



Code on Social Security 2020

The Code on Social Security 2020 (CSS) was passed by the parliament on 23 September 2020. It received Presidential assent on 28 September and was published in the Official Gazette on 29 September 2020, along with two other Labour Codes, namely, the Code on Industrial Relations 2020 and the Code on Occupational Safety, Health and Working Conditions, 2020. The Code on Wages 2019 was earlier passed and notified in the gazette on 8 August 2019. However, all of these Codes are yet to be notified to come into force.

The CSS amalgamates, simplifies and rationalises provisions of nine central labour enactments relating to social security, namely:

- The Employees' Compensation Act, 1923;
- The Employees' State Insurance Act, 1948;
- The Employees' Provident Funds and Miscellaneous Provisions Act, 1952;
- The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959;
- The Maternity Benefit Act, 1961;
- The Payment of Gratuity Act, 1972;
- The Cine Workers Welfare Fund Act, 1981;
- The Building and Other Construction Workers Welfare Cess Act, 1996; and
- The Unorganised Workers' Social Security Act, 2008.

Consequently, the multiplicity of definitions and authorities under the abovementioned Acts have been removed. Further, the use of technology is introduced for effective enforcement of the provisions and to ensure transparency, accountability and ease of compliance.

The main thrust of the CSS is to extend social security protections to employees and workers both in the organised and unorganised sector, including gig workers, platform workers and fixed term employees. Such protections will ensure access to health care and provide income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner, through rights conferred on them and the schemes framed under this Code.

While all of the abovementioned Acts will stand repealed, the Employees' Provident Funds Scheme, 1952, the Employees Deposit Linked Insurance Scheme, 1976, the Employees' Pension Scheme, 1995 and the Employees' Provident Funds Appellate Tribunal Procedure Rules, 1997 and the rules, regulations and schemes made or framed under the Employees' State Insurance Act, 1948, will remain in force, to the extent they are not inconsistent with the provisions of this Code for a period of one year from the date of commencement of this Code.

The key provisions of CSS 2020 that stand out as against the extant social security laws are as below :

Important definitions

The CSS 2020 distinguishes between workers and employees in keeping with their definitions under the Code on Wages. In addition, it extends social security benefits and other welfare coverage to contract labour¹ (which includes inter-state migrant workers²) and to

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unorganised workers³ such as self-employed and home based worker⁴, gig workers⁵ and platform workers⁶. It also introduces definitions of career centre⁷ and aggregator⁸ through which work is provided to or procured by different types of workers. Employment Exchange provided under the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 has been subsumed within the definition of career centre.

Definition of the term 'wages'⁹ has been aligned with the Code on Wages 2019 to include all remuneration, whether by way of salaries, allowances or otherwise, expressed in terms of money or capable of being so expressed.

'Wage ceiling' has also been expressly defined to mean such amount of wages as may be notified by the Central Government, for the purposes of becoming a member under Chapter III (Employees Provident Fund or EPF) and Chapter IV (Employees State Insurance Corporation or ESIC). For the purposes of determining coverage under Chapters III and IV, the wage ceiling will not be applicable.

The term 'building or other construction work' now specifically excludes work done for residential purposes.

The scope of the term 'dependent' has been enhanced to also include widower, if wholly dependent on the earnings of the employee, and maternal grandparents.

Registration and cancellation of establishment

Every establishment to which the Code applies is required to register itself electronically or otherwise, within such time and in such manner as the Central Government may by rules prescribe. However, establishments already registered under any other Central labour law are not required to obtain registration again.

The CSS provides for the allotment of a single registration number which will be used for the purposes of the CSS in respect of such establishment. As far as possible, the Central government will allot the same registration

number if the establishment is already registered under any other enactment.

The CSS also provides for cancellation of registration by any establishment whose business activities are in the process of closure, subject to the conditions as may be prescribed by the Central Government.

Administration of the Code through Social Security Organisations

The Code will be administered through various social security organisations that will be constituted as body corporates, which can sue and be sued, namely:

- The Central Board of Trustees of the Employees' Provident Fund (Central Board), for administration of the provident fund, pension fund and deposit-linked insurance fund under the Employees Provident Fund Scheme, the Pension Scheme and the Insurance Scheme, respectively;
- The Employees' State Insurance Corporation (Corporation), for administering the schemes of employees' State insurance (ESI) and the ESI Fund;
- State Building and other Construction Workers' Welfare Boards for every State, for administering welfare schemes related to disability, pension, education, medical expenses, skill development, etc.
- National Social Security Board for Unorganised Workers and State Unorganised Workers' Social Security Board, constituted for a term of three years to make recommendations for formulating suitable schemes for different sections of unorganised workers, gig workers and platform workers.

