

# New Labour Laws Impact on Business & Relevance for CAs

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Chir Amrit Corporate School

(Also available at  
[www.chiramritlaw.com](http://www.chiramritlaw.com))

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## Do You Know !!

**Q 1.** What is the % of work force earning more than 50,000/- p.m. in India?

- a. Less than 1%
- b. 2% - 1.6%
- c. 2 – 10 %
- d. > 10%

## Do You Know !!

**Q 2.** What is the % of work force earning less than Rs.10,000/- per month?

- a. 30 – 40%
- b. 40 – 50%
- c. 50 – 60%
- d. 60 – 70%

## Do You Know !!

**Q 3.** Are labour laws applicable to a Chartered Accountant's office?

- a. It depends on the particular law
- b. Yes
- c. No
- d. It differs from state to state

## Do You Know !!

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**Q 4.** Will the 'take-home' decrease after the implementation of new Labour Codes?

- a. Yes
- b. No
- c. It will remain the same

## Do You Know !!

**Q 5.** What is the % of workers employed in establishments with less than 10 workers?

- a. < 25%
- b. 25 – 50%
- c. 50 – 60%
- d. 70 – 80%

## Do You Know !!

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**Q 6.** Are labour laws applicable to an NGO?

- a. Yes, because they have employees
- b. No, because they are not for profit motive
- c. It differs from state to state



## Do You Know !!

**Q 7.** Is a person appointed as a housekeeping staff in an establishment earning Rs. 20,000/- per month, a workman/ worker?

- a. Yes
- b. No
- c. It differs from state to state

# Do You Know !!

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**Q 8.** What is the % of employees who don't get appointment letters?

- a. 10 – 20%
- b. 20 – 30%
- c. 50 – 60%
- d. 70 – 80%
- e. More than 80%

# Do You Know !!

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**Q 9.** What is the period until which the EPF amount can be recovered from an employer?

- a. 1 year
- b. 5 year
- c. 9 year
- d. No such limit

# Challenges



**44 CENTRAL LABOUR  
LEGISLATION**



**200 STATE LABOUR  
LEGISLATION**



**NEVER ENDING  
COMPLIANCES**

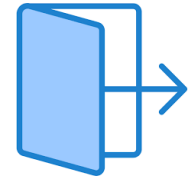
**900 + COMPLIANCES &  
100 + FILINGS IN A YEAR**



**MANUFACTURING SECTOR  
JOBS REDUCED BY 3.5  
MILLION BETWEEN 2011-12  
TO 2017-18**



**EASE OF DOING  
BUSINESS**



**EXIT BARRIER**

# Objectives

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Simplification and Updation

---

Flexibility to MSME Sector

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Easy Exit

---

Encouraging Growth & Investment

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Capture Needs of Emerging Forms of Labour (Gig Work, Work From Home)



