

## The Occupational Safety, Health and Working Conditions Code, 2019: Status of Contract Labour

written by Ragini Sharma | April 20, 2020



### A Step In The Direction Of Occupational Safety Of Labour

A safe work environment is a fundamental right. India's record in encouraging occupational and industrial safety remains frail even with years of robust economic growth. According to estimates, roughly 80,000 workers lose their lives every year in "accidents" at the workplace. The Ministry of Labor & Employment has come up with the Occupational Safety, Health and Working Conditions Code, 2019 ("Code") by emulating 13 labour laws in relation to safety, health standards, working conditions, welfare provisions, leaves and working hours for the employees. The Code acts as a regulatory of health and safety conditions of workers in an establishment with 10 or more workers, and in all mines and docks.

The Code was introduced in Lok Sabha on 23rd July 2019 wherein, it was further referred to a Standing Committee on 9th October 2019 and eventually on 11th February 2020, the Standing Committee submitted its report on the Code.

This article further discusses the key highlights of the Code along with status of contract labour under the Code.

### Concept of Contract Labour

Contract Labour is a system under which the workers are employed on a contractual. These contract workers are employed by the employer and work on the premises of the employer i.e Principal Employer but are not under his direct control. These contracts are temporary and seasonal in nature and therefore, contract labour is employed where work and duration are specific. Further, the Supreme Court of India in *Standard Vacuum Refinery Company Vs. Their Workmen*<sup>[1]</sup>, observed that the contract Labour should not be employed where:

1. The work is perennial and must go on from day to day;
2. The work is incidental to and necessary for the work of the Factory;
3. The work is sufficient to employ a considerable number of whole time workmen ;
4. The work is being done in most concerns through regular workmen;

### Key Highlights of the Code

- **Single Registration:** The Code proposes single registration for an establishment instead of multiple registrations. Therefore, establishments covered by the Code will be required to register within a period of 60 days from the date of commencement of this Code. This will design a centralized database and develop an ease of doing business.
- **Free Annual Health Checkups:** The Code provides for free annual health check-ups for the employees of such age as may be prescribed by the appropriate Government for prescribed tests and for prescribed establishments. By providing these annual health check-ups to employees will result in increased productivity by detecting diseases at an early stage through this provision.
- **Appointment letter made Statutory:** It is for the very first time wherein the

government has made statutory compliance to provide appointment letter to all the employees engaged in their establishment. This will stem from formalization of employment and the exploitation of employees.

- National Occupational Safety and Health Advisory Board: A National Occupational Safety and Health Advisory Board will be constituted in place of multiple committees set-up under various Acts. This board will be tripartite in nature and will have representation from trade unions, employer associations, and State Governments. The board will help in reducing the multiplicity of various boards which were earlier present under each enactment.
- Working Hours For Women: A special provision has been laid down wherein, female workers/women can work during night shifts but with their consent. Also, the time slot for such night shift shall be from 7 p.m. and before 6 a.m., which shall also be approved by the central or state government.
- Rights and duties of employees and employers: There have been rights and duties laid down in the Code for employees too, wherein, it provides that employees shall take care of their own health, shall comply with specified safety and health measures, shall report unsafe situations to the inspector. It also mentions that every employee has a right to gain information in relation to the safety and health standards of an establishment. Further, the Code places few duties on the employer which include providing a workplace that is free from hazards that may cause injury or diseases, providing free annual health check-ups, and informing the relevant authorities where an accident leads to death or bodily injury of an employee.
- Working conditions and welfare facilities: The employer shall provide an employee with a hygienic work environment which shall include ventilation, sufficient space, clean drinking water, comfortable temperature and humidity, and latrine and urinal accommodation. The facilities along with the above-mentioned shall also include separate bathing places and locker rooms for male, female and transgender employees. The Code also provides for the establishment of the bi-partite Safety Committee which will promote safe and healthy working conditions.
- Work hours and leave: The Code provides that work hours for different classes of establishment and employees shall be as per the rules prescribed by central or state government. Further, in relation to overtime work, an employee shall be paid twice the rate of daily wages. The Code in regard to leaves states that no employee shall work for more than 6 days a week, however, an exception has been provided for motor transport workers. The Code further enunciates that workers must receive paid annual leave for at least one in 20 days of the period spent on duty. Also, wherein, sales promotional employees are there in an establishment, medical leaves must be provided for at least one-eighteenth of the period of service. During medical leaves, workers must be paid half of their daily wages.
- Offences and Penalties: Under the Code, an offence which leads to the death of an employee will be punishable with imprisonment of up to two years, or a fine up to five lakh rupee or, both. Further, the court (Chief Inspector-cum-Facilitator or Inspector-cum-Facilitator or an officer of the appropriate Government or a person authorised to discharge any duty or to exercise any powers under this Code) has been granted a discretionary power wherein, it may direct that at least 50% of such fine be given as compensation to the heirs of the victim.