Establishment and maintenance of separate accounts under social security fund

Separate accounts are required to be maintained at the Central and State level, for the welfare of unorganised workers, gig workers and platform workers; So also, a separate account for the amount received from the composition of offences under the CSS.

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Applicability of Employee State Insurance Corporation (ESIC)

The provisions of Chapter on ESIC may be applied to establishments even if the number of employees in that establishment is less than the threshold, if the employer and the majority of employees in the relevant establishment agree for such coverage. The employer of an establishment covered voluntarily under these chapters may make an application to the Director General of Employees' State Insurance Corporation for opting out of such coverage and the relevant authority, if satisfied that there is an agreement between the employer and the majority of the employees to this effect, will make the provisions of the relevant chapter inapplicable to such establishment. The option of opting out is also available to the employer of those establishments that are voluntarily covered by making an application to the Central Provident Fund Commissioner subject to an agreement between the employer and the majority of the employees to this effect.

Significantly, this voluntary applicability of the ESIC Act despite not having the threshold number of employees will provide the possibility of larger numbers of workers coming under ESIC coverage.

Rate of EPF contribution

The CSS provides that the employer's and employee's contributions under the EPF Scheme will be 10% of the employee's wages (which may be increased to 12% by notification), respectively. The central government may, however, specify (by notification) a different rate for the employees' share of provident and pension fund contribution for any class of employee. Any amount due under Chapter III and IV shall be a charge on the assets of the establishment to which it relates and shall be paid in priority in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016, notwithstanding anything contained in any other law for the time being in force.

The CSS further empowers the Central Government to defer or reduce employer's or employee's contribution (or both), payable

under Chapter III or Chapter IV, for up to three months at a time in the event of pandemic, endemic or national disaster.

Assessment and determination of dues from employer

A limitation period of 5 years has been imposed on the initiation of any proceeding in respect of the amount of EPF or ESI contribution due from an employer or the applicability of EPF and ESI to an establishment. Authorised Officers are to conclude their enquiries to determine these disputes within 2 years, which may be extended by another year by the CPFC/DG upon consideration of the reasons and circumstances submitted by the AO for not concluding the enquiry within prescribed time.

Appeals against orders of authority related to EPF or ESI dues subject to deposit of 25% of dues

An appeal will lie against an order passed by any authority in regard to determination and assessment of dues and levy of damages relating to Employees' Provident Fund by an employer, only after depositing twenty-five per cent of the amount due from him as determined by the authority, with the Social Security Organisation concerned. Earlier, under the EPF Act, employers were required to submit 75% of the dues with the Tribunal before their appeal could be entertained.

With respect to ESI dues, an employer can only prefer an appeal within sixty days from the date of the order after depositing twenty-five per cent of the contribution so ordered or the contribution as per his own calculation, whichever is higher, with the Corporation.

Limitation period for inquiry and determination of dues in matters of ESI contribution before the Employees' Insurance Court

The CSS introduces a limitation period of 3 years (from the date on which the cause of action has arisen) for initiating proceedings by the aggrieved person in the Employees' Insurance Court (i) in respect of a claim by the Insured Person or dependants; (ii) by

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the Corporation for recovering contribution (including interests and damages) from the employer; and (iii) claim by the employer for recovering contributions from a Contractor

Prior opportunity to employer before prosecution

The CSS mandates that an opportunity be given to employer to comply with the provisions of the Code and rules, schemes, regulations made thereunder before initiating any proceeding against him for any offence under the Code. However, no such opportunity shall be accorded if the employer is a repeat offender, that is, if violation of the same nature of such provisions is repeated within a period of three years from the date on which such first violation was committed.

Determination of gratuity and EPF under new definition of wages

Under the Payment of Gratuity Act, wages include basic salary and dearness allowance but does not include any other allowances. With the wider definition of wages under the CSS employers will have a higher gratuity payout.

This revised definition of wages provides that if the exclusions are more than 50% of all remuneration paid, then the amount in excess of this 50% will be included in wages. Given that the wages will include this extra amount, the PF contribution for those people who are drawing wages less than or equal to the wage ceiling will probably be enhanced.

