



Occupational Safety, Health and Working Conditions Code 2020

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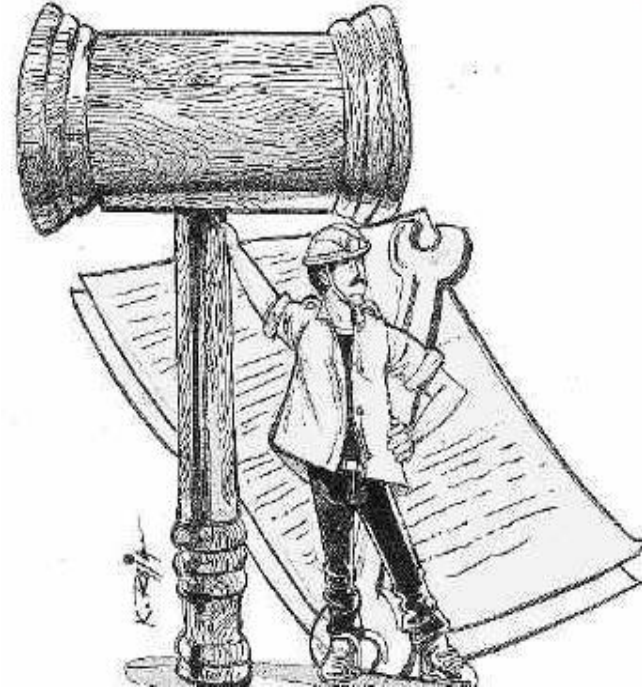
Lecture Outline

- **Occupational Health and Safety (Evolution)**
- **Definitions**
- **International Labour Standards on OSH**
- **The Provisions of the Code**
- **Implications of the Code on the Labour Market: Key Issues**



Occupational Safety & Health Evolution

- The **first Factory Act** ever passed by the British Parliament was called "**The Factory Health and Morals Act, 1802**", highlighting the **need for Workers' Safety**
- The **first Indian Factories Act**, was enacted in **1881**.





National Policy on (OSH) Safety, Health and Environment at Workplace

The Ministry of Labour and Employment declared the National Policy on Safety, Health and Environment at Workplace (NOSHEW) on 20th February, 2009.

Provide statutory framework on OSH in all sectors	Providing administrative and technical support services	System of incentives	Research and development	Data collection	Enforcement	National Standards	Compliance	Review
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ILO Standards on OSH

The Occupational Safety and Health Convention
155(1981) and Recommendation 164 (**69 ratifications**)

Protocol (P155) to the OSH Convention (2002) No 155
and List of Occupational Diseases recommendation
2002(No.194) (**13 ratifications**)

The Occupational Health Services Convention
161(1985)and Recommendation 171. (**33 ratifications**)

The Promotional Framework for Occupational Safety
and Health Convention 187,2006 and Recommendation
197 (**49 ratifications**)



THE OCCUPATIONAL SAFETY ,HEALTH AND WORKING CONDITIONS CODE 2020:SALIENT FEATURES



The Occupational Safety, Health and Working Conditions Code, 2020

Introduced in
Lok Sabha ,
July 23,2019



Referred to
Standing
Committee,
Oct 09,2019



Standing
Committee
Report,
Feb 11,2020



Passed in Lok
Sabha on 22nd
Sept 2020 and
came in
official Gazette
on
29,Sept 2020.

THE OCCUPATIONAL HEALTH AND SAFETY WORKING CONDITIONS CODE, 2020

The Gazette of India

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असाधारण

EXTRAORDINARY

भाग II—खण्ड 1

PART II—Section 1

प्रधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 62] नई दिल्ली, मंगलवार, सितम्बर 29, 2020/आश्विन 7, 1942 (शक्र)
No. 62] NEW DELHI, TUESDAY, SEPTEMBER 29, 2020/ASVINA 7, 1942 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 29th September, 2020/Asvina 7, 1942 (Saka)

The following Act of Parliament received the assent of the President on the 28th September, 2020 and is hereby published for general information:—

THE OCCUPATIONAL SAFETY, HEALTH AND WORKING
CONDITIONS CODE, 2020

No. 37 of 2020

[28th September, 2020.]

