

# BRLF

*Welcome Participants to*  
**प्रबोधन Prabodhan (Alert, Advise,  
Awake)**  
*Session 5*

*Social Security Laws for NGOs and  
Labour Codes*

Why comply  
with other  
laws

**Section 12 A of Income Tax was amended in the Finance Act,2019 as follows:**

“where registration of a trust or an institution has been granted and subsequently, it is noticed that the trust or institution has not complied with **the requirement of any other law then**, the Principal Commissioner or the Commissioner may, by an order in writing, after affording a reasonable opportunity of being heard, **cancel the registration of such trust or institution under the provision of section 12A.**

**Note:** The process for cancellation of registration has now been specified in the Finance Act, 2022

# Social Security Regulations for NPOs-Snapshot

**EPF:** EPF, EPS and EDLI are the schemes under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 managed by EPFO. Applicability: It is mandatory for organizations with 20 or more employee for establishment specified in Schedule 1.

**ESI:** Employees' State Insurance is a self-financing social security and health insurance scheme for Indian workers. The fund is managed by the Employees' State Insurance Corporation under ESI Act 1948. Applicability: It is mandatory for organizations with 10 or more employee.

**Minimum Wages Act 1948:** Centre & states fix minimum wage and revises at least once every 5 years for schedule employment

**Professional Tax Act:** Levied on persons earning income by way of either practicing a profession, employment, calling or trade. PT is levied by state/UT. Applicability: Majority of states impose profession tax as per income slab with maximum not more than Rs.2500/- PA. Example: Karnataka, Andhra, Telangana, MP, Jharkhand, West Bengal, Assam, Tamil Nadu, Odisha, Maharashtra etc. have Professional Tax, not applicable in Delhi, Uttar Pradesh, Rajasthan and Haryana.

**Maternity Benefit:** MB Act 1961-26 weeks-8 weeks prenatal and 18 weeks postnatal (2017 amendment from 12 weeks) paid leave during maternity period for first two children. 12 weeks for beyond 2 children and adoption, 2 weeks for tubectomy, 6 weeks for miscarriage and MTP and additional 1 month in case of illness certified by medical practitioner.

**Gratuity:** The Payment of Gratuity Act 1972 is applicable on establishments with 10 or more employees.

**Shops & Establishment Act:** State Act. Applicability based on coverage of charitable institution within the definition of 'Establishment'. Regulates working hours, opening closing, holidays, employment of children, leaves, OT etc. Need to obtain license.

# EPF & Misc Provisions Act 1952

- **Inclusion:** Employee Provident Fund scheme (EPF) 1952, Employee Pension Scheme (EPS) 1995 and Employee Deposit Linked Insurance Scheme (EDLI), 1976
- **Eligibility:** All the employees (full/part time) working for more than 30 days in a year covered
- **Excluded Employees:** employee whose pay is more than Rs. 15,000 a month at the time of joining provided he does not hold UAN number (member of EPFO). Employees drawing less than Rs 15,000 per month have to mandatorily be members.
- **EPF Scheme:** The contribution paid by employer and employee is 12 per cent each of basic wages, DA plus all fixed allowances. Contribution eligible for 80C benefit and interest is exempt from tax-for FY 21-22 it is 8.1%.
- **EPS:** Minimum 10 yeas of service or attaining 58 years of age and whether in service or superannuated.
- **EDLI:** Insurance benefit min 2.5 lakhs upto Rs.6.0 lakhs (now Rs.7 lakhs) in case of death while in service to family member/nominee

# EPF & Misc. Provisions Act 1952

- 12% employee share to EPF, 12% employer share-8.33% for EPS upto Rs.1250/- per month and remaining plus 3.67% to EPF, EDLI contribution and EDLI & EPF admin charges paid by employer. Total liability on employer is 13.61%
- Any organization employing less than 20 employees can opt for voluntary coverage with 10% Contribution
- Withdrawal of EPF >50k less than 5 years-TDS 10%
- UAN-12 digit for all previous and current memberships
- Final PF withdrawal: Form 19 for EPF made online
- Interest- exempt from tax except for interest on employee contribution exceeding Rs.2.5 lakhs per annum from 1.4.2021
- EPF Deposit: by employer within 15 days of close of month
- Various forms for services and all submission online now. E nomination by members mandatory.
- Deposit in PPF account is not compliance under EPF

# Important Points-EPF



HR department should ensure that e KYC of employees (Linking of Aadhar, Mobile Number, Email id, PAN, E-nomination etc.) are complete in the EPFO site.



