation provides a lower threshold, in order to determine the applicability of the OSH Code to their establishments.

Subject to the above, the threshold for a premises to be considered as a factory under the OSH Code has been increased from the existing threshold under the Factories Act from 10 or more to 20 or more workers, if manufacturing process is undertaken with the aid of power; and from 20 or more to 40 or more workers, if manufacturing process is undertaken without the aid of power.

iv. ‘Occupier’

The OSH Code, while retaining the existing definition of occupier under the Factories Act i.e., person having ultimate control of a factory, has specifically clarified that in case of a company, any one of the directors can be designated as the occupier, except an independent director within the meaning of sub-section (6) of Section 149 of the Companies Act, 2013.

v. ‘Manufacturing process’

The OSH Code has expanded the definition of manufacturing process from its existing meaning under the Factories Act to include the following processes within the definition: composing, offset, screen printing, three dimensional or four dimensional printing, prototyping, flexography or other types of printing process or book binding, and has provided flexibility to the Central Government to notify any additional processes in this regard.

vi. 'Wages'

The definition of the term 'wages' under the OSH Code is aligned with the other Labour Codes, thereby bringing consistency across legislations. The scope of the definition of wages has been widened to include all remuneration by way of salaries, expressed in monetary terms, which includes basic wages, dearness allowance and retaining allowance.

It is an exhaustive definition, which also provides a list of exclusions, such as:

- a. Statutory Bonus,
- b. Provident Fund,
- c. Pension,
- d. House rent allowance,
- e. Value of house accommodation and utilities,
- f. Conveyance allowance,
- g. Sum paid to defray special expenses due to the nature of work,
- h. Any overtime allowance,
- i. Any commission,
- j. Any retrenchment compensation, and
- k. Gratuity.

In an important proviso to the abovementioned exclusion, the OSH Code provides that if the aggregate amount of the exclusions specified in points (a) to (i), exceeds 50% (or such a notified percentage) of the total remuneration payable to the employee, the amount in excess of the said threshold, will be deemed as remuneration and be added to wages, a concept that has been reflected in the Wage Code as well. Further, if any part of the remuneration is given in kind, then the value of the said remuneration, which does not exceed 15% of the total wages payable to the employee, will also form part of the employee's wages.

vii. 'Building or other construction work'

Presently, the BOCW Act defines 'building or other construction work' to generally exclude any building



or other construction work to which the Factories Act applies, leading to anomalies in its application to green-field versus brown-field projects. The exclusions under the OSH Code from the ambit of 'building and other construction work' now include buildings or other construction work related to any factory or mine, or where such work is for residential purposes and the total cost of such work does not exceed INR 50,00,000, or a higher amount and employing more than the number of workers as notified by the appropriate Government.

viii. 'Appropriate Government'

Under the OSH Code, the appropriate Government for central public sector undertakings (**PSU**) is the Central Government, even if its shareholding in the PSU falls below 50% post the commencement of the OSH Code. The appropriate Government for any industry controlled by the Central Government or so notified in this regard, or for specified industries in the OSH Code, such as railways, mines, oil, field, major ports, etc., is also the Central Government. In other cases, the concerned State Government, where the establishment is situated is the appropriate Government. The OSH Code also clarifies that the State Government is the appropriate Government in respect of occupational safety, health and working conditions in a factory situated in that State.

B. Registration of Establishments and Closure Requirements

i. Registration of Establishments

The OSH Code envisages, at a national level, all establishments (whether a factory or a commercial establishment such as IT/ITeS establishments) to obtain a single registration within 60 days from the date of applicability of the OSH Code (unless they are registered under any Central labour law, or other law notified by the Central Government subject to compliance with certain conditions).

Any subsequent change in the ownership or management or any particulars contained in the registration is required to be electronically intimated to the registering officer within 30 days of such change.

In case of closure of establishments, the OSH Code requires a simple post-facto intimation of closure of the establishment to be electronically provided within 30 days of the closure, accompanied with a certification that *all dues to workers employed in the establishment have been paid*. Following this, the registering officer is required to cancel the registration certificate and remove the establishment from the register of establishments within 60 days.