सत्यमेव जयते

**SECOND NATIONAL  
COMMISSION ON LABOUR  
(2002)**

**GROUPING OF LABOUR LAWS  
IN 4 CODES**



**NDA 2014 ELECTION  
MANIFESTO**

# New Framework



# New Framework

## Code on Wages

Payment of Wages

Equal  
Remuneration

Payment of Bonus

Minimum Wages

## Code on Occupational Safety, Health and Working Conditions

Factories Act

Contract Labour  
Regulation and  
Abolition Act

Building and Other  
Construction  
Workers Act

## Code on Social Security

EPF Act

ESI Act

Maternity Benefit

Payment of  
Gratuity

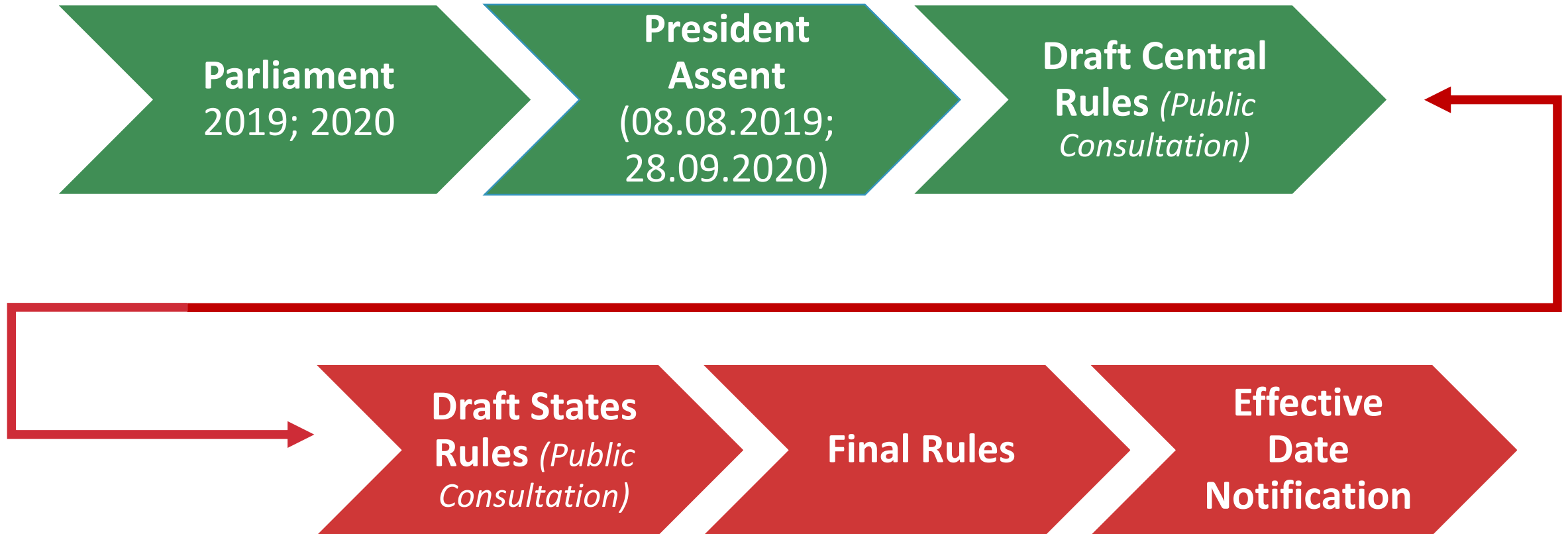
## Code on Industrial Relations

Trade Union Act

Industrial  
Employment  
(Standing Order)  
Act

Industrial Disputes  
Act

# TIMELINE





# RULES STATUS

| States             | OSH Code    | Code on Wages | IR Code     | SS Code     |
|--------------------|-------------|---------------|-------------|-------------|
| <b>Bihar</b>       | Draft Rules | Draft Rules   | Draft Rules | Draft Rules |
| <b>J &amp; K</b>   | Draft Rules | Draft Rules   | Draft Rules | Draft Rules |
| <b>Karnataka</b>   |             | Draft Rules   | Draft Rules |             |
| <b>Odisha</b>      |             | Draft Rules   |             |             |
| <b>M.P.</b>        | Draft Rules | Draft Rules   | Draft Rules | Draft Rules |
| <b>Uttarakhand</b> | Draft Rules | Draft Rules   | Draft Rules | Draft Rules |
| <b>U.P.</b>        | Draft Rules | Draft Rules   | Draft Rules | Draft Rules |



# Status in Rajasthan



March, 2021

“The state’s labour department had sent the draft rules for the approval of the law department last month and they will be taken up by the state cabinet before being made public for consultation.”

- Rajasthan Labour Secretary Niraj Kumar Pawan

# Labour Codes: Structure



# Structure

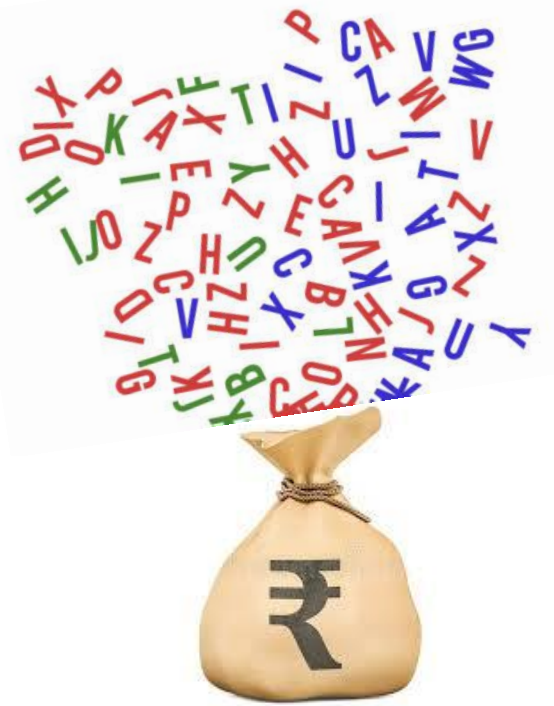
## ■ General Provisions

## ■ Special Provisions

- ▷ Beedi & Cigar Workers
- ▷ Audio Visual Workers
- ▷ Plantation Workers
- ▷ Motor Transport Workers
- ▷ Sales and Promotion Employees
- ▷ Newspaper Employees
- ▷ Mine Worker
- ▷ Inter State Migrant
- ▷ Dock Workers
- ▷ Building & Other Construction Workers



# WAGE JUMBLE



# Existing Challenges

Basic Wage vs. Wage

Vague Exclusions

Different Laws;  
Different Definitions

Conflicting  
Judgements



# Wages: New Definition



## Means

all remuneration whether by way of salaries, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment



## Includes

- (a) basic pay;
- (b) dearness allowance; and
- (c) retaining allowance, if any

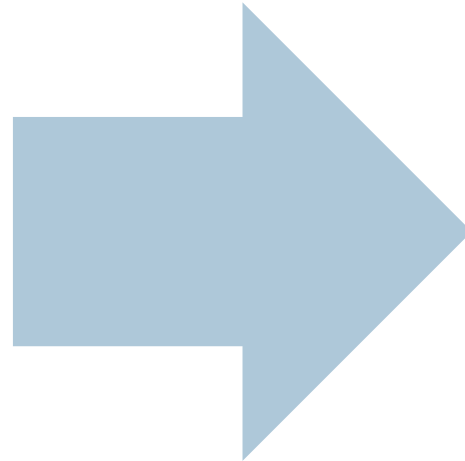
# Wage : Exclusions

1. Statutory Bonus
2. Value of any house-accommodation
3. Contribution paid to any pension or provident fund and interest thereon
4. Conveyance allowance or the value of any travelling concession
5. Sum paid to defray special expenses
6. House rent allowance
7. Remuneration payable under any award or settlement
8. Overtime allowance
9. Commission payable to the employee
10. Gratuity
11. Retrenchment compensation, other retirement benefit or any ex gratia payment made on termination



# The 50% Rule

If excluded  
payments (except  
gratuity and  
retrenchment  
compensation) >  
50% of all  
remuneration



Excess to be  
deemed as wages

**Basic + D.A. + R.A. must be at least 50% of total remuneration**

# 50% Rule: 2 Interpretations

**CONTROVERSY**

|          | Basic                            | Exclusion            | Total                              | Wage for PF    |
|----------|----------------------------------|----------------------|------------------------------------|----------------|
| Original | 40                               | 60                   | 100                                | 40             |
| Int. 1   | 40                               | 60<br>$60 - 50 = 10$ | 100<br>$50\% \text{ of } 100 = 50$ | $40 + 10 = 50$ |
| Int. 2   | 40<br>$50\% \text{ of } 40 = 20$ | 60<br>$60 - 20 = 40$ | 100                                | $40 + 40 = 80$ |

# Remuneration in Kind

**CONTROVERSY**

## Means Part

all remuneration whether by way of salaries, allowances or otherwise, expressed in terms of money or capable of being so expressed

## Explanation

Remuneration in kind **up to 15%** of total wages = Wages

## Specific Exclusions

Rent Free Accommodation

Light, Water and Medical Attendant

Other Amenities as may notified

## Issues

Food Coupon

Free Meals

Vehicle / Driver

Domestic Help

# Departure from Existing Position

## Minimum Wages

Before  
HRA included

Now  
HRA Excluded

**RESET**

# Departure from Existing Position

**Gratuity**



Before  
Basic + D.A.



Now  
Gross – Specified  
Allowances (HRA,  
Conveyance etc.)



# Departure from Existing Position

Before  
HRA Included

Now  
HRA Excluded



कर्मचारी राज्य बीमा निगम  
Employees' State Insurance Corporation



# Departure from Existing Position

**Bonus**



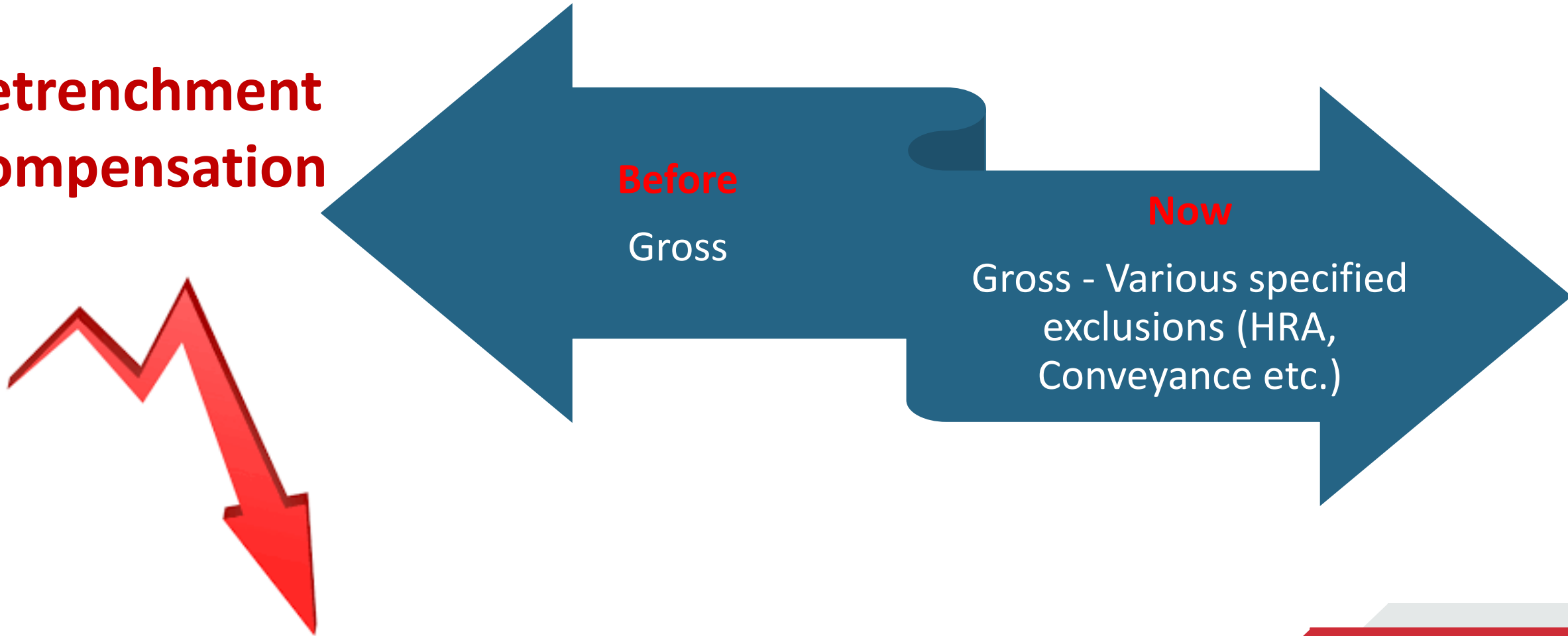
Before  
Basic + D.A.



