



The Industrial Relations Code, 2020

The Industrial Relations Code, 2020 (“**IRC 2020**”) was passed by the Parliament on September 23, 2020. It received Presidential assent on September 28, 2020 and was published in the Official Gazette on September 29, 2020, along with two other Labour Codes, namely, the Code on Social Security 2020 (“**CSS 2020**”) and the Code on Occupational Safety, Health and Working Conditions, 2020 (“**OSH Code**”). The Code on Wages 2019 (“**CoW 2019**”) was earlier passed and notified in the gazette on August 08, 2019. However, all of these Codes are yet to be notified to come into force. The Industrial Relations Code, 2019 (“**IRC 2019**”) which was introduced in Lok Sabha in 2019, was withdrawn on September 19, 2020.

The IRC 2020 subsumes 3 labour laws namely Industrial Disputes Act, 1947 (“**ID Act**”), Trade Unions Act, 1926 (“**Trade Union Act**”), and the Industrial Employment (Standing Orders) Act, 1946 (“**SO Act**”). The IRC 2020 aims to: (a) provide a framework in order to protect the rights of workers; (b) minimise the resistance between the employers and workers; and (c) provide provisions for settlement of industrial disputes.

The IRC 2020 proposes to bring transparency and accountability in the enforcement of labour laws which would lead to better industrial relations and thus higher productivity. The IRC 2020 aims to ease the burden of compliance on small scale industries with increased thresholds for prior permission for retrenchment, lay-off and closure and applicability of provisions in relation to standing orders. Additionally, these reforms are likely to provide flexibility to employers in terms

of financial planning *vis-à-vis* restructuring of workforce for smaller organisations.

In order to streamline of the adjudication process and ensure speedy disposal of disputes, the IRC 2020: (a) replaces the existing multiple adjudicating bodies with Industrial Tribunals; and (b) provides for 2 members for the Industrial Tribunal instead of 1 as per the exiting ID Act. The IRC 2020 also introduces the use of technology for effective enforcement of the provisions and to ensure transparency, accountability and ease of compliance.

The IRC 2020 introduces the definition of ‘fixed term employment’ keeping in line with the object of the CSS 2020 which aims to extend social security protections to fixed term employees as well. This introduction will benefit both the employee and the employer. Guaranteeing similar benefits to fixed term employees as available to permanent employees will help in improving the conditions of such employees. Further, fixed term employment will provide flexibility to employers to hire workers for a fixed duration and for work that may not be permanent in nature.

Although the monetary penalties have been increased substantially, the IRC 2020 also introduces provisions for compounding of certain offences which will help in saving legal costs to some extent.

The key provisions of IRC 2020 that stand out as against the extant industrial relations laws are as below:

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Key Changes in Definitions

The IRC 2020 introduces the definition of 'employee' and distinguishes it from the definition of 'worker'. The definition of 'worker' has been broadened to include working journalists and sales promotion employee excluding an apprentice. Additionally, the definition of worker now includes persons employed in supervisory capacity drawing wages less than INR 18,000 or an amount as may be notified by the Central Government from time to time. The definition of 'employer' has been broadened to include contractor and legal representative of the deceased employer.

The definition of 'appropriate government' has been changed to add that the Central Government will continue to be the appropriate government for a central public sector undertaking (PSU) even if the holding of the Central Government in that PSU becomes less than 50% after the commencement of the IRC 2020.

The definition of 'industry' under the IRC 2020 has been modified to include (a) systematic activity, (b) organized by cooperation between employer and employee consisting of a direct and substantial relationship between them; and (c) for production and distribution of goods and services calculated to satisfy human wants and wishes. It specifically excludes institutions owned or managed by organisations engaged in any charitable, social or philanthropic services, sovereign functions, and domestic services which was not the case earlier. This new definition is based on the definition of industry passed by the Parliament in 1982 but did not come into force.

The definition of 'industrial disputes' has been expanded to include any dispute between an individual worker and an employer in relation to discharge, dismissal, retrenchment or termination of such worker. The definition of 'strike' has been broadened to include mass casual leave on a given day by 50% or more workers employed in an industry.