An employee, who has resigned / terminated from the organization should be exited from the EPF portal within 2 months of last contribution by the employer.



In order to avoid mingling of funds for FC and NFC EPF contribution, it is advisable to generate separate challan for employees paid from FC and NFC respectively.



An individual who joined the Employees' Provident Fund (EPF) scheme after September 1, 2014, cannot open an Employees' Pension Scheme (EPS) account if his/her monthly salary exceeds Rs 15,000. In such cases the complete 12% of share will go to provident fund account.



**Form-11 to be obtained and kept in employee files for all exempted employees.**



Register of Wages, Leave, Advances / Loan, Fine to be maintained by the employer.

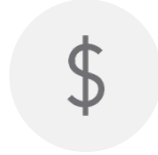
# ESI Act 1948-Compliances



Eligibility: All the employees (full time / part time) working with the organization for more than 30 days in a year are eligible for ESI Benefits.



Employees earning daily average wage up to Rs.176 are exempted from ESIC contribution. Employer will contribute both shares



As per the rules, in ESI, employee whose 'gross pay' is more than Rs 21,000 in a month are not eligible for ESI benefits. Employees drawing less than Rs 21,000 per month have to mandatorily become members of the ESI.



Contribution by Employer and Employee: The contribution paid by employer is 3.25 per cent of wages. The employee will contribute 0.75 per cent of wages. Deposit within 15 days of clos of month

Benefits: Medical, Sickness, Maternity Disablement, Dependents, Funeral

# Payment of Gratuity Act 1972

- Eligibility: As per section 4(1) of payment of gratuity Act 1972, gratuity shall be payable to an employee on superannuation, termination of employment after he has rendered five years (4 years and 240 days) or more. continuous service or on death/disablement due to accident/disease
- Calculation: The gratuity amount depends upon the tenure of service and last drawn salary. Formula: Last drawn salary (basic salary plus dearness allowance) X number of completed years of service X 15/26. Maximum ceiling Rs.20 lakhs
- Gratuity contribution: 4.81% of basic pay as per employment contract
- *As per new Code of Wages 2019, the basic salary of employee cannot be less than 50% of his gross wages.*
- Concept of fixed term employee under SS Code would be eligible even if the term is less than 5 years
- Secure gratuity liability through subscribing to group gratuity scheme of LIC or other insurance companies



# Budgeting for social security benefits

Monthly Salary	8,000.00
Employer Share of EPF 13 % (including admin charges)	1,040.00
Employer Share of ESI @ 3.25%	260.00
Gratuity (Monthly)	385.00
<b>Cost to Organisation</b>	<b>9,685.00</b>

In charitable organization, it is important that the provisions of mandatory Labour compliances are kept in mind at the time of budgeting itself as it is not feasible for the organization to contribute for these compliances in absence of budget from own funds .

## Points to be kept in Mind:

- Minimum Salary budgeted in the project should be Wages defined in

Minimum Wages Act of

State + 13% of EPF employer share (including administrative charges) + 3.25 % of ESI employer share + 15 days salary for gratuity benefit.

Example: a field worker to be paid Rs. 8000 per month then the provision for his salary in budget should be Rs. 9,685/-.

Budgeting for grant proposals should be done accordingly



These benefits are not provided by the donors separately in the budget therefore it is advisable that the salary provided in the budget should be on “Cost to Organization” principle to ensure that these mandatory continuation can be paid.



However if in exceptional cases it is not possible to provide these benefits to project staffs then their posts should not be included in the “Human Resource” cost.



