

The Industrial Relations Code

2020

1. Acts Repealed

1) The Trade Unions Act

2) The Industrial Employment (Standing Orders) Act

3) The Industrial Disputes Act

2. Clause 2(p) – “Industry”

“industry” means

- **any systematic activity**
- **carried on by co-operation between an employer and worker
(employed directly 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 spiritual or
religious in nature**

whether or not, —

(i) any capital has been invested for the purpose of carrying on such activity; or

(ii) such activity is carried on with a motive to make any gain or profit

However the definition excludes –

Institutions owned or engaged in

- **Charitable, Social, or philanthropic service,**
- **Domestic service**

and any other activity notified by the Central Government.

3. Clause 2(q) – “Industrial Dispute”

**Includes individual dispute and collective
disputes**

4. Clause 2(o) - “Fixed term employment”

Providing for engagement for a fixed period but ensuring hours of work, wages, allowances and other benefits not less than that of a permanent workman doing same or similar work. Also eligible for proportionate statutory benefits without applying qualifying period of employment required in the statute and gratuity if he renders service for a period of one year.

5. Clause 2(zh) – “Retrenchment”

**Excludes termination on completion of tenure of
fixed term employment**

6. Clause 2(zr) - Worker

Excludes Apprentice as defined under Clause 2(aa) of Apprentice Act,

Includes Working journalists and Sales Promotion employees

But excludes person employed mainly in a managerial or administrative capacity or who is employed in supervisory capacity drawing wage of exceeding Rs.18,000/- per month or an amount notified by the Central Government from time to time.

7. Clause 2(zk) – “Strike”

**Includes concerted casual leave on a given day by
fifty per cent or more workers employed in an
industry**

8. Clause 62 – Strike and Lockout

No person can go on strike, in breach of contract

[a] Without giving employer notice of strike within 60 days before striking.

[b] Within 14 days of giving such notice.

[d] During pendency of conciliation proceedings and 7 days after its conclusion.

[e] During the pendency of proceedings before a Tribunal and 60 days after its conclusion.

9. Clause 63

Strike/lock-out is illegal if there is contravention of Clause 62 or contravention of order made under 42(7).

42(7) – prohibition of strike and lock out by Government order while referring industrial dispute.

10. Clause 2(zq) – “Wages”

Includes only basic pay, dearness allowance and retaining allowance.

Excludes various allowances provided it does not exceed one-half or such other percent as notified by the central government.

The amounts which exceed one-half or the percent so notified is deemed to be a remuneration.

11. Clause 6(4) – Registered trade Union

A registered trade union should at all times have not less than 10% of the workers or 100 workers, whichever is less

12. Clause 14 – Negotiating union or Negotiating council

Clause 14(2) – If there is only one registered trade union of workers functioning in an industrial establishment, it shall be recognized as a sole negotiating union subject to criteria prescribed.

Clause 14(3) – If more than one trade union are functioning, the trade union having 51% or more workers support that trade union, it shall be recognized as the sole negotiating union.

Clause 14(4) – In the event of more than one trade union, and no trade union has 51% of workers, negotiating council which has the support of not less than 20 per cent of the total workers shall have one representative for each twenty per cent.

Clause 14(6) – Recognition granted to the trade union or to the negotiating council is valid for 3 years from the date of recognition or constitution or such period mutually decided not exceeding 5 years

13. Clause 2(zm) – “Trade Union Dispute”

Disputes relating to trade unions arising between two or more trade unions or between members of trade union inter se.

14. Clause 22(2)

No civil court other than Tribunal has the power to entertain any suit in relation to dispute concerning trade unions and the members.

**15. Clause 40 - Notice of change with regard to
matters in III Schedule**

40(c) – No notice shall be required for effecting change in case of emergent situation requiring change of shift or shift working otherwise than (except) in accordance with standing orders, in consultation with Grievance Redressal Committee

40(d) – If such change is affected in accordance with orders of Appropriate Government or in pursuance of any Settlement or Award.