- The Code further states that where no penalty has been laid down for violation of the provision of the Code by the employer, the employer will be penalised with a fine between two to three lakh rupees. And where the employee violates any provisions of the Code, he will be subject to a fine of up to Rs. 10,000.

#### Position of Contract Labour under the Code

- **Definition Clause:** The Code provides the definition of contract labours by including them in the benefits provided by the Code. It defines contract labour as “a worker who shall be deemed to be employed in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer and includes inter-State migrant worker but does not include a worker (other than part time employee) who is regularly employed by the contractor for any activity of his establishment and his employment is governed by mutually accepted standards of the conditions of employment (including engagement on a permanent basis), and gets periodical increment in the pay, social security coverage and other welfare benefits in accordance with the law for the time being in force in such employment;”
- **Welfare Facility:** The Code further provides for the welfare of the contract labour providing them with basic amenities of bathing, washing, changing room, sitting arrangements, canteen, first-aid boxes, etc separately for male and female contract labour.
- **Liability of principal employer for welfare facilities:** The Code specifically puts liability on principal employer to provide with all the basic amenities to the contract labourers in the establishment where the contract labour work.
- **Responsibility for payment of wages:** The Code further provides that the employer shall be liable to make payment of wages to the contract labour employed by him under the contract within the stipulated time period. This further helps contract labourers with the timely payment of wages to meet their expenses.
- **Licensing of the contractor:** The Code further provides that the contract labour shall seek for the license after contract labour fulfils such requisite qualifications or criteria as may be prescribed by the central government. Also, where the contract labour does not fulfil all the conditions of licensing as prescribed by the Central Government, the officer can provide them “work specific license” which shall be valid for that particular work only.

#### Conclusion

The Government of India has taken a great step to protect its labour workforce from any future accidents or mishappenings by amalgamating 13 acts and providing a single Code for the health and safety of the workers and labourers.. These specific provisions have been laid down for factories, mines, dock, plantations, construction, motor transport, etc. in relation to duties of employees, working conditions, license and registrations, work hours, disability and many more.

The position of contract labour in the Code is very well-established which can be clearly seen by defining what does contract labour means. Further, the Code provides for welfare facility for contract labour and specifically putting liability on the principal employer to provide basic amenities in the establishment for the contract labour during there specific work schedule. It

also includes licensing and timely payment of wages to the contract labour. As we are well-aware of the fact that the contract labour is a recent concept of employment which is only for a specific period of time therefore, it is one of the unorganised sectors. Though a good attempt has been made to protect the interest of contract labour in the Code, it is limited to the establishment in which twenty or more contract labour are employed or were employed on any day of the preceding twelve months through contract or, every manpower supply contractor who has employed on any day of the preceding twelve months twenty or more contract labour.

Therefore, any contract labour which is employed in any establishment and is less than twenty in number will not be protected by the Code. Hence, an extensive code is required to protect each one of the contract labours and their rights thereof arising out of the contract with the employer.

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[1] (1960) SCR (3) 466

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