The OSH Code has recognised the concept of deemed approval of the registration and cancellation of the registration in the event of failure of the registering officer to either issue a registration certificate or cancel the registration, as the case may be, within the prescribed time periods. Such deemed issuance or cancellation, as relevant, would certainly ease compliance of employers, and would also keep a check on unnecessary delays by authorities as a definitive time period is prescribed within which the authorities would be required to carry out their duties.

It would be relevant to note that the failure to obtain registration will disbar an employer from employing *any employee in the establishment*. The ramifications of this are much broader as it is not just about the authorities initiating criminal proceedings for failing to obtain such a registration, but it takes away the ability of an employer to employ any employee and

thereby, severely curtailing the ability to carry on any business, which needs to be borne in mind.

ii. Licencing of Factories

Depending on the rules framed by the appropriate Government, factories may have to also undergo a 2 step registration process, one when it employs 10 or more workers and the other when it qualifies to be a factory as per the amended definition under the OSH Code.

Another practically beneficial concept introduced under the OSH Code, in order to promote ease of doing business, is the ability to opt for and obtain a common licence in respect of a factory, industrial premises for beedi and cigar work, and for engaging contract labour, or any combination thereof (**Common Licence**), with an alternative option for a single licence for any one of them. The application for such Common Licence or any single licence can be made electronically, and the authority is required to grant the electronic licence within 45 days. In case of failure to grant the licence within such time frame, the licence would be deemed as issued and will be auto-generated after which no further inquiry may be undertaken. The OSH Code specifically prescribes that the form of the licence, which is to be notified by the appropriate Government should, as far as practicable, be similar throughout the country. This uniformity could be beneficial for employers who have establishments that require a licence in different states, from an administrative perspective.

iii. Licencing of contractors

In addition to the licencing requirement (i.e., standalone or a Common Licence, as explained above), the OSH Code has also introduced the concept of 'work-specific licence' for project based work orders and a 'national' license for undertaking work in more than one State.

C. Hours of Work, Annual Leave, Overtime Provisions

i. Daily and weekly working hours

The OSH Code, applicable to all establishments (including factories), has reduced the daily working hour limit from 9 hours, as currently provided under

the Factories Act, to 8 hours. Unlike the Factories Act, where specific approval of the authority is required to employ workers for overtime, the OSH Code provides that the appropriate Government can prescribe rules to limit the hours of overtime that an employer can engage its workers for, and also requires obtaining the worker's consent to work overtime.

The OSH Code has also empowered the appropriate Government to prescribe daily working hours, intervals of rest and spread over, such that the maximum daily hours do not exceed 8, and also to prescribe the total number of hours of overtime. The OSH Code also provides the employer to fix the weekly off for its workers so long as they are not made to work continuously for more than 6 days and the appropriate Government is further empowered to exempt workers from this provision on certain conditions.

Shift working restrictions and recognition of a weekly holiday for workers working in night shifts as prescribed under the Factories Act are broadly mirrored in the OSH Code, and the current restriction on double employment has been extended to workers in factories and mines, who have already been working in a similar establishment in the preceding 12 hours.

ii. Annual leave with wages

The quantum of leave benefit under the OSH Code is the same as what is provided under the Factories Act, however, the OSH Code has reduced the qualifying period for entitling a worker to such leave, from the existing 240 days under the Factories Act, to 180 days worked in a calendar year and permits the worker to avail that leave in the year he earns it, which under the Factories Act could only be availed in the subsequent calendar year.

Additionally, under the extant provisions of the Factories Act, if a worker commences work later than January 1 of a year, the prescribed annual leave may be granted to him if he has worked for 2/3rds of the total number of days in the remainder of the calendar year. Under the OSH Code, this qualifying period has been reduced to 1/4th, accordingly, entitling workers to annual leave with wages, sooner than they would have been entitled to under the Factories Act.

In relation to encashment of annual leaves, the existing carry forward limit under the Factories Act of 30 days (save for limited exceptions) and encashment on cessation of employment has been retained. In addition, the OSH Code now allows workers to also encash unavailed annual leave at the end of a calendar year.