The term 'wages' has been given a wider scope to include all remuneration, whether by way of salaries, allowances or otherwise, expressed in terms of money or capable of being so expressed. The list of exclusions has been broadened to specifically exclude bonus under law, value of any house-accommodation, etc., pension/provident fund contribution, conveyance allowance or travelling concession, sum paid to defray special expenses, house rent allowance, remuneration payable under any award or settlement, overtime allowance, commission payable to the employee, retrenchment compensation/retirement benefit /ex gratia payment on the termination of employment. Further, the value of any house-accommodation, etc., travelling concession and commissions have been specifically excluded from the definition of wages under the IRC 2020 which are specific inclusions under the definition of wages under the exiting ID Act.

The IRC 2020 introduces the definition of 'fixed term employment' with the objective that such employee gets all the statutory benefits available to a permanent worker in proportion to the period of service rendered even if the period of employment does not extend to the qualifying period of employment. Such employee will also be eligible for gratuity if he renders service under the contract for a period of 1 year. In furtherance of introduction of the definition of 'fixed term employment', the definition of 'retrenchment' has been expanded to specifically exclude the situation of completion of tenure of fixed term employment. It is important to note that "fixed term employment" was introduced for all sectors by the Ministry of Labour and Employment vide notification March 16, 2018 which amended the Industrial Employment (Standing Orders) Central Rules, 1946.

Recognition of Trade Unions at Central and State level

The Trade Unions (Amendment) Bill, 2019 which was introduced in Lok Sabha on January 8, 2019 sought to introduce the provision of recognition

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of trade unions at the central and state level. Following the same, the IRC 2020 introduces the provision for recognition of a trade union or a federation of trade unions as Central or State Trade Unions. The recognition of trade unions at central/state level will reduce duplicity of such exercise by different departments.

Negotiating Union/Council

A new feature providing for recognition of a negotiating union or negotiating council has been introduced. In case of 1 registered trade union, the employer, subject to the prescribed criteria, recognise such trade union as sole negotiating union of the workers.

In case of multiple registered trade unions, the standard for recognition has been fixed at 51% or more workers on a muster roll of that industrial establishment. A trade union will be recognized as *sole negotiating union* if it has support of 51% or more of the workers on the muster roll in an establishment. If no such trade union has support of 51% or more of workers on the muster roll of that industrial establishment, then a negotiating council will be constituted for negotiation. Further, an enabling clause has been added to prescribe through rules matters on which negotiations will take place, manner of verification of membership and facilities which will be provided to the negotiating union/council by an establishment.

Applicability of Standing Orders

The threshold for applicability of standing orders has been increased from 100 (*50 in certain States*) to 300. Such industrial establishments will be required to prepare standing orders based on the model standing orders. It is important to note that the power to increase or decrease the threshold given to the appropriate government under IRC 2019 has not been retained under the IRC 2020, thereby removing the possibility for multiple state-specific thresholds.

Model Standing Orders

The Central Government, as opposed to the appropriate Government under the SO Act, has been empowered to prepare model standing orders.

Consultation with Trade Unions/ Recognised Negotiating Union/ Negotiating Council

The employer is now required to consult the trade unions or recognised negotiating union or members of the negotiating council in respect of the draft of the standing order before forwarding the same for certification. Under the present SO Act, trade unions are asked for objections by the certifying officer only after submission of the draft standing orders by the employer.

Deemed certification of standing orders

The IRC 2020 introduces a new provision which provides that the certifying officer must complete the procedure for certification of the draft standing orders / modifications thereof within 60 days from its receipt, failing which the draft standing orders / modifications are deemed to have been certified. Similarly, in case an employer adopts the model standing orders, then, such model standing order shall be deemed to have been certified and employer shall forward the information in this regard to the concerned certifying officer. Otherwise, the employer may seek certification of only those clauses which are different from the model standing orders.

Grievance Redressal Committee

The maximum number of members in the Grievance Redressal Committee has been increased from 6 to 10 in an industrial establishment employing 20 or more workers.

Industrial Tribunals

The IRC 2020 will replace the existing adjudicating bodies such as the Court of Inquiry, Board of Conciliation and Labour Courts with Industrial Tribunals. One or more Industrial Tribunals may be constituted for the adjudication of industrial disputes and for performing such other functions as may be assigned to them under the IRC 2020. Such tribunals will have 2 members *i.e.* 1 judicial member and 1 administrative member as opposed to one member under ID Act.

