

Industrial Relations 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 Industrial Relations Code, 2020 (**IR Code**), the Code on Social Security, 2020 and the Occupational Safety, Health and Working Conditions 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 IR Code consolidates Central laws that govern and regulate the industrial relations and industrial disputes. To this end, the IR Code subsumes the following legislations, which will stand repealed once the IR Code is implemented, namely:

- i. the Trade the Industrial Disputes Act, 1947 (**IDA**);
- ii. Unions Act, 1926 (**TU Act**); and
- iii. the Industrial Employment (Standing Orders) Act, 1946 (**IESO Act**).

The stated objective of the IR Code is to consolidate and amend the laws relating to Trade Unions, conditions of employment in industrial establishment or undertaking, investigation and settlement of industrial disputes.

The IR Code was passed by both Houses of the Parliament on September 22, 2020 and September 23, 2020, respectively, and received the President's assent on September 28,

2020. The IR 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 IR Code in a staggered manner, meaning that different provisions of the IR 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 IR Code have been summarised below:

This Client Alert sets out the key aspects of the Industrial Relations Code, 2020. This is accompanied by an Client Alert on the Occupational Safety, Health and Working Conditions Code, 2020 and the Code on Social Security, 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 IR Code has introduced the definition of 'employee' which includes any person employed in an industrial establishment, to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical, clerical work for hire or reward, whether the terms of employment are express or implied and also includes a person declared to be an employee by the appropriate Government. The employee definition excludes apprentices engaged under the Apprentices Act, 1961, and member of armed forces of the Union from its purview.

Unlike the definition of 'workman' (now termed as 'worker' under IR Code) under IDA, the IR Code includes the working journalists as defined in Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 and sales promotion employees as defined under Sales Promotion Employees (Conditions of Service) Act, 1976. Further, the worker definition under the IR Code excludes apprentices defined under Apprentices Act, 1961. Additionally, the salary limit for exemption of supervisors from the ambit of 'workers' has been increased from INR 10,000 per month to INR 18,000 per month (or an amount as notified by the Central Government).

Further, for the purpose of Chapter III (*Trade Unions*), of the IR Code, the term 'worker' means (i) all persons employed in trade or industry; and (ii) includes the worker as defined under the Unorganised Workers' Social Security Act, 2008. The expanded scope of the 'worker' definition will bring a larger part of the workforce (including those engaged in the unorganised sector) within the purview of the IR Code.

ii. 'Industrial Dispute'

The IR Code has expanded the definition of 'industrial dispute' from its existing meaning under the IDA to explicitly include disputes or differences between an individual worker and an employer, connected with, or arising out of discharge, dismissal, retrenchment, or termination of such individual worker (**Individual**

Dispute). While the IDA has a deeming provision to also recognise such Individual Dispute, the same has not been specifically added within the definition of the term 'industrial dispute'.

iii. 'Wages'

The definition of the term 'wages' under the IR 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 IR Code provides that if the aggregate amount of the exclusions specified in points (a) to (i), exceed 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.

iv. 'Trade Union Dispute'

The IR Code has introduced the concept of 'Trade Union Disputes', which has been defined to mean any dispute relating to trade unions arising either between two or more trade unions or between the members of a trade union. This empowers the industrial tribunals to adjudicate disputes arising between trade unions as well.

v. 'Employer'

The IR Code has expanded the definition of 'employer' to cover contractors and legal representatives of a deceased employer. Additionally, the definition also clarifies that the head of department, occupier/manager of the 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. Therefore, under the IR Code, contractors will also be responsible for compliance with applicable provisions of the IR Code in relation to their employees who may be deployed as contract labour in the establishments of the principal employer.

vi. 'Strike'

The definition of the term 'strike' has been extended to include within its meaning any concerted casual leave on a given day, taken by 50% or more workers employed in a particular industry. This is aimed at dissuading workers from taking unannounced concerted casual leave with the intention to disrupt or stop the work at the establishment of an employer.

vii. 'Industry'