D. Special Provisions on Employment of Women

The OSH Code has removed the restrictions imposed on employers for employing women under the Factories Act and the Plantation Act. At present, the Factories Act mandates a specific notification to be issued by State Governments to provide an exemption for women to work more than 9 hours in a day and to work beyond the hours of 6 a.m. to 7 p.m., subject to the condition that women will not be permitted to work between 10 p.m. and 5 a.m. In contrast, the OSH Code sets out a general enabling provision for women to be employed in any establishment for any work before 6 a.m. and after 7 p.m., the only condition being that the consent of the woman is obtained before employing her during those times, and compliance with additional safeguards relating to their safety, holidays, working hours, etc., to be prescribed by the appropriate Government.

Further, the OSH Code empowers the appropriate Government to prescribe additional requirements for an employer to provide adequate safeguards prior to employment of women in some operations that are dangerous for their health and safety.

The OSH Code, therefore, provides greater flexibility for the employment of women at all hours and has removed the factors that had led to their discrimination, as a result of the restrictions that the Factories Act imposed on their employability, which had led to these provisions being held as unconstitutional by various High Courts.

E. Provisions Relating to Contract Labour

i. Employment of contract labour

The OSH Code provides a special chapter on matters dealing with contract labour, which applies to establishments in which 50 or more contract labour are employed or were employed on any day in the preceding 12 months through contract, and to every manpower supply contractor who has employed 50



or more contract labour on any day of the preceding 12 months. Unlike the CLRA, which allows State Governments the flexibility to modify the threshold for applicability of the CLRA, the OSH Code provides a single unified threshold without granting State Governments the ability to modify it.

ii. Core sector prohibition

Under the present CLRA regime, the appropriate Government is empowered to notify any processes/ operation/ work in an establishment where engagement of contract labour is prohibited, having regard to certain prescribed criteria, resulting in different standards, in different states. For example, the CLRA, in its application to the States of Andhra Pradesh and Telangana, prohibits engagement of contract labour in core activities.

Under the OSH Code, now engagement of contract labour by principal employers in core activities of the establishment is prohibited across States, subject to certain exceptions, which are broad. The assessment of whether a particular exception would apply to an activity or whether the activity would qualify as core activity is left to the designated authorities.

iii. Obligations on principal employers

The current regime under the CLRA imposes a secondary obligation on principal employers, to

provide welfare facilities and amenities to contract labour, engaged at their establishment only in case the contractor fails to do so within a prescribed timeline. In contrast, under the OSH Code, principal employers are specifically made responsible in the first instance for providing the prescribed welfare facilities and meeting the prescribed standards for occupational health and safety at their establishment, to the contract labour engaged at such establishment, and does not provide for a statutory right to claim reimbursement from the contractor for such facilities. This would necessitate employers to undertake a cost analysis before engaging contractors and ensuring the contractual arrangement specifically factors in the cost of such provisions before finalising the underlying fee structure and/or record the principal employer's right to recover such costs.

In the event a principal employer employs contract labour through a contractor who is not duly licenced, the engagement of contract labour would be deemed to be in contravention of the OSH Code, and penalties would be incurred by the principal employer in this regard. Accordingly, principal employers would have to undertake an additional step while conducting their due diligence on contractors to check if the contractors have obtained, and ensure that they maintain, a valid contractor licence.

iv. Other important provisions

Similar to the existing provisions under the CLRA, under the OSH Code also, a contractor has the primary responsibility to make payment of wages to contract labour within the prescribed time periods, failing which the principal employer is required to make such shortfall payment and may subsequently recover these costs from the contractor. The appropriate Government may also recover these amounts from the security deposit paid to it by the contractors.

In line with the goal of digitisation across the country, the OSH Code requires contractors to make the payment of wages to contract workers through bank transfer or electronic mode and intimate such mode of payment to the principal employers electronically. Only where this is not possible, payment may be made in a manner to be prescribed by the appropriate Government.

It is pertinent to note that the present requirement under the CLRA for the principal employer to nominate a representative in whose presence wages are to be disbursed, is done away with under the OSH Code.