Now  
Gross – Various specified  
exclusions (HRA,  
Conveyance etc.)

# Departure from Existing Position

## Retrenchment Compensation





# Departure from Existing Position

## Before

- Basic + D.A. [**#SC Judgement**]
- 12%
- Overtime, HRA and any other similar allowance excluded



## Now

- Gross - Various specified exclusions (HRA, Conveyance etc.)
- 10%; 12% Specific Establishments

# Illustration

| Particulars                   | CTC Amount (in Rs.) per month |
|-------------------------------|-------------------------------|
| Basic Salary                  | 10,000                        |
| HRA                           | 4,000                         |
| Conveyance Allowance          | 1,000                         |
| Leave Travel Allowance        | 500                           |
| Uniform Allowance             | 500                           |
| Special Allowance             | 3,000                         |
| PF Contribution (Employer's)# | <del>1,200</del> 1680         |
| Statutory Bonus*              | 833                           |
| ESI (Employer's)              | <del>585</del> 455            |
| ESI (Employee's)              | <del>135</del> 105            |
| Total CTC                     | <del>21,618</del> 21,968      |
| Take Home                     | <del>18,498</del> 18,048      |

Assuming Minimum Wages is Rs. 10000

Wage for Gratuity:  
~~10000~~ 14000

#SC Judgement

\*No Change as calculated on higher of Rs. 7,000 or M.W.