An Act to consolidate and amend the laws regulating the occupational safety, health and working conditions of the persons employed in an establishment and for matters connected therewith or incidental thereto.



The Code consolidates 13 Labour Laws

1. The Factories Act 1948
2. The Mines Act, 1952;
3. The Dock Workers (Safety, Health and Welfare) Act, 1986;
4. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996;
5. The Plantations Labour Act, 1951;
6. The Contract Labour (Regulation and Abolition) Act, 1970;
7. The Inter-State Migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979;
- 8 . The Working Journalist and other News Paper Employees (Conditions of Service and Miscellaneous Provision) Act, 1955;
9. The Working Journalist (Fixation of Rates of Wages) Act, 1958;
10. The Motor Transport Workers Act, 1961;
- 11 The Sales Promotion Employees (Conditions of Service) Act, 1976;
12. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966; and
13. The Cine Workers and Cinema Theatre Workers Act, 1981.

This has resulted in reduction of 622 sections to 143 sections in the code which has made it simple



Occupational Safety & Health Code 2019

Definitions

Chapter I

- (i) Appropriate Government
- (ii) Audio-visual workers
- (iii) Fixation of amount of Residential Property
- (iv) Building Worker
- (v) Chief Inspector - cum – facilitator
- (vi) Controlled Industry



Occupational Safety & Health Code 2019

Definitions

- (vii) Family
- (viii) Establishment and Factory
- (ix) Hazardous Process and Hazardous Substance
- (x) Industry
- (xi) Inter-State Migrant Workers
- (xii) Water Transport Undertaking and Water Transport Worker



Occupational Safety & Health Code 2019

Definitions

- (xiii) Occupier
- (xiv) Plantation
- (xv) Qualified Medical Practitioner
- (xvi) Working Journalists
- (xvii) Employee and Worker
- (xviii) Definition of 'Wage', 'Workplace' and 'Supervisor'



Modification of Definitions

- Definition of **Cine worker** has been modified to **include all audio-visual workers**
- Definition of **working journalist** has also been modified **to include journalists working in electronic media also**



Family' – Extension of Definition

Definition of a family extended **to include dependent grand-parents** of the worker

Impact

Due to increase in life expectancy, the grand-parents who are part of family will also get welfare benefits:

- **Compensation in case of death of the workers**
- **Benefits under the Plantation Act**



Inter-State Migrant Workers – Modification of Definition

The Definition of Inter-state Migrant Worker has been modified to include those migrant workers who have been **employed directly by the employer** besides the **migrant workers employed through a contractor**

Impact

This would enhance the coverage of the Inter State Migrant Workers **for the purpose of benefits like housing, education, etc.**



What does the OSHWC Code envisage?

Occupational Safety standards for different sectors.

- Health and Working Conditions - ventilation, drinking water, etc.
- Hours of Work, overtime Hours, Leave, Holiday, etc.
- Welfare Provision - Canteen, Crèche, Rest Rooms, First Aid, etc.
- Duties of Employers, Employees, Manufacturers, etc.
- Registration of Establishments including deemed Registration.
- Licence for Contract Workers, Factories, Beedi and Cigar Workers, etc.

Salient features of the Code

- ✓ Broad legislative framework with enabling provisions for framing rules, regulations, standards etc .
- ✓ **One registration for establishment** instead of multiple registrations. At present, separate registration is required to be obtained under 6 Acts namely: Factories Act, Contract Labour Act, BOCW Act, Motor Transport Workers Act, Plantation Act and Inter-State Migrant Workers Act.
- ✓ **The provisions of online and deemed registration** have been incorporated





Key Features of the Code

Chapter II Registration (Coverage, License)

- ❖ The Code applies to establishments employing at least 10 workers.
- ❖ It applies to mines and docks (applies even in case of 1 worker)
- ❖ Does not apply to apprentices under the Apprentices Act
- ❖ Does not apply to the offices of the Central Govt (contract workers are included) offices of the State Government and any ship of war of any nationality.
- ❖ Provisions on health and working conditions apply to all employees.