Instead the same should be budgeted as programme / field implementation cost and such person should be hired on consultancy on TOR basis and their payment should be made on deliverables basis and monthly invoice should be obtained against same.



NO attendance register / leave records etc. should be maintained for these staffs. However for internal monitoring or control purpose separate records may be maintained.

# Labour Codes

## Overview

29 existing labour laws have been consolidated under four new codes, with an intent to amalgamate, simplify and rationalize the relevant provisions of the subsumed laws.

**1**

**The Code on Wages, 2019**

Amends and consolidates the laws relating to **wages** and bonus

**3**

**Industrial Relations Code, 2020**

Consolidates and amends the laws relating to trade unions, conditions of employment in industrial establishments, investigation and settlement of industrial disputes

**2**

**The Social Security Code, 2020**

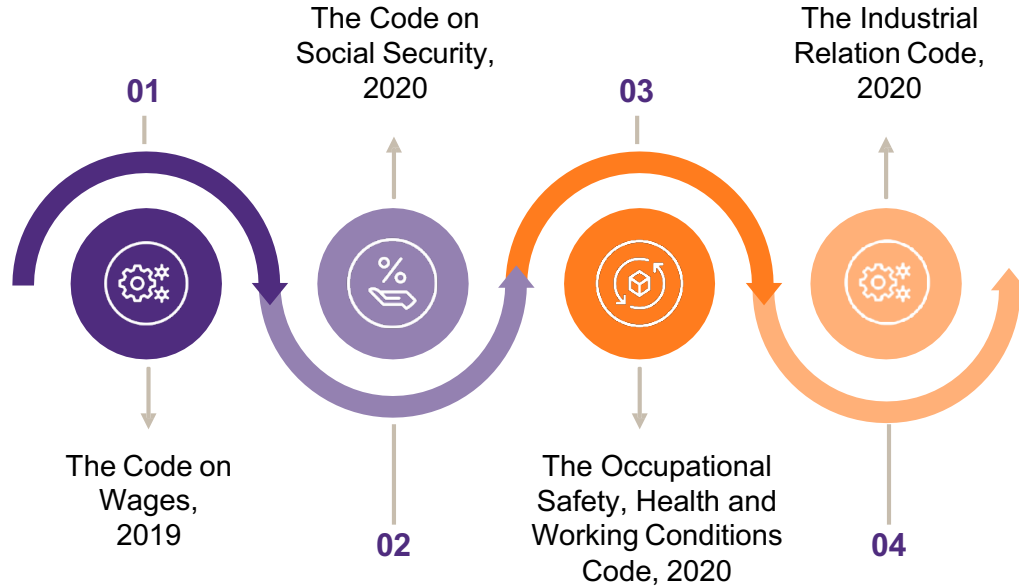
Seeks to amend and consolidate the laws relating to social security with the goal to extend social security to everyone in organised, unorganised and any other sectors

**4**

**Occupational Safety, Health & Working Conditions Code, 2020**

Focused on consolidating and amending the laws regulating the occupational safety, health and working conditions of the persons employed in an establishment

# Labour codes - where we are

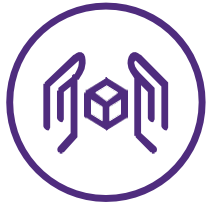


All four codes have received President's assent

Expected from 1.10.2022

# The Code on Wages, 2019

# Subsumed legislations



The Code on  
Wages, 2019

The Payment of Wages Act, 1936

The Minimum Wages Act, 1948

The Payment of Bonus Act, 1965

The Equal Remuneration Act, 1976

# Key impact areas

01

## Widened coverage

No wage threshold for employees, definition of employer includes 'contractor' and 'legal representative of deceased employer', Universal applicability

02

## New definition of 'wages'

Applicable to all employees; specified exclusions and conditional inclusions specified, cap on benefits in kind

03

## Timeline for full and final settlement

Two days from the date of removal/resignation/retrenchment/dismissal.