# APPLICABILITY & REGISTRATION

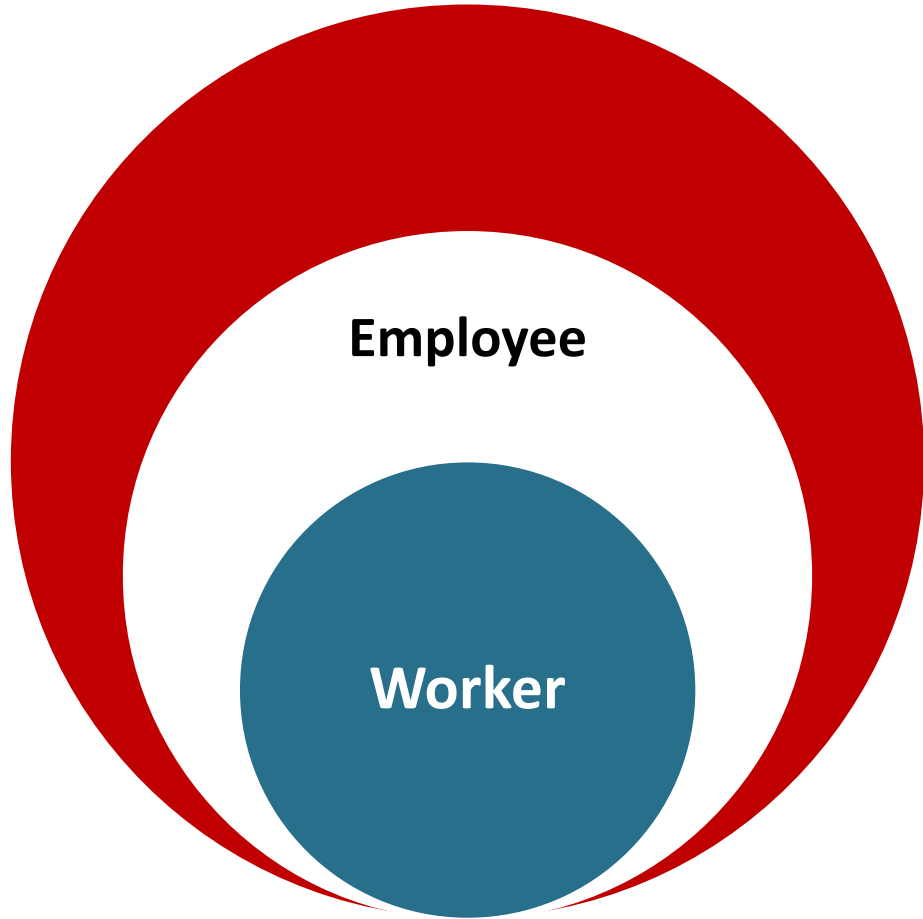


# Single Registration

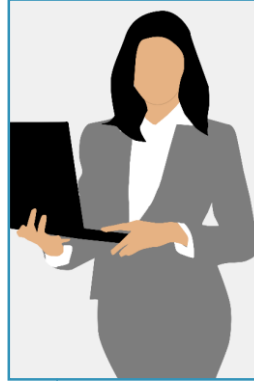
- For New Establishments : Single Registration on Shram Suvidha Portal
- For Existing Establishments : Updating existing registration particulars on Shram Suvidha Portal within prescribed time
- Labour Identification Number
- Single Annual Unified Return



# Employee vs. Worker



## Who is not a Worker?



Who is employed mainly in a managerial or administrative capacity

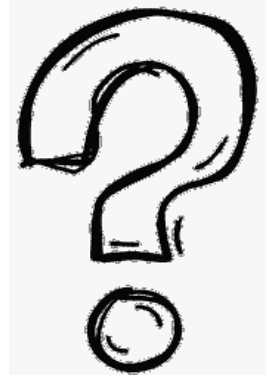
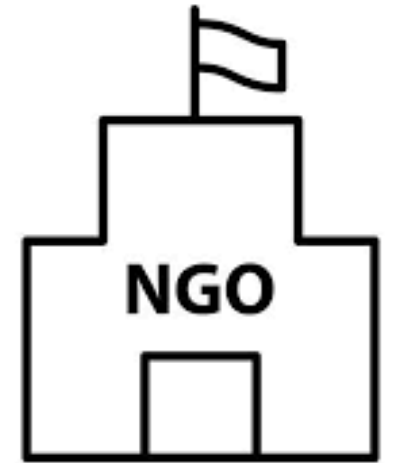


Who is employed in a supervisory capacity drawing wage > Rs. 18,000/- p.m.

# Applicability

## Establishment

Any place where any industry, trade, business, manufacture or occupation is carried on and includes Government establishments



# Applicability

## Wage Code

- Payment of Wages; Minimum Wages; Equal Remuneration: Establishment
- Bonus: Establishment > 20 employees; Exemptions to Universities & Educational Institutions; Hospitals and social welfare institutions established for not for profit

## OSH Code

- Establishment > 10 workers
- Factory > 10 workers

## SS Code

- EPF: Establishment > 20 Employees
- ESI: Establishment > 10 Employees
- Gratuity & Maternity Benefit: Factory; Shops & Establishments > 10 employees

## IR Code

- Industry

# Applicability

- **Payment of Wages:**  
No threshold of 24,000/- p.m.
- **Bonus:** Threshold to be prescribed

**Wage  
Code**



- **EPF:** Threshold to be prescribed
- **ESI:** Threshold to be prescribed

**SS Code**





# Industry

- ***Bangalore Water Supply and Sewerage Board vs. A. Rajappa (AIR1978 SC 548)***
- Regardless of charitable purpose, if an institution involves co-operation between employers and employees to produce / supply goods / services, it is 'industry'

- **IR Code**

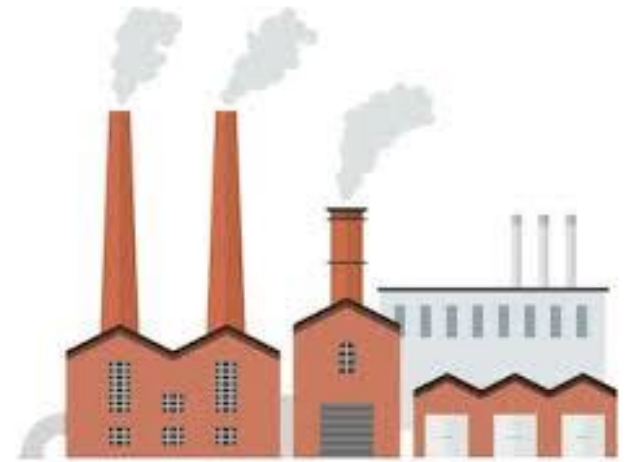
- **Industry** **Excludes:**  
Institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service

**EXEMPT**



# Factory

- Factories Act → OSH Code
- New Definition: Manufacturing Process
  - ▷ With aid of power  $\geq 20$  (Earlier 10)
  - ▷ Without aid of Power  $\geq 40$  (Earlier 20)
- Existing state specific thresholds to apply till state amendment are made



# Standing Orders

- Applicability threshold increased from 100 to 300 workers
- Each industrial establishment to draft the modifications required in the model standing orders, within 6 months
- Existing certified standing orders to be considered provided not inconsistent



# Apprentice

**CONTROVERSY**



## Before

- Judgements: Apprentice excluded from ambit of general meaning of 'Employee'
- Amendments made to specifically include Apprentice/ Trainees, e.g. ESI

## After

- Exclusion: Only to apprentice engaged under the Apprentices Act, 1961
- Other Apprentices such as Management Trainees?