16. Clause 60 – Conciliation

Conciliation Proceeding is deemed to have commenced on the first meeting held by conciliation officer after receipt of notice of strike or lock-out.

60(2)(b) – Conciliation proceedings deemed to have concluded on failure of conciliation recorded by conciliation officer

17. Clause 53

Conciliation proceedings can be held in respect of an industrial dispute which arose within 2 years. The Conciliation Officer in the event of failure of settlement should send a report within 45 days to the appropriate government. A concerned party can make an application to the Tribunal in respect of matters not settled within 90 days of receipt of the failure report.

18. Clause 4(10)

Notwithstanding anything contained in Clause 53, a worker who is discharged, etc. may make an application directly to the Tribunal for adjudication of the dispute after expiry of 45 days from the date he made the application to the conciliation officer and the Tribunal shall adjudicate the said dispute. However, under Sub-section (11), the application should be made to the Tribunal before expiry of 2 years from the date of discharge, etc.

19. Clause 44

Formation of Industrial Tribunals with a single member for two members consisting of a Judicial member and an Administrative member.

20. Clause 47

Decision of the Tribunal should be by consensus of the members. In the event of split between two members, the issue to be referred to another judicial member.

21. Clause 50(2)

The Tribunal may in the interest of justice grant interim relief to the worker during the pendency of the dispute.

22. Clause 77 - Special provisions relating to lay off, Retrenchment and Closure

Applicable to industrial establishment (excluding establishment of seasonal character or in which work is performed only intermittently) in which not less than 300 workers or any such higher number notified by the Appropriate Government employed on an average per working day in the preceding 12 months would lay-off, retrench or effect closure without prior permission of the appropriate government.

23. Clause 83 - “Workers Re-skilling Fund”

The management should contribute an amount equivalent to fifteen days’ wages last drawn (or any such days notified by the central government) for every retrenched worker in case of retrenchment only

24. Clause 97 – Civil Court

Civil court jurisdiction in respect of any matter under the provisions of this code is barred.

Interpretation based on Supreme Court judgment in the case of Premier Automobiles reported in 1975 (2) LLJ 445 no longer exists.

25. Schedule II

Item 5 in respect of unfair labour practice by workers includes “willful go-slow”.

Observations

26. Clause 2(j)

Any proceeding is deemed to be conciliation proceedings – restrictions imposed under Clause 90 regarding approval and permission will be wide spread.

27. Clause 2(f)

Definition of Lay-off – outdated

28. Clause 77 to 80

Permission to lay-off, retrench and closure – increasing the minimum number of worker to 300 is of no consequence.

Permission/Approval should be granted by the Industrial Tribunal

29. Formation of Industrial Tribunal

consisting of two judges

**30. Lack of power of grant of injunction by
the Industrial Tribunal.**

31. Continued restrictions on the management under Section 40 [old section 9A] and 90 [old section 33] hampering managerial powers.

32. The discretion of the Government to decline collective dispute has been taken away. Therefore, there is likelihood of large number of collective disputes on trivial demands made by trade unions.

The Code on Wages 2019

1. Acts Repealed

- 1. Payment of Wages Act, 1936,**
- 2. Minimum Wages Act, 1948,**
- 3. Payment of Bonus Act, 1965 and**
- 4. Equal Remuneration Act, 1976**

2. Clause 2(g) – “Contact Labour”

**“Contract Labour” includes Inter State
Migrant Worker and is deemed to be a
worker**

3. Clause 2(k) – “Employee”

**Fixation of salary limit is left to the
Appropriate Government.**

**4. Clause 2(v) – “Same work or work of
similar nature”**

**Work in respect of which skill, effort, experience
and responsibility are the same.**

5. Clause 3 – Gender discrimination

No discrimination on the ground of gender in the matter relating to wages when the “nature of work is same or similar”.

No discrimination on the ground of sex in respect of condition of employment.

6. Clause 4

**Authority to decide any dispute in respect of
“work of same or similar nature”**

7. Clause 9 – Floor Wages

Fixation of Floor Wages based on minimum living standards of a worker in respect of different geographical areas.

