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The Code on Social Security, 2020/The Occupational Safety, Health and Working Conditions Code, 2020



On 28 September 2020, the President of India gave his assent inter alia to the Code on Social Security, 2020 ("CoSS 2020")/the Occupational Safety, Health and Working Conditions Code, 2020, which are yet to be brought into force by way of a Notification in the Official Gazette. Part of the roadmap to implementation of the new labour law regime is release of the draft rules by the Central Government under the said Codes for public consultation (Draft Rules). →

MCA Updates

The Ministry of Corporate Affairs (MCA) has, vide its Order dated 17th December, 2020, deferred the applicability of the notified Companies (Auditor's Report) Order (CARO) 2020, till 1st April, 2021. In the Companies (Auditor's Report) Order, 2020, in paragraph 2, for the figures, letters and word "1st April, 2020", the figures, letters and word "1st April, 2021" shall be substituted. Accordingly, the Companies (Auditor's Report) Order, 2020 is now applicable for all statutory audits of financial statements for the periods commencing on or after 1st April, 2021

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The Code on Social Security, 2020/The Occupational Safety, Health and Working Conditions Code, 2020

Applicability and Scope

In the First Schedule of the CoSS 2020, applicability thresholds are defined for each scheme. Some examples being –

- CoSS 2020 is applicable to any establishment (subject to size-threshold as may be notified) for making certain benefits mandatory.
- All eligible establishments are required to be registered under the Code, unless they are already registered under any other labour law.
- EPF shall be applicable to establishments with 20 or more employees.
- ESI shall be applicable to certain establishments with 10 or more employees and to all establishments which carry out hazardous or life-threatening work as notified by the Central Government.
- CoSS 2020 not only recommends or administers schemes for unorganised sector workers but also dwells into the welfare of gig and platform workers, where such schemes were not applicable till now and these schemes shall be funded by the Central Government, State Governments, and aggregators (as mentioned in Seventh Schedule).



Definition of Employee as per CoSS 2020

Employee: Employee means any person (other than an apprentice engaged under the Apprentices Act, 1961) employed on wages by an establishment, either directly or through a contractor, to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical, clerical or any other work, whether the terms of employment be express or implied, and also includes a person declared to be an employee by the appropriate Government, but does not include any member of the Armed Forces of the Union.

Following are some of the important provisions under the Draft Rules in respect of both the Codes:

Draft Rules under the Code on Social Security, 2020

1. Mechanism for voluntarily opting out

An application can be made for voluntarily opting out, provided there is an agreement between the employer and the majority of the employees to this effect. The Draft Rules, however, stipulate a cooling off period of 5 years between the time the establishment voluntarily opts in to be covered under the relevant chapters and the time it makes an application to opt out.

2. Provision of crèche facility

In respect of every establishment with 50 or more women, a crèche needs to be provided with adequate accommodation, lighting, and ventilation. The crèche shall be



under the charge of women trained in the care of children and will be located within the establishment or at an appropriate distance from the establishment such that it is easily accessible to the women employees including a woman employee working from home.

3. Self-assessment mechanism for cess in relation to building or other construction workers

The Draft Rules provide that a cess shall be paid by an employer, at the time of approval or before commencement of the work, on the basis of self-assessment duly certified by Chartered Engineer. For this self-assessment, the employer would, if possible, calculate the cost of construction work as per the rates of construction specified by the respective state's Public Works Department or the Central Public Works Department or as per the documents submitted to the Real Estate Regulatory Authority. The Draft Rules then provide a format (Form XVI) in which the employer would furnish details of the self-assessment to the relevant officer.

4. Conditions for exemption from schemes under Chapter III and / or Chapter IV

While the existing regime allows exemption to establishments from the schemes formulated under Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the Employees' State Insurance Act, 1948, the Draft Rules set out a detailed exemption provision for establishments which have at least 500 contributory members (as regards Chapter III, which pertains to employees' provident fund) or 500 employees (as regards Chapter IV, which pertains to employees' state insurance fund). It is inter alia provided that in order to claim exemption from the relevant chapters, the



employees must be receiving benefits that are substantially similar, if not superior, to those set out under the statutory schemes. Further, there should be no default in contributions under the statutory schemes for a period of 3 years immediately preceding the application.

5. Benefits to unorganised sector

Creation of a social security fund for extending the benefits to workers in the unorganized sector has been proposed.

6. Relaxations in minimum service period for Gratuity

Unlike existing provisions of gratuity, it also stipulates the gratuity benefits to fixed-term employees with certain relaxations on minimum service.