Disputes of the registered trade unions

The disputes of the registered trade unions have also been included within the jurisdiction of Industrial Tribunal.

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National Industrial Tribunals

The IRC 2020 provides that the Central government may also constitute National Industrial Tribunals for settlement of industrial disputes which: (a) involve questions of national importance, or (b) could impact industrial establishments situated in more than one State. Such tribunals will have 1 judicial member and 1 administrative member. The IRC 2020 removes the existing reference system for adjudication of industrial disputes except for reference to National Industrial Tribunals for adjudication.

Transfer of Pending Cases

The pending cases from the current adjudicating bodies will be transferred to the tribunals having corresponding jurisdiction under the IRC 2020.

Notice Period for Strikes and Lock-Outs

The IRC 2020 provides for requirement of a notice period of 14 days for strikes and lockouts in any establishment. This criterion, at present, is only for *public utility services*, as per the ID Act.

Threshold for prior permission for Lay-off and retrenchment

Industrial establishments having 300 or more workers (or such higher number of workers as may be notified by the appropriate Government) to take prior permission of the appropriate Government before lay-off, retrenchment and closure. It is important to note that the IRC 2019 permitted the appropriate government to increase or decrease the threshold as it deemed fit, the IRC 2020 only allows notification of a higher number of workers by the government, thereby guaranteeing a minimum applicability threshold of 300 across States.

Retrenchment Compensation

Retrenchment compensation may be increased in future by notification by the appropriate government.

Notice of change in conditions of service

The IRC 2020 introduces a new provision which provides that an advance notice of any change in conditions of service of a worker will

not be required if such change is effected in accordance with the orders of the appropriate Government.

Worker Re-skilling Fund

The IRC 2020 introduces a re-skilling fund for training of retrenched workers. The fund will consist of the contribution of the employer of an amount equal to 15 days wages last drawn by the worker immediately before the retrenchment or such other number of days, as may be notified, and contribution from such other sources as may be prescribed by the appropriate Government. The retrenched employee would be paid from the fund within 45 days from the date of retrenchment. This amount of 15 days wages is in addition to the retrenchment compensation.

Offences and Penalties

The penalties under the IRC 2020 for certain violations have been rationalized to be commensurate with the gravity of the violations. Penalty of imprisonment for offences such as (a) instigation of strikes/ lockout, (b) giving financial aid to illegal strikes and lockouts, (c) breach of settlement or award and (d) disclosing confidential information has been reduced from upto 6 months to upto 1 or 3 months. However, monetary penalties have been increased from the initial 1 Thousand Rupees to a fine ranging from 10 Thousand Rupees to 2 Lakh Rupees for the aforesaid offences.

Monetary penalties for certain offences have been increased by 10 times such as penalty for not taking prior permission for lay-off, retrenchment and closure has been increased upto 10 Lakh Rupees for first time offence and upto 20 Lakh Rupees for subsequent offence. However, imprisonment for first time offence has been removed and has been added only for subsequent offence. Monetary penalty for unfair labour practice has been increased to upto 2 Lakh Rupees from 1 Thousand Rupees. However, imprisonment for first time offence has been removed and has been added only for subsequent offence.

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Compounding Offences

None of the legislations sought to be repealed by the IRC 2020 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 ID Act and Uttar Pradesh allows for compounding of certain offences under SO Act*). Thus, under the extant Central legislations, there is no option for compounding that is applicable across States.

The IRC 2020 has introduced an option of compounding of offences for a sum of 50% of the maximum fine provided for offences punishable with fine only and for a sum of 75% for offences punishable with imprisonment for a term of not more than 1 year, or with fine. Such amounts realized from composition of offences are required to be credited to the Social Security Fund to be created under the CSS 2020.

Compounding of offence is not permitted if the offence has been repeated within a period of 5 years from commission of same offence, which was compounded on first occasion or for such person who was convicted for the same offence earlier.

Power to exempt

The IRC 2020 provides that the Central or State Government may exempt any new establishment or a class of new establishment from all or any provisions of the Code in **public interest**.

Electronic Filings/Records/Registers

In order to promote digitalization, the IRC 2020, along with all other labour codes, introduces electronic filings for trade union registration applications, certification of standing orders and permissions for lay-off / retrenchment of employees or closure of an establishment amongst other compliances.

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