The ambit of the word 'industry' under the IR Code has been expanded to bring it in line with the definition given by the Supreme Court in its landmark decision of *Bangalore Water Supply and Sewerage Board v. A. Rajappa*¹ and the amendment introduced in 1982 to the IDA (which was never brought into force). The definition provided by the IR Code covers any systematic activity carried on by cooperation between an employer and worker (whether such worker is employed by such employer directly or by or through



any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature). It excludes institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service, activities of the appropriate/ Central Government relating to sovereign functions, defence research, atomic energy and space, domestic service, or any other activity notified by the Central Government.

viii. 'Appropriate Government'

Under the IR 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 IR Code. The appropriate Government for any industry controlled by the Central Government or so notified in this regard, or for specified industries in the IR Code such as railways, mines, oil, field, major ports, etc., is also the Central Government. In all other cases, the State Government is the appropriate Government.

B. Industrial Relations and Disputes

i. Retrenchment, Lay-off and Closure

Under the IDA, retrenchment, lay-off and closure

¹ AIR 1978 SC 548

in industrial establishments (i.e. factories, mines and plantations thereunder) in which 100 or more workmen are employed or were employed on an average per working day for the preceding 12 months, cannot be done, without the prior permission of the appropriate Government. While this requirement to obtain prior permission remains the same under the IR Code, the threshold for seeking prior permission from the appropriate Government has been increased from 100 to 300 workers (with a discretion given to the appropriate Government to notify a threshold higher than 300 workers). This change has no impact for industrial establishments other than factories, mines and plantations. Certain State Governments have already implemented the increased limit (from 100 to 300) for seeking prior permission from the appropriate Government.

Further, under the IR Code, the appropriate Government has been empowered to prescribe retrenchment compensation other than the average pay of 15 days prescribed under the IDA

ii. Strike and Lock-out

Currently, under the IDA, a notice of strike needs to be given only in public utility services². However, under the IR Code, workers employed in an industrial establishment/ or employers of industrial establishments (irrespective of it being a public utility service industry or not) are not allowed to go on a strike/ declare lock-out, as the case may be, in breach of contract, inter alia (i) without giving a notice within 60 days before striking/ locking-out, as the case may be; or (ii) within 14 days of giving such notice; or (iii) before the expiry of the date of strike/ lock-out, as the case may be, specified in such notice. Both the IDA and the IR Code provide that no strikes or lockouts are permitted during the pendency of any conciliation proceedings before a conciliation officer and 7 days after the conclusion of such proceedings.

Further, unlike the IDA, under the IR Code, no strike or lock-out, is permitted during: (i) the pendency of a

proceeding before tribunal or a national tribunal and 60 days, after the conclusion of such proceedings; or (ii) the pendency of arbitration proceedings before an arbitrator and 60 days after the conclusion of such proceedings; or (iii) any period in which a settlement or award is in operation, in respect of the matters covered by the settlement or award.

iii. Notice of Change

Under the IDA, in case any employer intends to make any unilateral change to certain terms and conditions of work (as prescribed under the IDA), a 21 day prior notice of such change is required to be given to the workmen (**Notice of Change**). Under the IR Code, while the Notice of Change continues to apply, it provides for two additional situations where such a notice is not required to be given³. These are: (a) emergent situation which requires change of shift or shift working, other than in accordance with the standing orders, in consultation with Grievance Redressal Committee constituted under the IR Code; or (b) if such change is effected in accordance with the orders of the appropriate Government or in pursuance of any settlement or award.

iv. Dispute Resolution

One of the key changes under the IR Code is the significant reduction in the number of authorities under the IDA. Unlike the IDA, the jurisdiction and authority of labour courts, courts of inquiry or boards of conciliation have been excluded and disputes under the IR Code are to be adjudicated only by conciliation officers, arbitrators and industrial tribunals. There is also a change in the constitution of industrial tribunals under the IR Code which provides for one judicial and one administrative member (in place of only one judicial member who presently presides the industrial tribunal under the IDA). Certain matters, as may be specified in the rules, can also be decided by single member industrial tribunal under the IR Code.

Further, the IR Code has removed the concept of reference of disputes, for the purpose of adjudication,

² The public utility service under the IDA broadly covers railway or transport services or services in connection with working of major ports or docks, postal, telegraph or telephone service, industry engaged in supplying power, light or water to public etc. and such other industries as notified from time to time.