F. Inter-State Migrant Workers

Under the ISMW Act, 'inter-state migrant workmen' is defined to include only persons recruited by or through a contractor in one State for employment in an establishment in another State. The OSH Code has significantly increased the ambit of the meaning of 'inter-state migrant worker' and has included persons who have come from one State and obtained employment in an establishment in another State (termed as the 'destination State') or has subsequently obtained employment in a different establishment in that destination State. It would also include persons who have been directly recruited by an employer for its establishments. However, it excludes from its purview those individuals whose monthly wages are in excess of INR 18,000 or such other amount as may be notified by the Central Government.

The specific chapter under the OSH Code, regulating welfare provisions for inter-state migrant workers, has been made applicable to every establishment in which 10 or more inter-state migrant workers are employed

or were employed in the preceding 12 months. The applicability under the OSH Code has been defined only with respect to establishments, as against the existing provisions of the ISMW Act, which provide for its applicability to establishments and contractors employing 5 or more inter-state migrant workmen.

The OSH Code imposes an obligation on the contractor or employer of every establishment employing inter-state migrant workers to specifically ensure suitable working conditions, having regard to the fact that they are required to work in a State different from their own, and to report to specified authorities of both States and his next of kin in case of any fatal accident or serious bodily injury. These are similar to the existing obligations under the ISMW Act.

The OSH Code specifically provides for extension of benefits that are available to workers of the establishment, to inter-state migrant workers, under the Employees' State Insurance Act, 1948 (**ESI Act**), Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (**EPF Act**), or any other law in force and to provide medical check-up facility as provided to workers.

The OSH Code empowers the appropriate Government to make schemes to: (a) provide inter-state migrant workers an option to avail benefits of public distribution system either in his native State or his destination State, and (b) to provide for portability of benefits of inter-state migrant workers working for building and other construction work, out of the building and other construction work cess fund in the destination State.

The extant provision on deemed extinguishment of an unsatisfied debt from an inter-state migrant worker upon completion of his period of employment is also mirrored in the OSH Code.

G. Other Workers

i. Audio-visual workers

The OSH Code has introduced the concept of an 'audio-visual worker', which is substantially wider than that of a cine-worker, covered under the Cine Workers Act. An audio-visual worker, under the OSH Code, refers to a person employed directly or indirectly, in

connection with audio-video production as an artist of various descriptions, and whose remuneration does not exceed the threshold to be prescribed by the Central Government. Audio-video production includes animation, audio-visual advertisement, digital production, feature and non-feature films, television, web-based serials, talk shows, reality shows and even sports shows.

The OSH Code therefore covers a wide variety of workers in the entertainment industry and will require employers of these establishments to ensure compliance with the provisions on the standards for occupational safety, health, working conditions and welfare facilities.

An additional protection is afforded to audio-visual workers under the OSH Code, mirroring the existing protection afforded to cine workers under the Cine Workers Act, in relation to mandatorily entering into contracts/agreements with audio-visual workers for their employment in connection with any audio-visual programme and registration thereof.

ii. Working journalists and sales promotion employees

The ambit of 'working journalists' has been broadened under the OSH Code from the existing definition under the Journalists Act to also include persons employed (whole-time or part-time) in establishments relating to electronic and digital media, radio or other media.

The Sales Promotion Act currently only governs the employment of sales promotion employees in certain notified industries, such as pharmaceutical industries. However, the OSH Code would regulate the employment of such employees in *any* establishment.

The OSH Code provides for near similar provisions relating to working hours, intervals of rest and leave as the Journalists Act and Sales Promotion Act, however, since working journalists and sales promotion employees are also covered under the worker definition, it is not clear if the leave provisions applicable to workers would supplement the leave benefits specifically identified for working journalists and sales promotion employees.

H. Duties of Employer and Employee

- i. The OSH Code imposes various responsibilities on an employer, which ranges from providing a working environment that is safe and without risk to the health of the employees, to providing adequate welfare facilities such as separate shelter-rooms, rest-rooms, etc. It is pertinent to note that under the OSH Code, the Central Government is empowered to declare, by notification, standards on occupational safety and health for work places relating to factories, mines, dock work, building and other construction work and other establishments.