# TUG OF WAR



# Liberal Hire & Fire



- Lay-off, Retrenchment and Closure for industries > 300 workers [Earlier 100]
- State government may fix a higher threshold through a notification
- No change in Notice and Compensation requirements
- Preference Hiring Rule for retrenched workers limited to 1 year

# Fixed Term Employment

**CONTROVERSY**

## Fixed Term Employees

- Hire for fixed duration on need basis
- Entitlement to same social security benefits & conditions of work as permanent worker
- Gratuity Entitlement post 1 year
- Termination on completion of term not Retrenchment

## Expected Benefits

- Ease of Doing Business
- Seasonal Requirements
- Attract large-scale investments at a global scale
- Improve productivity

## Fears

- Diluting Collective Bargaining
- Permanent Employees could vanish
- Job Security

# Negotiating Union or Council

- Industrial establishment having 1 Trade Union
  - ▷ Sole Negotiating Union
- Industrial establishment having > 1 Trade Union
  - ▷ Union having support of  $\geq 51\%$  workers on the muster-roll will be Sole Negotiating Union
  - ▷ If no Union has support of  $\geq 51\%$  workers, set up Negotiating Council
    - ▷ Representatives of each Union having support of  $\geq 20\%$  workers [*What if all Unions have support of 10% workers only??*]
    - ▷ Decisions by Majority





# COMPLIANCES



# Pay Day

## Before:

7th day if 1000>  
persons are  
employed

Daily Wages

End of the Shift

Weekly  
Basis

Last working day of the Week (before the  
weekly holiday)

Fortnightly  
basis

2 days from the end of the fortnight

10th day if 1000<  
persons are  
employed

Monthly  
Basis

7 days from the end of the month

Wages upon  
termination

2 working days



# Working Hours

**CONTROVERSY**

## Before

(Factories  
Act, 1948 )

9 work hours a day

48 hours a week

10.5 hour spread

Overtime 2x

## After

(OSH  
Code &  
Wage  
Code)

8 Work Hours + up to  
Hour Rest

6 days a week

12 Hour Spread

Overtime 2X



# Safety, Health and Welfare

- Mandatory issuance of Appointment Letter: Format Prescribed
- Free Annual Health Check-up: Before July 30, Workers aged > 45 years
- Canteen > 100 workers including contract labourers (Earlier ranged from 100 to 250)
- Crèche > 50 workers (Earlier ranged from 20 to 50 **female** workers)
- Welfare officer for factory/mines/ plantation > 250 employees (Earlier ranged from 300 to 500)

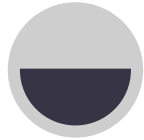


# Worker Re-skilling Fund



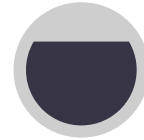
## Fund

Set up for training of retrenched workers



## Contribution

15 days' wages last drawn



## Period

10 days



## Remittance

45 days



# STRIKES & LOCKOUT



# Strikes And Lockouts

## ~~FLASH STRIKES~~



NOTICE PERIOD  
14 days



Before: Required only  
for public utility services



Now: Required for all

VALIDITY OF NOTICE



Before: 6 weeks



Now: 60 days

# CONTRACT LABOUR





# Applicability

Establishment  $\geq$  50 Contract Labour

Manpower supply contractor  $\geq$  50 Contract Labour

Earlier Threshold: 20

Contractor License validity 5 years

PAN India License



# LIMITATION



# Limitation

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Code on Wages      **3 Years**

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**Before**

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Minimum Wages Act      **6 month**

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Payment of Wages Act      **1 years**

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Payment of Bonus Act      **1 years**

