

# Labour Law Series

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## Part II: Code on Wages 2019: Comparative Analysis and Corporate Compliance Strategies

The Code on Wages, 2019 ("Wage Code") marks a landmark change in India's labour law landscape by consolidating and simplifying multiple wage-related statutes into a single, cohesive framework.

In this Part II of the labour law series of Nota Bene, we have discussed key changes brought in by the Wage Code and provided few practical tips for corporates to take note of. For understanding the critical changes introduced by the four labour codes, refer to [Part I](#) of our Labour Law Series.

### A. WIDENED COVERAGE

The coverage and applicability of Wage Code is much wider than the erstwhile legislations. The Wage Code now applies to (i) establishment which includes any place where any industry, trade, business, manufacture or occupation; and (ii) employees which include any person employed on wages for any skilled/ semi-skilled/ unskilled/ manual/ operational/ supervisory/ managerial/ technical work. Earlier, the applicability was limited and varied basis each statute. For example, Payment of Wages Act, 1936 ("PWA") primarily applied to factories and specified establishments, whereas Minimum Wages Act, 1948 ("MWA") applied to scheduled employment (i.e. limited sectors listed out in the schedule of MWA). Now, the Wage Code not only does away with fragmented applicability of labour laws but also increase the coverage to include almost all establishments pan India.

### B. REVISED DEFINITION OF WAGE IMPACTING SALARY STRUCTURING

Wage Code	Erstwhile Labour Laws
<p><u>Inclusion:</u> As per the Wage Code, 'wages' mean all remuneration whether by way of salaries, allowances or otherwise, and includes (i) basic pay; (ii) dearness allowance; and (iii) retaining allowance, if any.</p> <p><u>Exclusions:</u> Components which are excluded from definition of 'wages' are (i) bonus payable under any law (which does not form part of the employment terms), (ii) value of any house-accommodation or supply of light, water or medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the Government (iii) pension, or provident fund contribution (including interest accrued), (iv) conveyance allowance or the value of travel concession, (v) house rent allowance, (vi) overtime allowance, (vii) remuneration payable under any</p>	<p>Under PWA, wages meant all remuneration (whether by way of salary, allowances, or otherwise) and included overtime pay, annual bonus, settlement award, severance pay etc but excluded value of any house-accommodation EPF contribution by employer, travelling allowance, gratuity, etc.</p> <p>Under MWA, wages specifically included HRA.</p> <p>Payment of Bonus Act, 1965 ("Bonus Act") clarified that if food allowance or free food was provided by employer, then such food allowance/ the value of such food will form part of wages.</p> <p>Equal Remuneration Act, 1976 ("ER Act") defined remuneration to mean the basic wage or salary, and any additional emoluments whatsoever payable and did not have any exclusions.</p>

<p>award or settlement, (viii) gratuity or retrenchment compensation, etc.</p> <p><u>Threshold:</u> If the excluded components (except gratuity and retrenchment compensation/ ex gratia payment), exceed 50% of the total wages then any amount exceeding this threshold will be considered as 'wages'. For example, if an employee's monthly gross wage is INR 1,00,000 out of which his basic pay is INR 45,000 and allowances (such as HRA, other allowances) is INR 55,000, then INR 5,000 will be added back for computing the wages under the Wage Code.</p> <p><u>Remuneration in Kind:</u> If an employer gives any remuneration in kind to its employee which does not exceed 15% (fifteen percent) of the total wages, then it shall be deemed to form part of the wages of such employee.</p>	
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The new definition of wages replaces the fragmented definition across various legislations in the erstwhile labour law regime thereby creating a single standard for wage computation across establishments. The clear list of inclusions and exclusions, along with relevant thresholds will bring in uniformity and help organisations to follow consistent salary structuring in line with statutory requirements.

Additionally, the new definition of wages will impact calculation of social security benefits such as provident fund, gratuity, and contribution to employees' state insurance fund. Hence, payroll teams should be kept abreast with the changes and the thresholds to comply with statutory requirements. Furthermore, if organisations provide meals to their employees without cost, arrange retreat, issue meal cards then such initiatives will be considered remuneration in kind, and these will come under the definition of 'wages' to the extent of 15% of the total wages.

If organisations have been providing flexibility of wage structuring to their employees from an Income Tax Act, 1961 perspective, the practice needs to be revisited to assess the impact of threshold limit of exclusions. If the exclusions exceed the threshold, then such exclusions will fall under the ambit of the wages.

### C. DEDUCTIONS

Permissible deductions under PWA such as fines, absence from duty, for damage to or loss of goods, recovery for loans or advance, etc along with pre-conditions have been broadly retained in the Wage Code.

Wage Code	Payment of Wages Act, 1936
<p>The total amount of permissible deductions cannot exceed 50% (fifty per cent) of such wages without any bifurcation.</p>	<p>The total amount of permissible deductions was capped at:</p> <ul style="list-style-type: none"> <li>(i) 75% (seventy-five percent) of wages if it related to payment to co-operative societies or to a scheme or insurance of Indian Post Office; and</li> <li>(ii) 50% (fifty percent) of wages for any other case.</li> </ul>

Application for illegal deductions from wages may be filed within a period 3 (three) years from the date on which the claim arises.	Application for illegal deductions from wages could have been presented to relevant labour authorities for adjudication within 12 (twelve) months from date of deduction or due payment.
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The removal of bifurcation of the threshold for permissible deduction ensures uniformity, considering today's socio-economic conditions as deductions to co-operative societies and/or scheme of Indian Post Office may have fallen out of favour amongst new generation workforce. Interesting to note that employers now face heightened financial and criminal risks for deduction errors like unapproved fines, absence adjustments, or over-recoveries for damages/loans, necessitating precise payroll audits and employee notices before undertaking any deductions.