³ Under the IDA (as reiterated in the IR Code), Notice of Change is not required in case of any change (i) which is effected pursuant to any award or settlement; or (ii) where the workmen likely to be affected are persons to whom specified service regulations apply.

by the appropriate Government to the concerned authority (namely the board of conciliation, court, labour court, or tribunal) under the IDA. Under the IR Code, any concerned party may make an application in the prescribed form to the tribunal in the matters which are not settled by the conciliation officer, within 90 days from the date of receipt of the report prepared by the conciliation officer. Separately, in case of dispute arising out of individual grievances, the aggrieved party can directly appeal to the appropriate tribunal after the expiry of 45 days from the date he has made the application to the conciliation officer of the appropriate Government for conciliation of the said dispute.

However, the power of reference of the Central Government has been retained for matters of national importance or for industrial establishments situated in more than one State, which could be affected by such an industrial dispute. Additionally, the industrial tribunal and national tribunal, in the interest of justice are empowered to grant interim relief during the pendency of industrial dispute.

The IR Code expressly bars the conciliation officer from holding any proceeding relating to an industrial dispute after 2 years from the date on which the industrial dispute arose. Further, it expressly provides that the conciliation officer shall, upon closure of his investigation, send the full report to the concerned parties along with the appropriate Government within 45 days (as opposed to 14 days prescribed under the IDA) of the commencement of the conciliation proceedings or within shorter duration as may be fixed by the appropriate Government.

v. Grievance Redressal Committee (“Committee”)

The IDA provides for setting up of a Committee (with equal representatives of both workmen and employer including women members) by industrial establishments employing 20 or more workmen for the resolution of disputes arising out of individual grievances. As per the IDA, the requirement to constitute a Committee is not mandatory for industrial establishments which already have a grievance redressal mechanism in place. However, unlike the IDA, the setting up of the Committee appears to be mandatory under the IR Code, even

if the employer has an internal grievance redressal mechanism in place.

Further, under the IR Code, the number of members of the Committee has been increased from 6 under the IDA 10. Additionally, the IR Code mandates an adequate representation of women workers in the Committee, which shall not be less than the proportion of women workers to the total workers employed in the industrial establishment.

Unlike the IDA, the IR Code provides a time limit of 1 year from the date on which the cause of action arose, for an aggrieved worker, to file an application in respect of any dispute arising out of individual grievances. Further, the IR Code clarifies that the decision of the Committee on any application filed before it shall be made on the basis of the majority view of the Committee and more than half of the members representing the workers on the Committee should have agreed to such a decision.

Under the IDA, an appeal against the decision of the Committee can be made to the employer who is required to redress it within a period of one month from the date of receipt of such appeal. However, under the IR Code, the application against the decision of the Committee or if the matter has not been resolved, has to be filed with the conciliation officer (and not the employer) within 60 days from the date of the decision of the Committee or on expiry of the time limit for completion of proceedings by the Committee (i.e. period of 30 days from the date of receipt of grievance application), as the case may be.

vi. Individual Worker’s Dispute

Under the IDA, an application for the adjudication of an individual dispute can be made directly to the labour court or tribunal, after the expiry of 45 days of making an application for conciliation of the dispute. However, the same has to be made within three years from the date of discharge, dismissal, retrenchment or termination of service of the aggrieved worker. Under the IR Code, the limitation period for filing a direct application to the tribunal for adjudication of an individual dispute, has been reduced from three years to 2 years from the date of discharge, dismissal, retrenchment or termination of service of a worker.

Certain State Governments, such as Gujarat has reduced the time limit for raising individual dispute from 3 years to 1 year.

vii. Unfair Labour Practices

The activities considered as unfair labour practices under the IR Code are the same the IDA.

However, for further clarity, in the list of activities considered as unfair labour practices, wilful go-slow by workers or trade unions has been explained. In this regard, the term go-slow has been clarified under the IR Code to mean “*an occasion when more than one worker in an establishment conjointly work more slowly and with less effort than usual to try to persuade the employer of the establishment to agree to higher pay or better service condition or such other demand*”. The word usual means the standard that has been specified for a worker’s daily, weekly or monthly work, as applicable or the average of a worker’s daily, weekly or monthly work specified in the last three months, where no such standard has been specified.

viii. Power to Transfer Certain Proceedings

Under the IDA, the appropriate Government may withdraw any proceeding pending before any authority and transfer the same to another authority under the IDA, for the disposal of the proceeding. The appropriate Government has been given similar powers under the IR Code. Additionally, the Central Government has been given the discretion to withdraw any proceeding pending before an industrial tribunal constituted by the Central Government or the State Government and transfer it to the National Industrial Tribunal for disposal of the proceeding.