04

## Equal treatment of genders

No discrimination on the basis of gender in matters related to wages, recruitment and conditions of work

05

## Payment of wages and deductions

Payment vide cheque, online mode; no unauthorised deductions allowed from the wages. Deduction not more than 50% of wages for specified matters. Wage slip

06

## Floor wage

Central govt. to fix floor wage for different geographical areas and State govt. shall not fix the minimum wages less than the Floor wage.

07

## Payment of Bonus

Appropriate Govt to decide. However, likelihood of previous provisions to continue.

# Definition of wages

Meaning and inclusions	Exclusions
<p>Covers all remuneration payable by way of salaries, allowances or otherwise; expressed or capable of being so expressed in terms of money and includes:</p> <ul style="list-style-type: none"> <li>a) Basic pay</li> <li>b) Dearness allowance</li> <li>c) Retaining allowance</li> </ul>	<p><b>Specified exclusions (11)</b></p> <ul style="list-style-type: none"> <li>• Statutory bonus payable but not forming part of remuneration</li> <li>• Value of house accommodation and utilities settlement (light, water, medical attendance, etc.)</li> <li>• Employer contribution to provident fund/pension together payable with accretions</li> <li>• Conveyance allowance or value of travelling concession</li> <li>• Sum paid to defray special expenses due to nature of work</li> <li>• House rent allowance</li> <li>• Remuneration payable under any award</li> <li>• Any overtime allowance</li> <li>• Any commission</li> <li>• Any gratuity payable on termination</li> <li>• Any retrenchment comp/ benefit</li> </ul> <p><b>Specified exclusions capped at 50% of total remuneration</b> (<i>except gratuity and retrenchment compensation</i>)</p>
<p>Remuneration in kind to the extent it does not exceed 15% of total wages shall be included in wages</p>	



# Illustration – definition of wages

## Scenario 1

### Total remuneration

Type	Amount (INR)
Basic	8,000
HRA	4,000
<b>Special allowance</b>	<b>6,000</b>
<b>Conveyance</b>	<b>2,000</b>
Overtime	3,000
Commission	2,000
<b>Total</b>	<b>25,000</b>

### Specified exclusions

Type	Amount (INR)
HRA	4,000
<b>Conveyance</b>	<b>2,000</b>
Overtime	3,000
Commission	2,000
<b>Total</b>	<b>11,000</b>

### Calculation of wages

Type	Amount (INR)
• Basic	8,000
• Special Allowance	6,000
• Conditional inclusion (if specified exclusions exceeds 50% of total remuneration, i.e., INR 12,500)	0
<b>Total (lower of inclusions or 50% of total remuneration)</b>	<b>14,000</b>

**Wages - INR 25,000 - INR 11,000 = INR 14,000 {i.e., total remuneration (-) exclusions}**

## Scenario 2

### Total remuneration

Type	Amount (INR)
Basic	8,000
HRA	4,000
<b>Special Allowance</b>	<b>4,000</b>
<b>Conveyance</b>	<b>4,000</b>
Overtime	3,000
Commission	2,000
<b>Total</b>	<b>25,000</b>

### Specified exclusions

Type	Amount (INR)
HRA	4,000
<b>Conveyance</b>	<b>4,000</b>
Overtime	3,000
Commission	2,000
<b>Total</b>	<b>13,000</b>

### Calculation of wages

Type	Amount (INR)
• Basic	8,000
• Special Allowance	4,000
• Conditional Inclusion (if specified exclusions exceeds 50% of total remuneration, i.e., INR 12,500)	500
<b>Total (lower of inclusions or 50% of total remuneration)</b>	<b>12,500</b>

**Wages - INR 25,000 - INR 13,000 + INR 5,00 = INR 12,500 {i.e., total remuneration (-) exclusions (+) inclusions}**

# The Code on Social Security, 2020

# Subsumed legislations



The Code on  
Social Security,  
2020

The Employee's Compensation Act, 1923

The Employees' State Insurance Act, 1948

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952

The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959

The Maternity Benefit Act, 1961

The Payment of Gratuity Act, 1972

The Cine-Workers Welfare Fund Act, 1981

The Building and Other Construction Workers' Welfare Cess Act, 1996

The Unorganised Workers' Social Security Act, 2008

# Key impact areas

01

## Coverage and registrations

Universal coverage for all working individuals envisaged-unorganised/individual. 20 EPF and 10 ESI Voluntary coverage – opt in/ opt out. Limitation introduced as 5 years. ISMW defined