As these standards and regulations around facilities are to be prescribed by the Central Government, they accordingly will now be standardised and made consistent across the country, as opposed to the current regime where State Governments are empowered to make rules for certain occupational health, safety and welfare conditions, resulting in differing standards across states and in some cases, across industries.

- ii. It is pertinent to note that these welfare facilities are required to be provided in *all establishments* (for example even commercial establishments), and not just in factories as under the current regime.
- iii. In a welcome and progressive legislative change, the OSH Code recognises the rights and needs of transgender employees and imposes an obligation on the employer to ensure that adequate and separate bathing places, locker rooms, rest-rooms and bathrooms are provided to transgender employees.
- iv. The threshold of employees for the provision of welfare facilities has been reduced from the current thresholds under the Factories Act. For example:
 - a. canteen facilities are required in all establishments for employees, wherein 100 or more workers, including contract labourers, are ordinarily employed, as against the current threshold of 250 workers under the Factories Act;
 - b. adequate, suitable and separate shelters or restrooms for male, female and transgender employees and a lunch room in every factory and mine where more than 50 workers are ordinarily

- employed, as against the current threshold of 150 workers;
- c. the appointment of a welfare officer in every factory, mine or plantation where 250 or more workers are ordinarily employed, as against the current threshold of 500 workers.
- v. Provision of an ambulance room in every factory, mine, building or other construction work where more than 500 workers are ordinarily employed is a new welfare facility prescribed under the OSH Code for which the Central Government is empowered to notify rules.
- vi. Another new mandatory facility introduced under the OSH Code is free temporary living accommodation within, or as close to, the work site as possible to be provided by an employer to all building workers employed, and for causing removal or demolition of the temporary accommodation. Further requirements in this regard may be prescribed by the Central Government, as well as for the employer to return possession of the land so obtained for this purpose to the relevant local authority, and for payment by the principal employer of expenses incurred by the contractor on providing accommodation, where building or other construction work is done through the contractor.
- vii. The provision of welfare facilities in all establishments would undoubtedly benefit a larger group of employees, that said, the impact on employers – from a financial, timing and general compliance perspective – is quite considerable, particularly since the threshold of employees to be considered for provision of these facilities will be reduced in comparison to the existing regime.
- viii. In line with the current legal regime, the OSH Code also imposes a duty on the employer to send notices to relevant authorities appointed under the OSH Code, within the prescribed time period in the event an accident occurs in the establishment or an employee contracts any notified disease.
- ix. In addition to the abovementioned duties, the OSH Code also imposes certain specific responsibilities on manufacturers, importers, suppliers, architects, project engineers and designers such as non-deployment of untested articles (whether imported or manufactured in India) in establishments.
- x. Every employee of an establishment is entitled to obtain from the employer, information relating to employees' health and safety at the workplace and represent to the employer either directly or through the Safety Committee (if constituted for this purpose) regarding inadequate provision for protection of his safety or health, and if he is still not satisfied, he may approach the Inspector-cum-Facilitator.
- xi. Additionally, if an employee has reasonable apprehension that there is a likelihood of imminent serious personal injury/ death/ imminent danger to health, he may bring the same to the attention of the employer (directly or through the Safety Committee) and simultaneously to the Inspector-cum-Facilitator, in order for the employer to take corrective actions.
- xii. Safety Committee: The OSH Code empowers the appropriate Government to require any establishment or class of establishments to constitute in the prescribed manner a Safety Committee consisting of equal number of representatives of employers and workers engaged in such establishment. Further, the OSH Code mandates appointment of safety officers with such qualifications and perform such duties, as may be prescribed by appropriate Government in: (i) every factory which employs 500 workers; or (ii) a factory carrying on hazardous process, which employs 250 workers; or (iii) building or other construction work where 250 workers are employed; or (iv) a mine where 100 or more workers are ordinarily employed.
- xiii. The OSH Code also imposes certain responsibilities on the employees, such as: (i) co-operating with employers in meeting the provisions of the OSH Code; (ii) reporting of any unhealthy or unsafe working situation to the employer; (iii) taking reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at the workplace; and (iv) bringing to the attention of the employer, events in the workplace which may cause serious bodily injury or death or are an imminent danger to health of the employees.
- xiv. The OSH Code also imposes a uniform responsibility on all persons to not intentionally or recklessly interfere with, damage or misuse anything which is provided in the interest of health, safety or welfare under the OSH Code.