'Principal' and 'immediate' employer replaced with 'employer' and 'contractor' for the purposes of ESI

The ESI Act pertained to two categories of employers, namely, principal employer and immediate employer. The principal employer could employ employees through an immediate employer who in turn executed the work of the establishment/factory on behalf of and under the supervision of the principal employer. The CSS has remodelled this structure between an employer and a contractor, including sub-contractor(s), if any.

Payment of cash benefit to nominated person under ESI

While cash benefit under the Code cannot be commuted, as was the case under the ESI Act, however, the CSS provides that if a person dies during any period for which he is entitled to a cash benefit under the chapter on ESIC, the amount of such benefit up to and including the day of his death shall be paid to any person nominated by the deceased person. If there is no such nomination, the benefit will go to the heir or legal representative of the deceased person.

Gratuity for fixed term employees and reduced period of continuous service for working journalists

In the case of an employee employed on fixed term employment or in case of death or disablement, the employer is required to pay gratuity on pro rata basis and not on the basis of continuous service of five years. Further, with respect to working journalists, the continuous years of service for entitlement to gratuity shall be counted as three years instead of five.

Self-assessment of cess

The CSS enables employer to pay cess on the basis of self-assessment on the cost of construction worked out on the basis of the documents, adjusting the advance cess already paid, within 60 days of completion of each building and other construction work in the manner prescribed by the Central Government and file return.

Registration of gig worker or platform worker as beneficiaries

The Code provides for registration of gig worker and platform worker, in addition to unorganised worker, in order to avail benefit under the social security schemes framed under Chapter IX. Such registration will be on the basis of self-declaration, electronically or otherwise, along with such documents including Aadhaar number, in such form and in such manner, containing such information as may be prescribed by the Central Government.

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Funding of schemes for unorganised workers, gig workers and platform workers

The Code provides for social security schemes to be formulated for unorganised workers, gig workers and platform workers in matters relating to, *inter alia*, life and disability cover, health and maternity benefit, old age protection and education. Such schemes may be wholly or partly funded through a combination of contributions from the central government, state governments, CSR funds, beneficiaries and aggregators (in case of schemes for gig and platform workers). Contributions by aggregators shall range between 1-2% of the annual turnover of the aggregator, as may be notified by the Central government. However, such contribution has been capped at 5% of the amount paid/payable by the aggregator to gig workers and platform workers. The Seventh Schedule specifies classification of aggregators that shall be required to make this contribution, for this purpose such as ride sharing services, food and grocery delivery services, content and media services, and e-marketplaces.

Medical bonus

Further, the extant upper limit of Rs. 20,000 for medical bonus payable to women has also been removed.

Employees' compensation

In addition to imposing liability on employer to pay compensation to employee for personal injury resulting from an accident or occupational disease arising out of or in the course of employment as provided under the Employees' Compensation Act, the CSS has prescribed a new provision for compensation in case of death or injury on plantations. Thus, if death or injury is caused to any worker¹⁰ or a member of his family as a result of the collapse of a house provided by the employer in a plantation, and the collapse is not solely and directly attributable to a fault on the part of any occupant of the house or to a natural calamity, the employer shall be liable to pay compensation.

The rates of compensation payable to employees shall be as notified by the Central

Government. However, expenditure for funeral has been increased from Rs. 2,500 to Rs. 15,000.

References to 'penalty' under the Employees' Compensation Act have been substituted by 'damages' for default and 'arears of damages'.

Inspector-cum-facilitator

The CSS has replaced the erstwhile Inspectors under the various legislations with Inspector-cum-facilitators, who have been vested with wide powers and duties, to administer the provisions of the Code.

Cognizance of offences

The CSS mandate Courts to take cognizance of offences punishable under it only upon a complaint made by an aggrieved person or such officer as may be notified by the appropriate Government. Earlier, different legislations provided different conditions and procedure for taking cognizance of offences or instituting proceedings. E.g. the EPF Act required a report in writing of the facts constituting the offence made by the Inspector, with the previous sanction of the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government.

Enhanced penalties for violations

The extant legislations prescribe varied penalties for violations. While most of the legislations provide for fine as well as imprisonment, some legislations (such as the Employee's Compensation Act) only prescribe fines. Further, the range of fines that may be imposed also varies, ranging from maximum of Rs. 5,000 under the Maternity Benefit Act to a maximum of Rs. 1,00,000 under the Employee's Compensation Act. The CSS, on the other hand, imposes stringent penalties ranging from Rs. 50,000 to Rs. 1,00,000 of in case of a contravention of any provision thereof. Further, if the same offence is repeated after having been convicted for the same offence earlier, the employer shall be punishable with imprisonment for a term which may extend to two years and with a fine of Rs. two lakh for the second or every subsequent offence. In case a second or subsequent offence is on account of a failure by the employer to pay any

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contribution, charges, cess, maternity benefit, gratuity or compensation which he is liable to pay under the CSS, he shall be punishable with imprisonment for a term which may extend to three years, subject to a minimum of 2 years, along with a fine of three lakh rupees.

