

Labour & Liberty

CENTRE FOR ADVANCED STUDIES IN LABOUR WELFARE (CASLW)

RAJIV GANDHI NATIONAL UNIVERSITY OF LAW, PUNJAB

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LEGISLATIVE ACTIONS

Labour Codes:

The Union government has recently codified 29 central enactments into four labour codes namely the Industrial Relations Code, 2020, the Occupational Safety, Health and Working Conditions Code, 2020, the Code on Social Security, 2020 and the Code on Wages, 2019 for giving due assurance to workers in terms of wages, benefits and job security. The 2nd National Commission on Labour (NCL) recommended consolidation of central labour laws. For the first time since Independence a change in labour law is taking place, the need for change was felt especially after the 1990s with the transformation in manufacturing activity and meteoric growth of service industry, IT and other related industries.

Draft Model Standing Orders for the Manufacturing Sector, Mining Sector and Service Sector:

Ministry of Labour and Employment has recently published Draft Model Standing Orders for Service Sector, Manufacturing Sector and Mines, 2020. This is in pursuant to powers conferred under section 29 of the Industrial Relations Code, 2020. The Central Government has published the draft Model and subsequently invited suggestions/objections from the stakeholders within a month. There has been a sense of uniformity maintained in all the three Model Standing Orders while providing some flexibility considering the sector-specific requirement. All three model standing orders encourage employers to use information technology in the dissemination of information to the workers. There have been certain important sector specific changes such as concept of 'Work from home' has been formalised in the model standing orders for the service sector; rail travel facility has been extended to the workers in the mining sector and to provide safeguard to IT industry, "Involvement in unauthorized access of any IT system, computer network of the employer/customer/client" has been prescribed as a misconduct.

The Transgender Persons (Protection of Rights) Act, 2019

Transgender is a person whose gender does not match the gender assigned at birth and includes: (a) transmen and transwomen, (b) persons with intersex variations, (c) genderqueers, and (d) persons with socio-cultural identities, such as kinnar, hijra, aravani and jogta. This Act was introduced in Lok Sabha in July 2019 after the lapse of the 2018 Bill. This Act prohibit discrimination against transgender people. Unlike the 2014 bill, the 2019 bill does not provide reservation to transgender people in educational institutions and jobs. Section 3 of this bill prohibits discrimination or unfair treatment of transgender people in relation to occupation or employment.

Industrial Relations Code, 2020:

The Industrial Relations Code combines the features of three erstwhile laws — the Trade Unions Act, 1926, the Industrial Employment (Standing Orders) Act, 1946, and the Industrial Disputes Act, 1947. It defines 'workers' to include, besides all persons employed in a skilled or unskilled, manual, technical, operational and clerical capacity, supervisory staff drawing up to ₹18,000/month as salary. It introduces fixed term employment', giving employers the flexibility to hire workers based on

requirement through a written contract. Fixed term employees should be treated on a par with permanent workers in terms of hours of work, wages, allowances and other benefits, including statutory benefits such as gratuity. The Code says any establishment that employs 300 or more workers must prepare standing orders relating to classification of workers, manner of intimating to them periods and hours of work, holidays, pay days etc, shifts, attendance, conditions for leave, termination of employment, or suspension, besides the means available for redress of grievances.

The Occupational Safety, Health and Working Conditions Code, 2020:

Occupational Safety, Health and Working Conditions Code was introduced by Ministry of Labour and Employment in 2019, it was referred to Standing Committee on Labour for reconsideration. The main aim of the reintroduced bill was to lessen the burden of the employers as by replacing multiple registrations under various acts to one common registration, ultimately creating a consolidated database centrally and increase the ease of doing business. It emphasises on health, welfare and safety of workers employed across various sectors. This code has subsumed 633 provisions of 13 major labour laws into a single code and has setup Occupational Safety Boards at National and State levels to aid and advise the government on standards and regulations to be framed under the code. It has also barred Civil Courts from hearing matters under the Code and grievances can only be redressed by filing a writ petition before the relevant High Court.

RECENT JUDGEMENTS

STATE OF UTTARAKHAND v. SURESHWATI (Jan, 2021):

The Supreme Court observed that dismissal of a workman by his/her employer cannot be interfered with merely on the ground that it did not conduct a disciplinary enquiry, if the latter could justify the action before the Labour Court. The judgment refers to observations and precedent set in *Workmen of Firestone Tyre & Rubber Co. of India (P) Ltd. v. The Management of Firestone Tyre & Rubber Co. of India (P) Ltd and Other* (1973) 1 SCC 813.

GUJARAT MAZDOOR SABHA & ANR. v. THE STATE OF GUJARAT (Oct, 2020):

A three-Judge Supreme Court Bench comprising of Justices Indu Malhotra, DY Chandrachud and KM Joseph, quashed a Gujarat government notification dated April 17, 2020 exempting factories from paying overtime wages to workers and providing ideal working conditions to them amid the Covid-19 lockdown, on grounds of public emergency. The court, under Article 142 of the Constitution also directed the Respondent Government to pay

overtime wages to all workers who had been putting in additional labour since the issuance of the notification. This is an important judgement as an important precedent has been set where the Judiciary recognizes the need to balance a public health crisis and labour welfare.

Dr POOJA JIGNESH DOSHI v. STATE OF MAHARASHTRA & ANR. (Jul, 2019):

In this case, the division bench of Bombay High Court reiterated the decision laid down by the division bench of the court in *Dr Mrs Hema Vijay Menon v. State of Maharashtra* [Writ Petition No. 3288]. It was held that even in the case of a child by surrogacy, the parents who have lent the ova and sperm would be entitled to maternity leave and paternity leave. The Maternity Benefit (Amendment) Act, 2017 also introduced an explicit provision that the commissioning mother shall be given a maternity leave of 12 weeks from the date the child is handed over to the commissioning mother.

PANKAJ PRAKASH v. UNITED INDIA INSURANCE CO LTD & ANR. (Jul, 2019):

A writ petition was filed before the High Court of Allahabad against for non-disclosure of APAR (Annual Performance Appraisal Report) by the employer. The High Court of Allahabad held that in the absence of an adverse entry or an entry below the benchmark, the failure to communicate the grade in an APAR did not result in an actionable grievance. Further an appeal was filed in the SC and it held that it is mandatory that every entry in the APAR of a public servant must be communicated to him/her within a reasonable period. Apart from ensuring transparency in the system, such disclosures also ensure that a public servant is given reasonable opportunity to make representations against the gradings if he / she is dissatisfied with the results.

CHIEF REGIONAL MANAGER, UNITED INDIA INSURANCE CO. LTD. v. SIRAJUDDIN KHAN (Jul, 2019)

The two-judge bench of the Supreme Court in this case held that, setting aside of the termination order does not automatically entitle an employee to claim salary for the period he was absent without leave from work. The SC differentiated the present case from a situation where an employee was dismissed from service and when such dismissal was set aside, he would automatically be entitled for back wages. The SC noted that since the Respondent in this case was not kept away from the work on account of dismissal or by any order of the Appellant, the Respondent was not eligible to claim arrears of wages. Therefore, the SC partly allowed the appeal and directed the Appellant to consider the claim of back wages of the Respondent and pass appropriate orders with reasons.