8. Rule 11 – Manner of fixing Floor

Wage

**Minimum living standards including the food,
clothing, housing, etc.**

9. Clause 6 – Minimum Wages

Minimum wages fixation based on skill, geographical area, arduousness of work, etc

Clause 9

The minimum wages fixed under Section 6 shall not be less than floor wages.

10. Clause 13

**While fixing minimum rates of wages, to fix
hours of work for a normal working day**

11. Rule 3 – Criteria for fixation of minimum wages

a) Spouse and two children

b) A net intake of 2700 calories per day per consumption unit

c) 66 meters cloth per year per standard working class family

d) House rent expenditure of 10% of food and clothing expenditure

e) Fuel, electricity and miscellaneous item expenditure to constitute 20 percent of minimum wages

f) Children education, medical requirement, recreation and expenditure on contingencies at 25 percent of minimum wage.

{Criteria recommended in Reptakos Brett judgment of Supreme Court followed}

12. Clause 29 - Bonus

**Disqualification from receiving bonus includes
dismissal for conviction for sexual harassment**

13. Clause 38

An employee found guilty of misconduct causing financial loss could lose bonus to that extent in respect of that accounting year

14. Clause 46

Fixation of bonus or eligibility of bonus and application of the Code in respect of bonus to an establishment is deemed to be industrial dispute

15. Clause 45 - Jurisdiction of Authorities

Claims regarding minimum wages, payment of wages including fines and deductions, bonus claims and dispute on “work of same or similar nature” to be decided by the Authority appointed by the appropriate government.

16. Clause 49

**Any person aggrieved by the order of the
Authority may prefer an appeal to the
Appellate Authority**

17. Observation

Appointment of Authorities, Appellate Authorities has not served the purpose. Claims under this code should be straightaway adjudicated by the Industrial Tribunal.

The Occupational Safety,
Health and Working Conditions
Code 2020

1. Acts Repealed

1. The Factories Act

2. The Plantations Labour Act

3. The Mines Act

4. The Working Journalists (Condition of Service) Act

5. The Working Journalist Fixation of Rates of Wages

Act

6. The Motor Transport Workers Act

7. The Beedi and Cigar Workers Act

8. The Contract Labour (R & A) Act

9. The Sales Promotion Employees Act

10. The Inter-State Migrant Workmen Act

11. The Cine Workers and Cinema Theatre Workers Act

12. The Dock Workers Act

13. The Building and Other Construction Workers Act

2.Clause 2(m) – “Contract Labour”

A worker employed in or in connection with the work of an establishment and hired through contractor including interstate-migrant worker.

3. Clause 2(n) – “Contractor”

“Contractor” means a person who undertakes to produce a given result to the establishment, other than mere supply of goods or articles to the establishment through contract labour or

Supplies contract labour as a mere human resource and includes a sub-contractor

4. Clause 45 - Applicability

- ☐ Applies to every establishment in which 50 or more contract labour employed on any day preceding twelve months.**
- ☐ Applies to every non-power supply contractor employing 50 or more contract labour on any day preceding twelve months.**
- ☐ Not applicable to establishment where work is of intermittent or casual nature.**

5. Clause 47 (2)

License for contract labour to be

“work specific license”

6. Clause 54 – Absence of license

Contract Labour engaged through a contractor without obtaining license is deemed to be in contravention of the provision of the Code and would attract penalty under Clause 94 or 97

7. Clause 2(zf) – Inter-state migrant worker

- ❑ A person recruited directly by the Employer or indirectly through a contractor in one State for employment in establishment in another State or**
- ❑ A person who has come on his own from one State and obtained employment in an establishment in another State**
- ❑ And draws wages not exceeding Rs.18000/- per month.**

8. Clause 59 – Applicability

Applies to every establishment in which ten or more inter-state migrant workers employed on any day preceding twelve months.

9. Clause 2(zs) – “Occupier”

Excludes an independent Director within the meaning of sub-section (6) of Section 149 of the Companies Act.