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IR Code      **2 years**

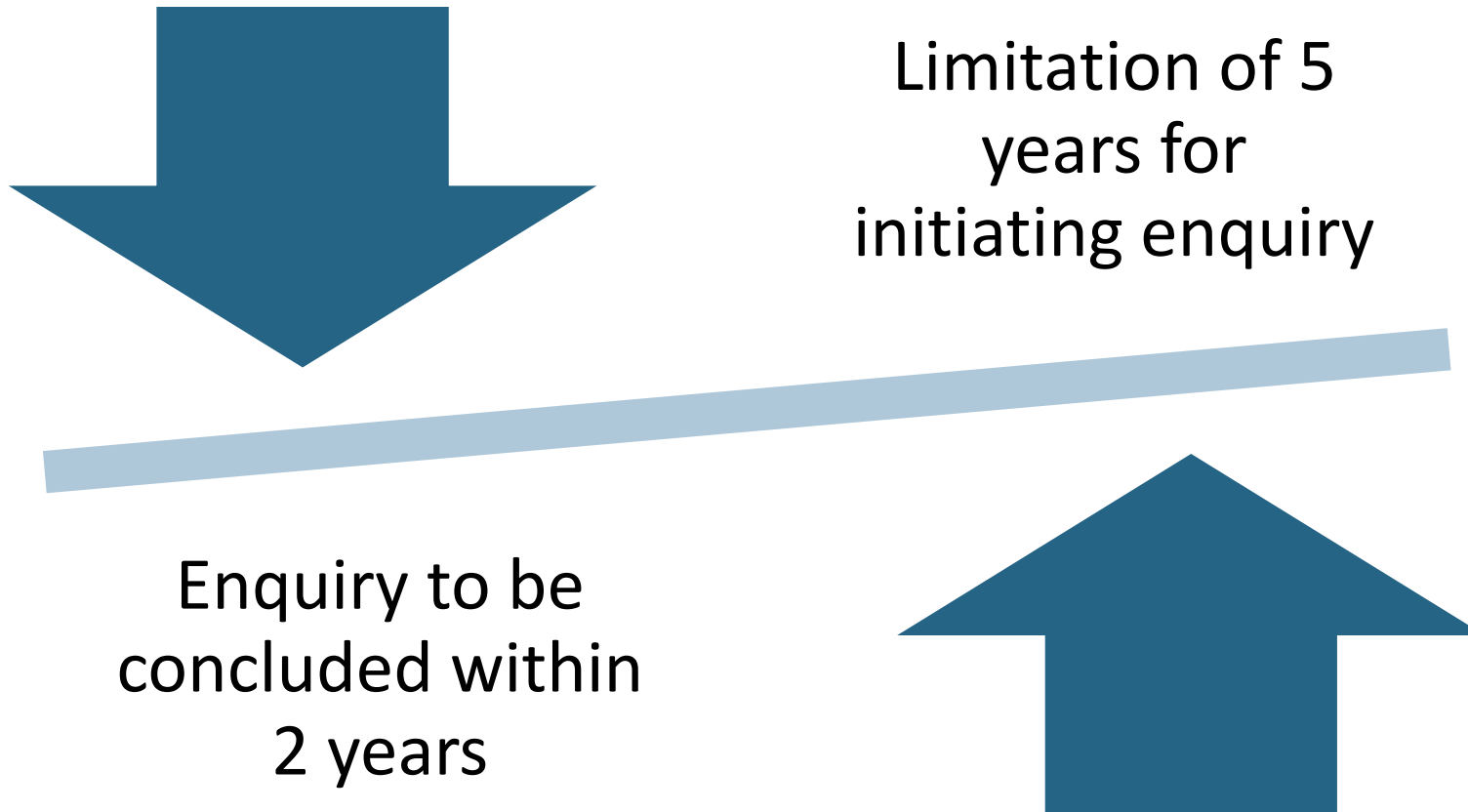
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OSH Code      **6 months**

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# EPF & ESI Dues



# OFFENCES & PENALTIES



# Inspector-cum-facilitator

- A novel enforcement authority of chief inspector-cum-facilitator and inspector-cum-facilitator has set up.
- The major duties of Inspector-cum-facilitators include:
  - a) conducting inspection
  - b) inquiring into accidents
  - c) sensitise employers



# Major Penalties

| Offence  | Penalty in Rs. (before)           | Penalty in Rs. (after)  |
|--|-----------------------------------|---|
| Lay-off / retrenchment in contravention  | 1000 and/or 1 month imprisonment  | <b>1<sup>st</sup> time:</b> 1 lakh - 10 Lakhs<br><b>Continued:</b> 5 lakhs - 20 lakhs and/or 6 months' imprisonment |
| Closure in contravention   | 5000 and/or 6 months imprisonment | <b>1<sup>st</sup> time:</b> 1 lakh - 10 lakhs<br><b>Continued:</b> 5 lakhs - 20 lakhs and/or 6 months' imprisonment |
| Contravention of rights of workers regarding retrenchment, lay-off, transfer and closing | N/A                               | <b>1<sup>st</sup> time:</b> 50,000 - 2 lakhs<br><b>Continued:</b> 1 lakh - 5 lakhs and/or 6 months' imprisonment    |
| Standing orders in contravention   | N/A                               | <b>1<sup>st</sup> time:</b> 50,000 - 2 Lakhs<br><b>Continued:</b> 2,000 per day till the default continues          |

# Major Penalties

| Offence                                 | Penalty in Rs. (before)   | Penalty in Rs. (after)  |
|---|---|---|
| Unfair Labour Practices                 | 1,000 and/or up to 6 months' imprisonment   | <b>1<sup>st</sup> time:</b> 10,000 - 2 lakhs<br><b>Continued:</b> 50,000 - 5 lakhs and/or up to 3 months' imprisonment  |
| Non-payment of Minimum Wage             | 500 or up to 6 months' imprisonment   | <b>1<sup>st</sup> Time:</b> 50,000<br><b>Continued:</b> 1 lakh and/or up to 3 months' imprisonment  |
| Failure to pay EPF                      | Less than 2 months: 5%<br>2 - 4 months: 10%<br>4 - 6 months: 15%<br>6 months and above: 25% | <b>1<sup>st</sup> Time:</b> Less than 2 months: 1 lakh and 1 - 3 years' imprisonment<br>2 - 6 months: 50,000<br><b>Continued:</b> 2 lakhs and up to 2 years' imprisonment |
| Non-maintenance of registers (OSH Code) | 50,000 – 1 lakh   | <b>1<sup>st</sup> Time:</b> 50,000 - 1 lakh<br><b>Continued:</b> 50,000 - 2 lakhs   |



