



# Labour Code may lead to overtime pay for white-collar, managerial employees

By Nehal Chaliawala, ET Bureau Last Updated: Dec 08, 2020, 09:49 AM IST

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## Synopsis

Not only that, the compensation for overtime should be at least twice that of the employees' regular pay, as per the Code on Wages, 2019. Currently, there are several laws, giving diverse thresholds and different definitions of 'wages' for applicability of overtime pay, which will all be streamlined under the new codes.



Agencies

Even employees may not be too willing to claim overtime given prevalent work culture in India where working long hours is seen as a virtue, he said.

Professionals working extra hours may have something to cheer for in the **new labour codes** as the new law, if implemented in its entirety, would widen the purview of **overtime pay** to include all employees, including managerial staff.

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Code on **Wages**, 2019.

Currently, there are several laws, giving diverse thresholds and different definitions of 'wages' for applicability of overtime pay, which will all be streamlined under the new codes.

"The white-collar workers so far had not been in the purview of overtime wage payment and the government is trying to rectify that with these codes," said Rishi Agrawal, chief executive of Avantis Regtech, a subsidiary of staffing firm **TeamLease** **NSE -1.50 %**.

The codes are yet to be implemented.

While it may be a welcome development for many of the employees, for

companies this means added expenses and compliance burden, experts said.

For instance, companies will have to come up with new frameworks through which such overtime will be monitored. They will also have to ensure that no employee logs in more than a threshold number of overtime hours in a day, week or quarter as notified in the labour codes.

The exercise becomes even more complicated in the current scenario wherein majority of the white-collar employees are working remotely, said Lohit Bhatia, president, workforce management, at Qess Corp, India's largest staffing firm. Tracking work hours also becomes challenging in sectors like consultancy, when employees work for long hours during off-site assignments, he said.

Agrawal of Avantis Regtech said, "There will be serious implications of this change, especially on workplace dynamics in the IT and ITeS industry which employs 4-5 million white-collar employees in India. At the moment, employers do not mind socialising at work as there are no financial implications. If the proposed change goes through, employers will start demanding greater productivity during regular working hours."

However, employees may not cheer just yet as the Centre is yet to notify the laws based on these codes. The government may put a cap on salary up to which the overtime pay becomes applicable, experts said.

Some even interpret the code differently.

"Not every employee would get covered. Only those whose minimum rate of wages have been fixed under this code are entitled for overtime," said Suhas Tuljapurkar, director at compliance solution provider Legasis Services. "That would exclude white-collar workers."

Section 14 of the Code in Wages, 2019, reads: "Where an employee whose minimum rate of wages has been fixed under this Code...works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess, at the overtime rate which shall not be less than twice the normal rate of wages."

However, Pooja Ramchandani, partner at law firm Shardul Amarchand Mangaldas, said the definition of employee was broad enough to cover white-collar workers and managerial employees.

The new definition of 'employee' has been expanded to include all

professionals employed to do “skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work”, she said.

Some legislations like the Shops and Establishment Act exempt managerial personnel from overtime pay so the interplay of the Wage Code with these legislations needs to be seen, Ramchandani said. “Generally speaking, the more beneficial legislation would prevail in such situations.”

However, corporates could potentially work around the code by offsetting overtime payment against bonuses and variable pay components.

“The HR department can nullify this while making the compensation plan by writing something like ‘any overtime done by you will first be compensated against this value of bonus and variable pay that you’ve earned,’” said Bhatia of Quess. “Companies can always do that.”

Even employees may not be too willing to claim overtime given prevalent work culture in India where working long hours is seen as a virtue, he said.

States too have the potential to water down the code. Labour is a concurrent subject and states are yet to notify their laws around these codes. However, looking at past precedents, both Bhatia and Agrawal feel that states may not meddle with the codes much and just follow the Centre’s lead when making the laws to avoid political controversy.


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**Arnab Bhattacharya**

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