10. Clause 2(zzg) - “Serious bodily injury”

“Serious bodily injury” means any injury involving permanent loss of any part of a body including permanent loss of sight or hearing or any permanent physical incapacity.

11. Clause 14(2)

An employee on apprehension of serious bodily injury, death or imminent danger to health may bring it to the notice of the employer directly or through member of the safety committee and also to Inspector-cum-Facilitator

12. Clause 60

An employer/contractor in the case of serious bodily injury to an interstate migrant worker should report it to the specified authority and next kin of the worker.

Duty to provide suitable conditions of work, to extend benefits under ESI Act, EPF Act and medical checkup.

13. Clause 2(p) – Core activity

Core activity of an establishment means any activity for which the establishment is set up including activity which is essential or necessary to such activity.

Exceptions - Establishments which are not set up for activities

- 1. Sanitation work including sweeping, cleaning, dusting and collection and disposal of all kinds of waste.**
- 2. Watch and ward services including Security**
- 3. Canteen and catering services**
- 4. Loading and unloading operations**
- 5. Running hospitals, educational and training institutions, guest houses, clubs, etc.**

- 6. Courier services**
- 7. Civil and constitutional work including maintenance**
- 8. Gardening and maintenance**
- 9. Housekeeping and laundry**
- 10. Transport service including ambulance.**
- 11. Any activity of intermittent nature.**

14. Clause 57 – Prohibition of core activities

Employment of contract labour in core activities is prohibited

Exceptions

- 1. If the normal functioning of the establishment is such that the activities ordinarily run through contractor or**
- 2. If the activity do not require full time workers for long hours**
- 3. Sudden increase in volume of work in the core activity needing accomplishment in a specified time.**

15. Clause 6(f) – Appointment letter

The employer should issue letter of appointment to every employee on his appointment.

16. Clause 13 – “Duties of Employees”

To take reasonable care of his health and safety and of other persons, comply with safety and health requirements, cooperate with the employer in meeting statutory obligations, report any unsafe or unhealthy situation, not to willfully misuse or neglect safety appliance, not to willfully endanger himself.

17. Clause 14

Every employee has a right to obtain information from the employer relating to his health and safety. He is also entitled to represent to the Inspector-cum-Facilitator if he is not satisfied with the response of the employer.

18. Clause 89

**Worker employed in a hazardous process on
reasonable apprehension or likelihood of
imminent danger to his life or health can bring it
to the notice of Inspector-cum-Facilitator.**

19. Clause 25 – “Hours of work”

8 hours in a day and period of hours

fixed by the Government

20. Clause 27 - OT

**Worker could be required to work overtime
only with his consent.**

**Appropriate Government to prescribe the
total number of hours of overtime**

21. Clause 32 – Leave wages

Every worker is entitled for leave with wages provided he has worked for 180 days or more in a calendar year.

22. Clause 43 – Woman worker

Woman worker entitled for all types of work in all establishments

Woman worker can be employed from 7 p.m. to 6 a.m. with her consent and subject to conditions prescribed by the Government relating to safety, holidays and working hours.

23. Clause 44

The Employer to provide adequate safeguards for employment of women in such operations which is considered to be dangerous for her health and safety.

24. Clause 103 – Fine Amount

In the case of an accident or dangerous occurrence resulting in death, or serious bodily injury, for which the Court imposes fine on the employer, it may direct that out of the fine amount not less than 50% should be given as compensation to the legal heir of the victim or to the victim.

The Code on
Social Security 2020

1. Acts Repealed

1. The Employees' Compensation Act,

2. The Employees' State Insurance Act,

3. The Employees' Provident Funds and Miscellaneous Provisions Act,

4. The Employment Exchanges (Compulsory Notification of Vacancies) Act

5. The Maternity Benefit Act

6. The Payment of Gratuity Act

7. The Cine-Workers Welfare Fund Act

8. The Building and Other Construction Workers' Welfare Cess Act

9. The Unorganised Workers Social Security Act, 2008.

2.Clause 2 (28) - “Employment Injury”

“Employment injury” includes accident occurring or occupational disease contracted within or outside the territorial limits of India for the purpose of Employees

State Insurance Corporation and Employees

Compensation

3. Clause 34

An accident is presumed to have arisen in the course of employment in the absence of evidence to the contrary.