Other provisions in relation to industrial disputes and industrial relations under the IR Code have not undergone any significant change from the current law under the IDA.

C. Trade Unions

i. Sole Negotiating Union and Negotiation Council

The IRCODE has introduced the concept of a negotiating

union or council. An industrial establishment having a registered trade union shall have a negotiating union or a negotiating council, as the case may be, and such negotiating union or council shall negotiate with the employer on such matters as may be prescribed. In case there is only one trade union in an industrial establishment, the employer is required to recognise such trade union as the sole negotiating union of the workers. In case of multiple recognised trade unions, one with the support of at least 51% of the workers on the muster roll of that establishment as members will be recognised as the sole negotiating union by the employer. In case the industrial establishment has no trade union with at least 51 % of the workers on its muster roll as members, the employer should constitute a negotiating council consisting the representatives of registered trade unions which have the support of not less than 20 % of the total workers on the muster roll of that industrial establishment and such representation shall be one representative for each 20% of the workers.

Other provisions in relation to trade unions under the IR Code have not undergone any significant change from the current law under the TU Act.

D. Standing Orders

i. Applicability of the chapter on standing orders

The IESO Act is applicable to every industrial establishment that employs or had employed 100 or more workmen⁴ on any day of the preceding 12 months. Under the IR Code, the threshold for applicability of the provisions relating to standing orders has been increased from 100 to 300 workers. Further, the IESO Act defines an industrial establishment to include inter alia industrial establishment as defined under the Payment of Wages Act, 1936 (PWA). Therefore, unless specifically notified under the PWA, the provisions of the IESO Act are not applicable to an industrial establishment, except factories, railways and establishment of a contractor of an industrial establishment. However, the IR Code removes such a restriction and makes the provisions related to standing orders applicable to all establishments, which fall within the ambit of the words industrial establishment and industry. In this regard, certain

⁴ The definition of workman under the IESO Act is same as the definition under the IDA.

industrial establishments regulated by specific regulations, In this regard, certain industrial establishments regulated by specific regulations, such as Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, continue to be exempted under the IR Code.

The IESO Act gives the appropriate Government the discretion to apply provisions of the IESO Act to any industrial establishment employing workmen below 100, by way of a notification and by giving a prior notice of 2 months regarding such application. Such discretion has not been extended to the appropriate Government under the IR Code.

ii. Model Standing Orders and concept of deemed certification

The IR Code gives the employers an option to either frame their own standing orders or adopt the model standing orders drafted under the IR Code. In this regard, the Central Government will frame the model standing orders relating to conditions of service and related matters.

Further, the IR Code eases compliance for employers by introducing the concept of deemed certification of the model standing orders. Under the IR Code, if an employer adopts the model standing orders, the same shall be deemed to have been certified and the employer is only required to inform the certifying officer of such adoption. However, in case of any modifications to the model standing orders, such modifications are required to be submitted by the employer to the certifying officer for certification in the manner prescribed under the IR Code.

In terms of the procedure for certification, unlike the IESO Act, the IR Code places a consultation obligation on the employer to consult trade unions or recognised negotiating union or members of the negotiating council on the draft standing orders prior to submission of the same to the certifying officer for certification. The requirement of certifying officer notifying workers, trade unions and negotiating unions to submit objections to the draft standing

orders remains the same under the IR Code. However, unlike the IESO Act, the timeline of 15 days to submit such objection has been deleted under the IR Code. The IR Code, further, requires the certifying officer to complete the process of certification within a period of 60 days from the date of receipt of the draft standing orders or the modified standing orders, as the case may be.

iii. Appeal against order of the certifying officer

Under the IESO Act, any employer, workman, trade union or other prescribed representatives of the workmen aggrieved by the order of the certifying officer passed in relation to certain objections raised against the draft standing orders, could appeal to the appellate authority within 30 days from the date on which copies of the order of the certifying officer are sent to the parties.