Employee means *a person (other than apprentice engaged in Apprentices Act 1961) employed on wages by an establishment to do any skilled, semi-skilled, unskilled, manual, operational, supervisory, managerial, administrative, technical, clerical or any other work .*



Registration (contd)

- Establishments covered by the Code are required to **register within 60 days (of the commencement)** with registering officers, appointed by the central or state government.
- Electronic registration through ***Shram Suvidha portal***. Certificate of registration will be issued within **7 days**
- The employer shall inform **the closing of establishment within 30 days** to the registering officer and certify payment of all dues
- Further, some establishments such as factories and mines, and those hiring workers such as beedi and cigar workers, may be required to obtain additional licenses to operate.



The employer shall, within thirty days of the commencement and completion of any work, intimate to the Inspector-cum-Facilitator, having jurisdiction in the area where the proposed establishment or as the case may be, the work is to be executed, intimating the actual date of the commencement, completion of work and cessation of establishment, electronically and the same shall be auto-shared to EPFO and ESIC.



Appropriate Government

Central Government

in relation to an establishment carried on by or under the authority of the Central Government or the establishment of, railways, mines, oil field, major ports, air transport service, telecommunication, banking and insurance company or a corporation or other authority established by a Central Act or a central public sector undertaking or subsidiary companies set up by the central public sector undertakings or autonomous bodies owned or controlled by the Central Government

State Government

in relation to any factory, motor transport undertaking, plantation, newspaper establishment and establishment relating to beedi and cigar including the establishments not specified in clause



Chapter III Duties of the Employer and Employees etc

Duties of Employers

- ❖ providing a workplace that is free from hazard
- ❖ providing free annual health check up
- ❖ issuing appointment letters to employees (prescribed format)
- ❖ informing relevant authorities in case an accident at the workplace leads to death or serious bodily injury of an employee
- ❖ Additional duties are prescribed for employers in factories, mines, docks, plantations, and building and construction work,



Duties of consultants

- ✓ Manufacturers, importers, designers and suppliers must ensure that any article created or provided by them for use in an establishment is safe, and provide information on its proper handling.
- ✓ Further, architects, engineers and designers must ensure any structure designed by them can be safely executed and maintained.

Duties of Employees

- Duties include taking care of their own health and safety, complying with safety and health standards, and reporting unsafe work incidents to the Inspector
- Employees have rights including the right to obtain information on safety and health standards from the employer directly or through member of Safety Committee



Relevant Authorities Chapter IV



- Inspector-cum-Facilitator
- Inquiring into accidents and conducting inspections

- National Occupational Safety and Health Advisory Board
- Advisory Bodies OSH Advisory bodies at National and State level
- Terms of office:3 years

- Safety Committees(comprising of employers and workers)



National Occupational Safety and Health Advisory Board

The Central Government shall, by notification, constitute the National Occupational Safety and Health Advisory Board (hereinafter in this Code referred to as the National Board)

Will advise the central government in matters relating too

Standard rules and regulations relations
related to the Code

Implementation of the provisions of this
Code and the standards, rules and
regulations

The issues of policy and programme relating to
occupational safety and health referred to it, from
time to time

Any other matter related to
code



Safety Committee

In every establishment where there are

500 or more
workers

A mine where
100 workers or
more are
employed

Factory
carrying on
hazardous process
wherein two hundred
fifty workers or more

**building or
other
construction
work wherein
two hundred
fifty workers**



Some other provisions

Chapter IV

- **Research related activities** :Duty of institutions in the field of OSH as Central Govt may notify to conduct research, experiments and demonstrations relating to OSH and submit their recommendations to the appropriate govt.
- **Safety and Occupational Health Surveys** :employer to conduct survey of the factory, mine or such establishment and employer shall afford all facilities for such survey including facilities for examination and testing of plant and machinery and collection of samples and other data relevant to the survey.
- **Statistics** :Central and State Govt to develop and maintain an effective programme of collection, compilation and analysis of OSH statistics and for this the app govt may promote, encourage and directly engage in programme of studies, information and communication concerning OSH statistics.