# COMPOUNDING



# Compounding of Offences

**Offences with only fines:**

50% of max. fine

**Offence with fines and  
imprisonment of one year:**

75% of max. fine

**Offences with only  
fines:** 50% of  
maximum fine

OSH Code

SS Code

IR Code

Wage Code



# Relevance for CAs

# CA as an Advisor: Impact on Business



# IMPACT ON BUSINESS

COST

CASH FLOWS

COMPLIANCES

REDUCED  
HINDERANCES

EASE OF ENTRY

EASE OF EXIT

# WHETHER THE COST FOR EMPLOYER WILL INCREASE?

Change in  
Definition of  
wage



Specific list of  
excluded  
Allowances



Minimum 50%  
of Gross Wages  
to be treated  
as Wages



PF, Bonus,  
Gratuity  
Components to  
increase

If current CTC not restructured, cost will increase substantially

# IMPACT ON CASH FLOWS OF BUSINESS



ENTREPRENEUR



EMPLOYEE

*Increase in Retirement  
benefits  
Increase in CTC  
Increase in Cash Payout*

*CONTRACTOR*

*Payment to be made in  
advance  
Negative impact on cash  
flows*

# EASE OF DOING BUSINESS

## COMPLIANCES

Single Return

Reduced  
Registers

## REDUCED HINDERANCES

Standing Order  
requirement >  
300

Legal Strike – 14  
days notice

## EASE OF ENTRY

Single  
Registration

Factory  
threshold  
increased

## EASE OF EXIT

No Govt  
Permission upto  
300 employees

Easy Hire, Fire &  
closure



## UNIFORMITY ACROSS NATION

| PROVISIONS          | EARLIER LAW  | NEW LAW                                       |
|---------------------|--|---|
| STANDING ORDER      | Requirement > 100 employees<br>(Few states had other thresholds)           | Requirement > 300 employees                   |
| CLOSURE OF BUSINESS | Government Permission > 100 employee<br>(some states >300 employees)       | Government Permission > 300 employees         |
| CONTRACT LABOUR     | No registration required < 20 contract labour<br>(some states > 50 labour) | No registration required < 50 contract labour |

# CA as an Auditor



# ROLE OF AN AUDITOR

## CARO

Whether Company is regular in depositing un-disputed statutory dues (e.g. PF, ESI, etc.)

❑ Extent of the arrears of outstanding statutory dues for more than 6 months

## 3CD

Details of contributions received from employees for various funds

provision for payment of gratuity not allowable under section 40A(7);

## AS

AS -15  
REPORTING OF ONE  
TIME IMPACT

IND AS 19  
REPORTING OF ONE  
TIME IMPACT

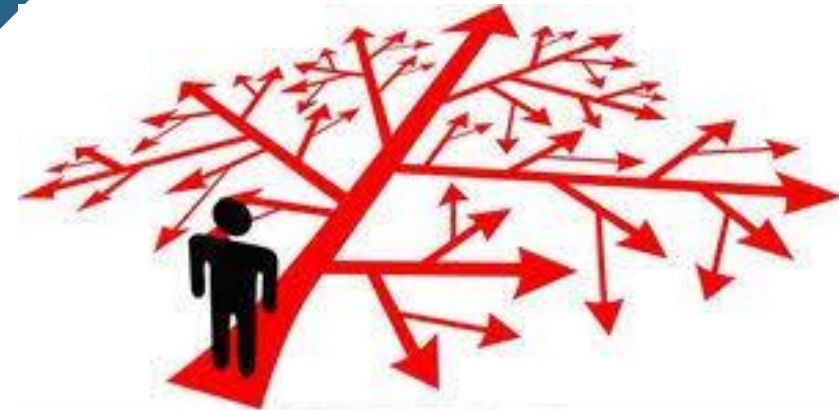
# CA: Own Office



# Applicability on its Own Office

- Professional office of CA has been held to not fall within the meaning of 'shop' or 'commercial establishment' and accordingly, most of the labour laws were not applicable.
- Now, the term 'establishment' includes place where any occupation is carried on.

# WAY FORWARD



# Action Points for Businesses

Review Existing  
CTC Structure

Review Current  
HR Policies /  
Contracts

Re-assess your  
Cost, Liabilities,  
Cash Flows &  
Working Capital

Identify Gaps

Assess  
Compliance  
Readiness

ARE YOU READY?



# THANK YOU