The timeline for making an appeal against the order of the certifying officer has been increased from 30 days to 60 days under the IR Code.

Other provisions in relation to standing orders under the IR Code have not undergone any significant change from the current law under the IESO Act.

E. Concept of Fixed-Term Employment

While employers often enter into fixed term contracts with the employees for short duration, the same was largely unregulated under previous Indian labour legislations. In an attempt to recognise fixed term employment and contracts, the Central Government by way of notification dated March 16, 2018 incorporated fixed term employment as a classification of workmen under the central rules framed under the IESO Act across all sectors, where the Central Government is the appropriate Government. Similarly, various states, such as Haryana, Karnataka, Bihar, and Punjab, have amended their respective state rules framed under the IESO Act to recognise the concept of fixed term employment.

With an aim to provide flexibility to employers across sectors, to engage workers for shorter and fixed durations (irrespective of whether the appropriate Government for the sector is the Central Government or



the State Government) the IR Code has also expressly recognised fixed term employment.

The IR Code aims at protecting the rights and ensuring welfare of the fixed term employees and this is reflected in the definition of fixed term employment. Under the IR Code, a fixed term worker shall be entitled to *inter alia* the following:

- i. Parity in wages, working hours, allowances and other benefits of fixed term workers and permanent workers for doing same work or work of similar nature.
- ii. Statutory benefits extended to all permanent workers proportionate to his period of employment, notwithstanding the qualifying period to receive such benefits provided under the respective legislations;
- iii. Gratuity benefits, if such fixed term worker renders service for 1 year under the contract.

The definition of the term 'retrenchment' under the IR Code, has been amended to specifically remove 'termination of service of worker as a result of completion of tenure of fixed term employment'.

F. Establishing a Worker Re-Skilling Fund

The IR Code provides for the setting up of a fund, namely 'Worker Re-Skilling Fund', by the appropriate Government through a notification. The rationale for establishing such a fund is to provide monetary support to retrenched workmen, for training and re-skilling purposes.

The said fund will consist of:

- i. The contribution of the employer of an industrial establishment equivalent to 15 days' wages last drawn by the worker immediately before retrenchment, or such other number of days as may be notified by the Central Government, for every retrenched worker in case of retrenchment only;
- ii. The contribution from such other sources as may be prescribed by the appropriate Government.

This fund will be utilised by crediting an amount equivalent to 15 days wages last drawn by the retrenched worker to such worker's account within 45 days of such retrenchment in the prescribed manner. This amount would be paid in addition to the compensation paid to a worker at the time of retrenchment.

G. Penalties and Offences

While laying down uniform penalties for non-compliance with provisions under the IR Code relating to *inter alia* conditions of employment in an industrial establishments, settlement of disputes and trade

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

Sr. No.	Offence	Penalty
1.	Failure to comply with the provisions relating to lay-off and retrenchment in certain industrial establishments, such as factories and mines, employing not less than 300 workers	Up to INR 10,00,000. For subsequent offence, fine up to INR 20,00,000 and imprisonment up to 6 months.
2.	Failure to comply with the provisions relating to lay-off, retrenchment, transfer of undertaking and closure in industrial establishments other than the establishment to which (1) above applies	Up to INR 2,00,000. For subsequent offence, fine up to INR 5,00,000 and imprisonment up to 6 months
3.	Default by the trade union in giving any notice or sending any statement or other document as required under the IR Code	Every office bearer/executive of the trade union (if there are no office bearers/executives, then every member of the executive of the trade union) shall punishable with fine up to INR 10,000 or imprisonment for a term of up to 1 year, or both. For any continuing default, an additional penalty of INR 50 per day would be levied so long as the default continues
4.	For <i>inter alia</i> making false in entries in the annual returns submitted by the trade union, giving incorrect copies of trade union rule to any person applying for membership of the trade union or any existing member of the trade union	Up to INR 20,000
5.	For failure to certify standing orders or the modifications to the same and comply with the finally certified standing orders	Up to INR 2,00,000. In case of non-certification of standing orders, an additional fine of INR 2,000 per day during which the contravention continues. In subsequent contravention of the finally certified standing orders, fine up to INR 4,00,000 and imprisonment for a term up to 3 months, or both.