Chapter V Health Safety and Working Conditions

Responsibility of employer for maintaining health, safety and working conditions

- Cleanliness
- Hygiene
- Ventilation
- Drinking water
- Lighting
- Treatment of waste
- Others



Working conditions and Welfare Facilities (Chapter VI)

- ✓ Conditions may include hygienic work environment, clean drinking water, and toilets.

Welfare facilities

- ✓ Welfare facilities such as canteens, first aid boxes, and crèches, may be provided as per standards notified by the central government. Additional facilities may be specified for factories, mines, docks, and building and construction work such as welfare officers, and temporary housing.
- ✓ The Code includes three schedules containing lists of: (i) **29 diseases that the employer is required to notify the authorities of, in case a worker contracts them,** (ii) **78 safety matters that the government may regulate,** and (iii) **29 industries involving hazardous processes.** The lists may be amended by the central government.



Chapter VII Hours of Work, Annual Leave with wages

- **No worker should be allowed to work more than eight hours in a day**
- **Not more than six days in a week**
- There shall be paid wages at the rate of twice the rate of wages in respect of overtime work, where a worker works in an establishment or class of establishment for more than such hours of work in any day or in any week as may be prescribed by the appropriate Government and the period of overtime work shall be calculated on a daily basis or weekly basis,



Chapter VIII Maintenance of Registers, Records and Returns

Work performed

No of hours worked

Wages paid receipts

Overtime ,leave etc





Chapter IX Inspector -cum-Facilitator (Powers and Duties)

- Enter, with such assistance of persons, being persons in the service of the Government, or any local or other public authority, or with an expert, as he thinks fit, any place which is used, or which he has reason to believe, is used as a work place .
- inspect and examine the establishment, any premises, plant, machinery, article, or any other relevant material
- Inquire into accident or dangerous occurrence
- Sensitise the employers and supply information
- Require the production of any register and any document
- Issue show cause notice relating to safety,health
- Prosecute,conduct, defend before any court any complaint or other proceeding



Special Provisions for Women Employees? (Chapter X)

- The Code enables consenting women to work beyond 7 PM and before 6 AM subject to the employer's compliance with the conditions relating to safety, holidays and working hours to be prescribed by the Government.
- Government can prohibit employment of women in some operations that are dangerous for their health and safety.



Special Provisions for Contract and Inter State Migrant Workers? (Chapter XI)

- **Licensing in case of contract labour:** provision of one license in place of multiple licenses
- However the provision for penalty for principal employer who engages an unlicensed contractor is not there .
- **Experience certificate (annually) or when demanded by the contract labour (earlier no prescribed format. Now,** every concerned contractor shall issue, on demand, experience certificate, *in such form as may be prescribed by the appropriate Government, to the contract labour giving details of the work performed by such contract labour*).
- **All benefits applicable to contract labour are extended to inter-state migrant workmen too.**
- **The inter state migrant workman definition has been expanded to include employer as earlier it was only workers brought through contractor**
- “under an agreement or other arrangement for such employment and draws **wages not exceeding the amount notified by the Central Government from time to time**”(in case of States like Kerala it is higher so ‘*whichever is higher*’ need to be replaced)



- **Toll free helpline**

The appropriate Government may provide facility of toll free helpline to the inter-State migrant workers in such manner as may be prescribed by that Government.

- **Study on Migrant Workers**

The appropriate Government may provide for study of inter-State migrant workers in such manner as may be prescribed by that Government.



Offences and Penalties XII

In case of Death of employee

- Imprisonment 2 years
- Fine : Rs 5 lakhs
- Or both
- courts may direct that at least 50% of such fine be given as compensation to the heirs of the victim.

Punishment for causing obstruction to Inspector cum Facilitator

- Imprisonment 3 months
- Fine:Rs One lakh
- Or both (extend to 6 months and fine 2 lakhs for repeating)

Punishment for non-maintenance of register, records, non-filing of returns

- Penalty not less than 50,000 (may go up to one lakh) and if convicted again then 2 lakhs

If an employee violates provisions of the Code, he will be subject to a fine of up to Rs 10,000

For any other violation where the penalty is not specified, the employer will be punished with a fine between two and three lakh rupees.