H. Penalties

While laying down uniform penalties for non-compliance with inter alia occupational safety, health and working conditions in establishments, welfare facilities, etc., the OSH Code enhances the penalties

for offences committed thereunder, adding to their deterrence value. Given below is an overview of the penalties envisioned under the OSH Code.

Sr. No.	Offence	Penalty
1.	For general non-compliance with the provisions of the OSH Code or rules or regulations or bye-laws or of any standards, made thereunder.	INR 2,00,000 which may extend to INR 3,00,000. In case of a continuing contravention, an additional penalty of INR 2,000 for each day till the contravention is so continued.
2.	For non-maintenance of registers, records and non-filing of returns, etc., as required under the OSH Code.	INR 50,000 which may extend to INR 1,00,000.
3.	For prohibiting, restricting or regulating the employment of workers, including women, audio-visual worker and contract labour and employees below 18 years of age in case of mines.	INR 50,000 which may extend to INR 1,00,000.
4.	For contravention of the provisions of duties relating to hazardous processes.	Imprisonment for a term which may extend to 2 years and with fine which may extend to INR 5,00,000. In case of a continuing contravention, with additional fine which may extend to INR 25,000 for each day till the contravention is so continued
5.	For contravention of any provision of the OSH Code or any rules or orders made thereunder, which imposes any duty or liability on employee.	Up to INR 10,000.
6.	Any contravention under the OSH Code resulting in an accident or dangerous occurrences causing death.	INR 5,00,000 or imprisonment for a term which may extend to 2 years or both.

7.	Any contravention under the OSH Code resulting in an accident or dangerous occurrences resulting in serious bodily injury to any person within the establishment.	<p>INR 2,00,000 which may not exceed INR 4,00,000 or imprisonment for a term which may extend to 1 year or both.</p> <p>It is pertinent to note that in case of any accident or serious bodily injury, the OSH Code empowers the courts to grant a portion of fine (not less than 50%) as compensation to the victim or his legal heirs.</p>
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Under the OSH Code, penalties by way of imprisonment is reserved for serious infractions (such as those leading to death or serious bodily injury or obstruction of authorities in performing their duties). The decriminalisation of various offences is in stark contrast with the extant laws which prescribe imprisonment even for general minor non-compliances.

devising an inspection scheme under the OSH Code include *inter alia* the practice of assigning a unique number to establishments (which will be the same as the establishment's registration number) and the assignment of such a unique number to each Inspector-cum-Facilitator as well as to each inspection undertaken under the OSH Code.

G. Other Salient Features

i. Emphasis on ensuring compliance rather than penalising an employer

Similar to the Wage Code, the thrust of the OSH Code is to ensure compliance therewith, and various measures have been introduced to achieve this objective:

a. Inspector-cum-Facilitator

The OSH Code provides for the appointment of an Inspector-cum-Facilitator, whose role is enlarged to encompass not just inspection, but also to supply information and sensitise employers and workers of the provisions of the OSH Code and compliance therewith.

b. Inspection

The appropriate Government is empowered to frame an inspection scheme that may provision for web-based information and calling for information electronically as well as assign duties to carry out such inspections based on a random selection. If properly framed, it could cut down on abuses that are rampant in the inspection regime currently in place. The factors that will be considered while

c. Prior opportunity to rectify

The OSH Code permits the employer to rectify any non-compliances under certain circumstances, and further restricts the Inspector-cum-Facilitator from initiating action unless the employer has been given such an opportunity to rectify the non-compliance within a period of 30 days from the date of notice giving such opportunity. However, the employer would be disqualified from availing such an opportunity if it subsequently indulges in similar violation within a period of 3 years.