6.	For commission of unfair labour practices	Up to INR 2,00,000. For any subsequent offence, fine up to INR 5,00,000 and imprisonment up to 3 months, or both.
7.	For commencing or continuing illegal strike	Up to INR 10,000 and imprisonment up to 1 month, or both.
8.	For commencing or continuing illegal lockout	Up to INR 1,00,000 and imprisonment up to 1 month, or both.
9.	For inciting, instigating and financially aiding illegal strike or lockout	Up to INR 50,000 and imprisonment up to 1 month, or both
10.	Breach of any term of any settlement or award under the IR Code	Up to INR 2,00,000 and imprisonment up to 3 months, or both. An additional fine of INR 1,000 per day during which the breach continues.
11.	On a complaint made by or on behalf of the Trade Union or individual business affected relating to wilful disclosure of any such information which is requested to be kept confidential during proceedings under the IR Code.	Up to INR 2,00,000 and imprisonment up to 3 months, or both.
12.	Contravention of provisions of the IR Code or the rules/regulations framed thereunder, for which no penalty has been specified under the IR Code	Up to INR 1,00,000.
13.	Failure to pay penalty on order being made by the authorized officer to pay the same for certain offences, such lay-off, retrenchment, within 90 days from the receipt of the order.	Up to INR 2,00,000.

The decriminalisation of various offences is in stark contrast with the extant laws which prescribe imprisonment even for general non-compliances.

H. Other Salient Features

i. Emphasis on ensuring compliance rather than penalising an employer

Similar to the Wage Code, the thrust of the IR Code

is to ensure compliance therewith, and various measures have been introduced to achieve this objective:

Compounding of offences

Unlike the current legislations, the IR 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

fine, in case of an offence punishable with fine only, and 75% of the maximum fine in case of an offence punishable with imprisonment not exceeding one year or fine. 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.

In this regard, if any person fails to comply with an order to compound an offence, such person shall be liable to pay an additional penalty equivalent to 20% of the maximum fine prescribed for such compounded offence.

ii. Electronic filings/registrations

To promote digital economy, the IR Code permits employers, trade unions, the authorities to take certain steps electronically such as filing of application for registration of trade union, application for certification of standing orders etc. For example, under the IESO Act, an employer is required to submit five copies of the draft standing orders to the certifying officer for certification. However, under the IR Code, the same can be done electronically.

iii. Power to exempt

The existing corresponding legislations, i.e., IESO Act and the IDA, empower the appropriate Government to exempt an industrial establishment from the provisions of the said legislation, by way of notification. In this regard, under IDA, such exemption would be afforded if the appropriate Government is satisfied that the industrial establishment has adequate provisions to investigate and settle industrial disputes in respect of workmen employed by such industrial establishment. In addition to the above, under the IR Code the appropriate Government has been vested with the discretionary power to exempt “new industrial establishments” and “new undertakings” from all or any provisions of the IR Code, if deemed necessary in public interest.

In this regard, it may be pertinent to note that the term ‘public interest’ has not been defined in the IR Code. Under the IR Code, the word new industrial establishment or new undertaking or class of new industrial establishments or new undertakings means “*such industrial establishment or undertaking or class of industrial establishments or undertakings which are established within a period as may be specified in the notification.*”

iv. Exclusion of jurisdiction of civil courts

The IR Code specifically excludes the jurisdiction of civil courts in respect of any matter to which the IR 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 IR Code. This is a modification brought about by the IR Code, leaving employers and employees with recourse only to approach authorities prescribed under the IR Code.

v. Overriding effect

The provisions of the IR Code shall be effective notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the terms of any award, agreement or contract of service whether made before or after the commencement of this IR Code. Any award, agreement, contract of service or otherwise under which a worker is entitled to more beneficial benefits than under the IR Code will, however, to that limited extent, prevail.

vi. Preservation of actions taken under existing laws

Once the IR 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 IR Code and will be in force to the extent they are not contrary to the provisions of the IR Code or until they are repealed by the Central Government.

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