4. Clause 2(35) – “Gig Worker”

“Gig Worker” means a person who performs a work arrangement and earns from such activity outside traditional employer-employee relationship.

5. Clause 2(60) – “Platform work”

“Platform work” means a work arrangement outside a traditional employer-employee relationship by using online platform

6. Clause 2 (61) - “Platform worker”

**“Platform worker” means a person
engaged in platform work**

7. Clause 45 - ESI

The Central Government may frame a scheme for unorganised workers, gig workers and platform workers and members of their families.

8. Clause 141 – Social Security Fund

The Central Government to constitute Social Security Fund for social security and welfare of unorganized workers, platform workers or gig workers

9. Clause 114 - Social Security Scheme

The Government may formulate social security scheme for gig workers and platform workers relating to disability, maternity, old age, etc. with funds funded by central government, state government or from aggregators or from corporate social responsibility fund within the meaning of Companies Act, 2013.

10. Clause 42 – ESI contribution

If the employer fails to pay contribution and the corporation pays the benefit to the employee, it shall recover from the employer, after providing due opportunity, the capitalised value of the benefit paid to the employee after adjusting the payment of contribution and interest or damages. The said amount may be recovered as arrears of land revenue.

11.Clause 43 - ESI

If incidence of sickness among the insured person is excessive by reason of insanitary working conditions or neglect of health regulations in the factory or lodgings occupied by the insured person, then the corporation may send a claim for payment of extra expenditure amount incurred by the Corporation and after due enquiry determine the amount of extra expenditure

12. First Schedule

The provisions of the ESI Act is applicable to an establishment wherein hazardous or life threatening occupation (as notified by the Central Govt.) is carried on even with a single employee.

13. Clause 53 – Gratuity

Gratuity is payable on termination of contract period under fixed term employment for which continuous service of 5 years is not necessary.

14. Clause 125 – Limitation period

In respect of dispute arising under Employees Provident Fund and Employees State Insurance Corporation, no proceedings could be initiated after the expiry of a period of five years from the date on which the dispute is alleged to have arisen or the alleged due from an employer.

15. Clause 23 – PF Appeal

An appeal may be preferred to the Tribunal within sixty days on deposit of 25% of the amount determined with the concerned social security organization.

The Tribunal may decide the appeal within a period of 1 year from the date of filing of appeal.

16. Observation

Clause 42 claiming from the employer capitalized value due to non-payment of contribution and clause 43 claiming extra expenditure due to insanitary condition is harsh and excessive.

HIGHLIGHTS

The Industrial Relations Code 2020

- 1.Fixed term employment.**
- 2.Strike and Lockout.**
- 3.Wages.**
- 4.Recognition of trade unions.**
- 5.No reference on Industrial Disputes.**
- 6.Civil Court jurisdiction ousted.**

- 7. Interim relief to workman during pendency of dispute.**
- 8. Continued compulsion of permission for layoff retrenchment and closure.**
- 9. Division Bench of tribunals.**
- 10. No power of injunction to Industrial Tribunal.**

The Code on Wages 2019

- 11. Inter State migrant workmen deemed to be contract workman.**
- 12. Same or similar nature of work – equal pay for equal work.**
- 13. Fixation of minimum wages as per Reptakos Brett decision of Supreme Court.**

The Occupational Safety, Health and Working Conditions Code 2020

14. Duties of employees

15. Over time with the consent of employee worker

The Code on Social Security 2020

- 16. Gig and platform workers.**
- 17. Levy of capitalized value collection from employer.**
- 18. Extra expenditure claimed from employer due to sickness caused because of insanitary working conditions.**
- 19. Gratuity for fixed term employment without 5 years limitation.**
- 20. 5 years limitation for EPF demand by organization.**
- 21. CONTINUED QUASI-JUDICIAL POWERS VESTED WITH AUTHORITIES**

Thank You

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