7. Operationalisation of provisions relating to ESIC, EPFO, Gratuity, maternity benefit, Social Security Cess

Draft Rules provide for operationalization of provisions relating to Employees' Provident Fund Organisation (EPFO), Employees' State Insurance Corporation (ESIC), gratuity, maternity benefit, social security and cess in respect of building and other construction workers, social security for unorganised workers, gig workers, platform workers, freelancers and home-based workers.

The schemes are to be formulated by the Central Government for unorganized workers on matters such as: (i) life and disability cover; (ii) health and maternity benefits; (iii) old age protection; and (iv) education.



The State Government shall frame and notify, from time to time, suitable welfare schemes for unorganised workers, including schemes relating to: (i) provident fund; (ii) employment injury benefit; (iii) housing; (iv) educational schemes for children; (v) skill upgradation of workers; (vi) funeral assistance; and (vii) old age homes.

Hence, there is a duality in the administration of social security schemes.

Draft Rules provide for Aadhaar based registration of building and other construction workers on the specified portal of the Central Government and the State Government or the State Welfare Board. Provision has also been made in the Draft Rules regarding gratuity to an employee who is on fixed term employment. Draft Rules provide for single electronic registration of an establishment, including cancellation of the registration in case of closure of business activities.

Provision has also been made regarding manner and conditions for exiting of an establishment from EPFO and ESIC coverage. The procedure for self-assessment and payment of cess in respect of building and other construction workers has also been elaborated in the Draft Rules. For the purpose of self-assessment, the employer shall calculate the cost of construction as per the rates specified by the State Public Works Department or Central Public Works Department or on the basis of return or documents submitted to the Real Estate Regulatory Authority. The rate of interest for delayed payment of cess has been reduced from 2 per cent every month or part of a month to 1 per cent.



8. Enables Single registration/Auto Cancellation/Combined annual return

Draft Rules provide for single electronic registration of an establishment, including cancellation of the registration in case of closure of businesses. Also, they provide for auto cancellation of registration in case of non-compliance made against the registration number. Guidelines for filing a combined annual return by employers have also been prescribed.

9. Reduction in rate of interest on delayed payment of cess

The rate of interest for delayed payment of cess has been reduced from 2 per cent every month or part of a month to 1 per cent, under the Chapter relating to Building and other Construction Workers.

Draft Rules under the Occupational Safety, Health and Working Conditions Code, 2020

1. Letter of appointment

The Code requires every covered establishment to issue a letter of appointment to every employee on his / her appointment in the form prescribed by the government. Aside from personal details, this includes particulars such as Aadhaar Card Number, Labour Identification Number, Universal Account Number (in respect of employees' provident fund), Insurance Number (in respect of employees' state insurance fund), category of skill, wages, avenue for achieving higher wages/higher position, nature of duties etc.



2. Hours of work and related provisions

The Code merely provides the daily working hour limit of 8 hours for establishments while leaving several other related requirements to the government to prescribe by way of rules. Pursuant to the above, the Central Government provides, in the Draft Rules, that the weekly working hour limit for establishments would be 48 hours, in line with the present limit under the Factories Act, 1948 and several state-specific shops and establishments statutes. The Draft Rules state that the period of work (not the hours of work) of a worker should be arranged in a manner that, inclusive of his / her intervals for rest, the same does not spread over to more than 12 hours in a day.

3. Conditions for employment of women in night shifts

In a progressive move, the Code provides that women can, upon their consent, work between the hours of 7 PM and 6 AM, subject to such conditions as may be prescribed by the government. The Draft Rules set out the conditions to be met while engaging women in night shifts. These include providing adequate transportation facilities to them for their pickup and drop off at their residence, making available toilet and drinking water facilities near the place of work, providing safe, secure and healthy working conditions to them, and complying with the provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

4. Journey allowance for inter-state migrant workers

One of the important shifts from the existing regime is inclusion of directly recruited employees from other states within the purview of 'interstate migrant worker' (if they fall in Rs. 18,000 wage bracket). Under the existing regime, only workers engaged



through third party manpower service providers were considered so. A necessary consequence of this change is that now, employers would be required to pay journey allowance to their employees hailing from other states. The Draft Rules provide that an inter-state migrant worker would be eligible for journey allowance if he / she has worked for 180 days in the establishment in the preceding 12 months. For such eligible employee, he / she shall be paid a lump sum amount once in 12 months, which amount would cover the to and fro journey by train (not less than class-II sleeper), bus or any other mode of passenger transport, between the place of employment and the place of residence.