New Provision

Chapter XIII Social Security Fund

- There shall be established by the appropriate Government a social security fund for the welfare of the unorganised workers and the amount received from composition of offence and penalty to be credited to this.
- The fund may also be funded by such other sources as may be prescribed by the appropriate Government.
- The fund shall be administered and expended for welfare of the unorganised workers in such manner as may be prescribed by the appropriate Government including the transfer of the amount in the fund to any fund established under any other law for the time being in force for the welfare of the unorganised workers.
- For the purpose of this section the expression "unorganised worker" shall have the same meaning as is assigned to it under clause (m) of section 2 of the Unorganised Workers Social Security Act, 2008.

"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 any of the Acts.



Chapter XIV Miscellaneous

- The appropriate Government may direct a Chief Inspector-cum-Facilitator or any other officer under the control of the Government concerned or appoint a committee to undertake a survey in such manner as may be prescribed by the appropriate Government on the situation relating to safety or health at work at any workplace or class of workplaces or into the effect of work activity on the health of the employees and other persons within and in the vicinity of the workplace
- **Publication of reports** : The appropriate Government may, if it thinks fit, cause to be published any report submitted to it by the National Board or State Advisory Board or any extracts from any report submitted to it under this Code
- Power of the Central and State govt to make rules



Do you think that the code will help in protecting migrant workers ?IF YES ,how.If NO how?

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Implications of the Code on Labour Market: Key Issues

- The Code covers establishments with 10 or more workers. **It excludes establishments with less than 10 workers.** This raises the question of whether workers in smaller establishments should be covered by health and safety laws.
- Law on health and safety need to cover workers in all establishments, to protect their basic rights against unsafe work practices.
- **most countries do not exempt smaller enterprises from labour regulation entirely.**
- The International Labour Organisation (2005) notes that only 10% of its member states had exempted micro and small enterprises from labour regulation altogether. Most countries adopt a mixed approach to labour regulation. For example, health and safety laws in the **United States, United Kingdom, South Africa and Philippines provide universal coverage to all workers (except for domestic help in the US and UK)**
- **The employers perspective :extending the code to small enterprise will hamper growth but needs to facilitate MSME sector.**



Contd..

- **The Second National Commission on Labour (2002) had recommended consolidation and simplification of existing health and safety laws.**

However, the Code continues to retain special provisions for various categories of workers such as working journalists and sales promotion employees. The rationale for retaining such provisions is unclear.

- The Code refers to “wages” in provisions relating to overtime work and calculation of leave. **It does not define the term wages. It is unclear which definition of wages will apply (Code On Wages, 2019)**

- **The Code bars civil courts from hearing matters under the Code.**

Therefore, the only judicial recourse for a person aggrieved under the Code is to file a writ petition before the relevant High Court.

It can be argued that a bar on civil courts from hearing any matters under the Code may result in the denial of an opportunity to challenge issues before a lower court.



On Creches

The Standing Committee had recommended that provision of creche facility would be an expensive affair for MSME sector and particularly for small scale industry.

So, in Sec 24 (3) it was added that an establishment can avail common creche facility established by the State or Central government or a nearby located private facility and a cluster of small scale industries can pool their resources and can set up common a common creche.

No mention of implementation of the same.



contd...

Overlapping Provisions

The Code states that the central government *may* make rules to provide for crèches in establishments with more than 50 workers, i.e. it is not mandatory. The Maternity Benefit Act, 1961 makes the provision of crèches mandatory in such establishments.

Section on contract and Migrant Workers

- Earlier draft had both the section merged together. The new code had separate parts for contract workers and migrant workers .
- The Central Government and the State Governments shall maintain the database or record, for inter-State migrant workers, electronically or otherwise in such portal and in such form and manner as may be prescribed by the Central Government.
- **Good practices by Govt of Kerala** as they have **health insurance scheme and accommodation** for migrant workers.
- **Good practices from Govt of Odisha** like **Shramik Sahayata Helpline, Migrant Labour helpdesk, migration support systems etc.**



References

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- The Occupational Health and Safety Working Conditions Code (2019),Bill no 186 of 2019
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THANK YOU
Q &A