Compounding of offences

None of the legislations sought to be repealed by the Code provide for an option of compounding of offences, except for a few state-specific amendments (for instance, Gujarat allows for compounding of certain offences under the Gratuity Act). Thus, under the extant Central legislations, there is no option for compounding that is applicable across states. The CSS has introduced an option of compounding of any offence which is punishable with fine/imprisonment of not more than one year along with fine.

An application for compounding can be made before or after the initiation of prosecution in relation to the offence committed. However, such an opportunity for compounding is not available to an employer for the second time or thereafter within a period of three years from the date of either (i) commission of a similar offence which was earlier compounded; or (ii) commission of a similar offence for which such person was earlier convicted.

For offences which are punishable with a fine only, compounding is allowed for a sum of 50% of the maximum fine provided for the offence. For offences punishable with imprisonment for a period not more than one year along with fine, compounding is allowed for a sum of 75% of the maximum fine prescribed for the offence.

Endnotes

- 1 “contract labour” means 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 an employee (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 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.
- 2 “inter-State migrant worker” means a person who is employed in an establishment and who— (i) has been recruited directly by the employer or indirectly through contractor in one State for employment in such establishment situated in another State; or (ii) has come on his own from one State and obtained employment in an establishment of another State (hereinafter called destination State) or has subsequently changed the establishment within the destination State, under an agreement or other arrangement for such employment and drawing wages not exceeding eighteen thousand rupees per month or such higher amount as may be notified by the Central Government from time to time.
- 3 “unorganised worker” means a home-based worker, self-employed worker or a wage worker in the unorganised sector and includes a worker in the organised sector who is not covered by the Industrial Disputes Act, 1947 or Chapters III to VII of this Code.
- 4 “home-based worker” means a person engaged in the production of goods or services for an employer in his home or other premises of his choice other than the workplace of the employer, for remuneration, irrespective of whether or not the employer provides the equipment, materials or other inputs.
- 5 “gig worker” means a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship.
- 6 “platform work” means a work arrangement outside of a traditional employer-employee relationship in which organisations or individuals use an online platform to access other organisations or individuals to solve specific problems or to provide specific services or any such other activities which may be notified by the Central Government, in exchange for payment.
“platform worker” means a person engaged in or undertaking platform work.

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- 7 “career centre” means any office (including employment exchange, place or portal) established and maintained in the manner prescribed by the Central Government for providing such career services (including registration, collection and furnishing of information, either by the keeping of registers or otherwise, manually, digitally, virtually or through any other mode) as may be prescribed by the Central Government, which may, inter alia, relate generally or specifically to— (i) persons who seek to employ employees; (ii) persons who seek employment; (iii) occurrence of vacancies; and (iv) persons who seek vocational guidance and career counselling or guidance to start self-employment.
- 8 “aggregator” means a digital intermediary or a market place for a buyer or user of a service to connect with the seller or the service provider. (E.g., food delivery apps, ride sharing apps, cab aggregators, etc.)
- 9 “wages” 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, and includes,—
- (a) basic pay;
 - (b) dearness allowance; and
 - (c) retaining allowance, if any, but does not include—
 - (a) any bonus payable under any law for the time being in force, which does not form part of the remuneration payable under the terms of employment;
 - (b) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government;
 - (c) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
- 10 For this purposes “worker” means a person employed in a plantation for hire or reward, whether directly or through any agency, to do any work, skilled, unskilled, manual or clerical, and includes a person employed on contract for more than sixty days in a year, but does not include—
- (i) a medical officer employed in the plantation;
 - (ii) any person employed in the plantation (including any member of the medical staff) whose monthly wages exceed the amount as determined by the appropriate Government, by notification, from time to time;
 - (iii) any person employed in the plantation primarily in a managerial or administrative capacity, notwithstanding that his monthly wages do not exceed the amount as determined by the appropriate Government, by notification, from time to time;
 - (iv) any person temporarily employed in the plantation in any work relating to the construction, development or maintenance of buildings, roads, bridges, drains or canals.

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