02

## Definition of wages

Wider definition, consistent with definition under Code on Wages, 2019

03

## Introduction of new category of beneficiaries:

Platform workers, gig workers, fixed-term employees, unorganised workers. 16-60 years, 90 days engagement in 12 months to be registered for benefit. Cost increase for aggregators

04

## Increase in quantum of gratuity payment

- New category of employees introduced i.e. 'Fixed term workers' rendering services for < 5 years versus open contract.
- Principal employer liable to Gratuity payable to the contract labourers, in case of default by contractor. Gratuity besides PF and ESI

05

## Aadhaar Pre-requisite

- Mandatory for registration, availing benefits
- Obligation on International Worker to obtain Aadhaar as per The Aadhaar Act, 2016

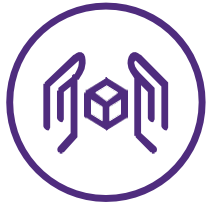
06

## Transition provision

Schemes applicable till one year after Code is implemented, threshold limits to be specified/ notified by central government

# **The Occupational Safety, Health and Working Conditions Code, 2020**

# Subsumed legislations



The Occupational  
Safety, Health and  
Working  
Conditions Code,  
2020

The Factories Act, 1948

The Plantations Labour Act, 1951

The Mines Act, 1952

The Working Journalists and other Newspaper Employees (CoS)  
& M P Act, 1955

The Contract Labour (R&A) Act, 1970

The Motor Transport Workers Act, 1961

The Inter-State Migrant Workmen, Act 1979

The Working Journalist Act, 1958

The Beedi and Cigar Workers Act, 1966

The Sales Promotion Employees Act, 1976

The Cine Workers and Cinema Theatre Workers Act, 1981

The Dock Workers Act, 1986

The BOCW Act, 1996

# Key impact areas

01

## Registration and closure

Registration to be applicable if 10 or more workers.

02

## Concept of core and non-core workers

Employment of contract labour in core activities of any establishment is prohibited (with certain exceptions)

03

## Canteen and crèche facility

Mandated for specified establishments

04

## Special provisions for women

Consent of female employees required for working before 6 am and after 7pm along with other safety measures

05

## Leave rules and leave encashment

Workers can ask for encashment of leaves at end of year

06

## Duties of Employees & Employers

Annual Health check up mandated for specified employees of specified establishments

07

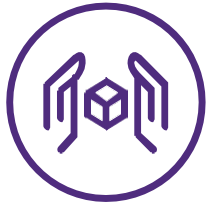
## Contractor / ISMW

Registration of contractors if having 50 of more workers  
Liability on principal employer if default by contractor  
Inter state migrant worker defined-10 or more with wages above Rs.18k per month

# The Industrial Relations Code, 2020



# Subsumed legislations



The Industrial  
Relations Code,  
2020

The Trade Unions Act, 1926

The Industrial Disputes Act, 1947

The Industrial Employment (Standing Orders) Act, 1946

# Key impact areas

01

## Concept of fixed-term employment

Introduced with benefits not be less than of a permanent worker

02

## Conditions for strikes and lockouts prescribed

No strikes and lock outs without giving proper notice in compliance with the norms laid down in the code

03

## Standing orders

Required in establishments where 300 or more workers are employed

04

## Retrenchment, lay-off and closure provisions

Not to be applicable if workers are <300; lay-off related provisions will not be applicable if workers are <50

05

## Grievance redressal committee mandatory

To be set up where 20 or more workers employed, requires proportionate women representation

06

## Recognition of Trade Unions

All possible efforts have been made in order to provide recognition to the Trade Unions in India.

07

## Reskilling Fund

Re-Skilling fund for retrenched employee

# BRLF

## Thank You!

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