d. Compounding of first offence

Unlike the current legislations, the OSH Code provides for compounding of certain offences either before or after an enquiry is held or prosecution is initiated in a prescribed manner, by paying 50% of the maximum penalty in case of a penalty, and 75% of the maximum fine in case of an offence. However, the option of compounding is not available for the offence committed the second or subsequent time within a period of 3 years from the date of either: (i) commission of a similar offence which was earlier compounded; or (ii) commission of a similar offence for which conviction order has been passed.

ii. Maintenance of registers and records electronically

By consolidating the various registers and records, and permitting the maintenance of the same electronically, the OSH Code offers substantial relief to employers. Returns may also be filed electronically, under the OSH Code. Further, the OSH Code recognises the issuance of wage slips in electronic format to employees.

iii. Social Security Fund

A significant new concept introduced under the OSH Code is the establishment of a social security fund by the appropriate Government for the welfare of unorganised workers as defined under the Unorganised Workers Social Security Act, 2008.

The amounts collected as penalties for certain non-compliances under the OSH Code and the amounts collected through compounding of offences under the OSH Code will be utilised for this fund. The OSH Code also empowers the appropriate Government to prescribe other sources as well for funding the social security fund. The entire corpus of the social security fund will be used for the welfare of the unorganised workers in a manner prescribed by the appropriate Government. Further, the OSH Code empowers the appropriate Government to transfer the amount in the social security fund to any fund established under any other law for the time being.

It is pertinent to note that the Code on Social Security, 2020, also provides for establishment of a social security fund for unorganised workers.

iv. Power to exempt

Under the OSH Code, the appropriate Government has power to exempt establishments or class of establishments from any provisions of the OSH Code, rules or regulations framed thereunder, by notification and subject to such conditions and restrictions, and for such period to be specified. In addition, State Governments have been vested with the discretionary power to exempt a “new factory” or “class or description of new factories” from all or any provisions of the OSH Code, if deemed necessary in public interest to create more economic activities and employment opportunities for a specified period



from the date commercial production starts. In this regard, it may be pertinent to note that the term ‘public interest’ has not been defined in the OSH Code. Under the OSH Code, the terms “*new factory or class or description of new factories*” means “*such factory or class of description of factories, which are established and whose commercial production start within a period as may be specified in the notification*”.

An additional discretionary power is vested with the appropriate Government to exempt any workshop or workplace where manufacturing process is carried on and attached to a public institution maintained for the purposes of education, training, research or information, from provisions of the OSH Code. However, such exemption cannot be granted in relation to hours of work and holidays without obtaining approval of the appropriate Government of a scheme regulating the hours of work, intervals of rest and holidays of persons employed at the institution.

v. Powers during an epidemic, pandemic or disaster

Drawing from the experience of the COVID-19 pandemic, the OSH Code provides the appropriate Government the power to exempt any workplace, work activity or class thereof from provisions of

the OSH Code in the event of any public emergency, disaster or pandemic in the whole or part of the country, for a period of up to one year at a time. In this regard, 'public emergency' means a grave emergency whereby the security of the whole or any part of India is threatened, by war or external aggression or internal disturbance.

vi. Exclusion of jurisdiction of civil courts

The OSH Code specifically excludes the jurisdiction of civil courts in respect of any matter to which the OSH Code applies, and also provides that no injunction is to be granted by a civil court in respect of anything done or intended to be done under the OSH Code. This is a modification brought about by the OSH Code, leaving employers and employees with recourse only to authorities prescribed under the OSH Code.

vii. Overriding effect

The provisions of the OSH Code shall have effect, notwithstanding anything inconsistent therewith,

contained in any other law for the time being in force or in terms of any award, agreement or contract of service, whether made before or after the commencement of the OSH Code. Any award, agreement, contract of service or otherwise under which an employee is entitled to more beneficial benefits than under the OSH Code will, however, to that limited extent, prevail.

viii. Preservation of actions taken under existing laws

Once the OSH Code is notified, the corresponding legislations will stand repealed. However, any actions taken under those enactments or any rule, regulation, notification, nomination, appointment, order or direction made thereunder will be deemed to have been done or taken or provided for such purpose under the corresponding provisions of the OSH Code and will be in force to the extent they are not contrary to the provisions of the OSH Code or until they are repealed by the Central Government.

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