#### **D. MINIMUM WAGES**

<b>Wage Code</b>	<b>Minimum Wages Act, 1948</b>
Minimum rate of wages (as notified by state governments) shall be payable to all employees irrespective of scheduled employment. However, the rate of minimum wages notified by state government cannot be less than the floor wage fixed by the central government and has to be revised ordinarily at an interval not exceeding 5 (five) years.	Minimum wages notified by state governments region-wise applied only to scheduled employments which included <i>inter alia</i> woollen carpet making or shawl weaving establishment, any rice mill, flour mill or dal mill tobacco (including bidi making) manufactory, cinchona, rubber, tea or coffee plantation, oil mill, etc.

The above changes will ensure widened applicability of minimum wage across all industries and bring in uniformity in minimum wages across the country. This will assist organisations, particularly those operating pan-India in standardising their salary structure.

#### **E. PAYMENT TIMELINE**

<b>Wage Code</b>	<b>Payment of Wages Act, 1936</b>
Wages will be paid to the employees on or before 7 <sup>th</sup> day of the succeeding month.	Wages had to be paid to persons employed in factory, railway, industrial or other establishment (such as tram, dock, mine, etc) as per the following: <ul style="list-style-type: none"> <li>(i) in which less than 1000 (one thousand) persons were employed, before expiry of the 7<sup>th</sup> of the succeeding month;</li> <li>(ii) in other cases, before the expiry of the 10<sup>th</sup> of the succeeding month.</li> </ul>
Full and final settlement in case of termination of employment/ closure of establishment as well as resignation will have to be cleared within 2 (two) working days	Full and final settlement where the employment of any person was terminated by the employer had to be cleared within 2 (two) working days from the day on which his employment was terminated.

Therefore, organisations, across the sectors will have to update their payroll management systems to ensure that not only salaries are paid on time but full and final settlement is also undertaken within 2 (two) working days to avoid any potential disputes and implications of non-compliance.

## F. WORKING HOURS AND OVERTIME WAGES

Wage Code	Minimum Wages Act, 1948
Since the applicability of the Wage Code is wider than the MWA, the overtime wages will have to be paid to a wider category of employees. The overtime rate shall not be less than 2 (twice) the normal rate of wages. Thus the employers are now permitted to voluntarily pay higher overtime, subject to floor being double of the ordinary rate of wages.	When a worker in any scheduled employment works for more than 9 (nine) hours on any day or for more than 48 (forty-eight) hours in any week, then overtime at double the ordinary rate of wages will be paid.

## G. PENALTIES

Wage Code	Erstwhile Statutes
<p>Paying less than due wages (including through improper deduction) carries a fine up to INR 50,000 (Indian Rupees Fifty Thousand) for first offence. Any repeat violations within 5 (five) years trigger imprisonment up to 3 (three) months and/ or fine up to INR 1,00,000 (Indian Rupees One Lakh).</p> <p>For any other contravention of the Wage Code, the employer shall be punishable with fine which may extend to INR 20,000 (Indian Rupees Twenty Thousand).</p>	<p>Under PWA, any contravention of provision relating to deduction was punishable with fine which was not less than INR 1,500 (Indian Rupees One Thousand Five Hundred) but which may extend to INR 7,500 (Indian Rupees Seven Thousand Five Hundred).</p> <p>Under MWA, failure to pay minimum wages was punishable with imprisonment for up to 6 (six) months and/ or with fine of up to INR 500 (Rupees Five Hundred).</p> <p>Under Bonus Act, non-payment of bonus is punishable with imprisonment of up to 6 (six) months and/or fine of up to INR 1000 (Indian Rupees One Thousand).</p> <p>Under ER Act, non-compliance related to recruitment, remuneration or incidents of discrimination was punishable with fine which is not less than INR 10,000 (Indian Rupees Ten Thousand) extendable to INR 20,000 (Indian Rupees Twenty Thousand) and/or with imprisonment for 3 (three) months to 1 (one) year for the first offence, and with imprisonment up to 2 (two) years for subsequent offences. Failure to maintain register was punishable with simple imprisonment up to 1 (one) month and/ or with fine up to INR 10,000 (Rupees Ten Thousand).</p>

Therefore, the penal implication in case the employers contravene the requirements of the Wage Code are more stringent.

## ***H. EASING THE COMPLIANCE BURDEN FOR EMPLOYERS***

- **Reduced number of registers:** The Wage Code consolidates the MWA, the PWA, the Bonus Act, and the ER Act. Each of these legislations had individual compliances with respect to maintenance of registers which cumulatively came upto more than 20 (twenty) registers. The Wage Code has now consolidated the requirement and provides for maintenance of only 3 (three) registers: (i) register of fines and all realisations thereof; (ii) register of deductions with respect to damage or loss; and (iii) register containing the details with regard to persons employed, muster roll, wages.
- **Option to compound:** Wage Code has now allowed for compounding of offences which is not an offence punishable with imprisonment only, or with imprisonment and/ or fine, upon application by the accused before or after prosecution initiation. A gazetted officer, notified by the appropriate Government, can compound such offences for 50% of the maximum fine. Compounding of offence only applies to first-time violations. This is a welcome step which will allow employers to compound breaches like delayed payments or wage miscalculations, thereby promoting compliance over prosecution.

## ***I. CORPORATES TO NOTE***

The Wage Code brings in transparency, wider coverage and simplified compliance. As an immediate step, the employers should review their existing salary structures to align with the Wage Code requirements, adopt robust payroll and compliance systems to avoid fines and imprisonment risks. Corporates should proactively update their HR policies, conduct trainings for their HR teams, implement technology-driven compliance tools, and maintain accurate records to align with new Wage Code.

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