



Aatma Capital
Nurturing Relationships



The Occupational Safety, Health and Working Conditions Code, 2020 - Part IV

CS Meenakshi Jayaraman

A member of



Independent legal & accounting firms

Credits and Acknowledgments

Sundar Rajan S

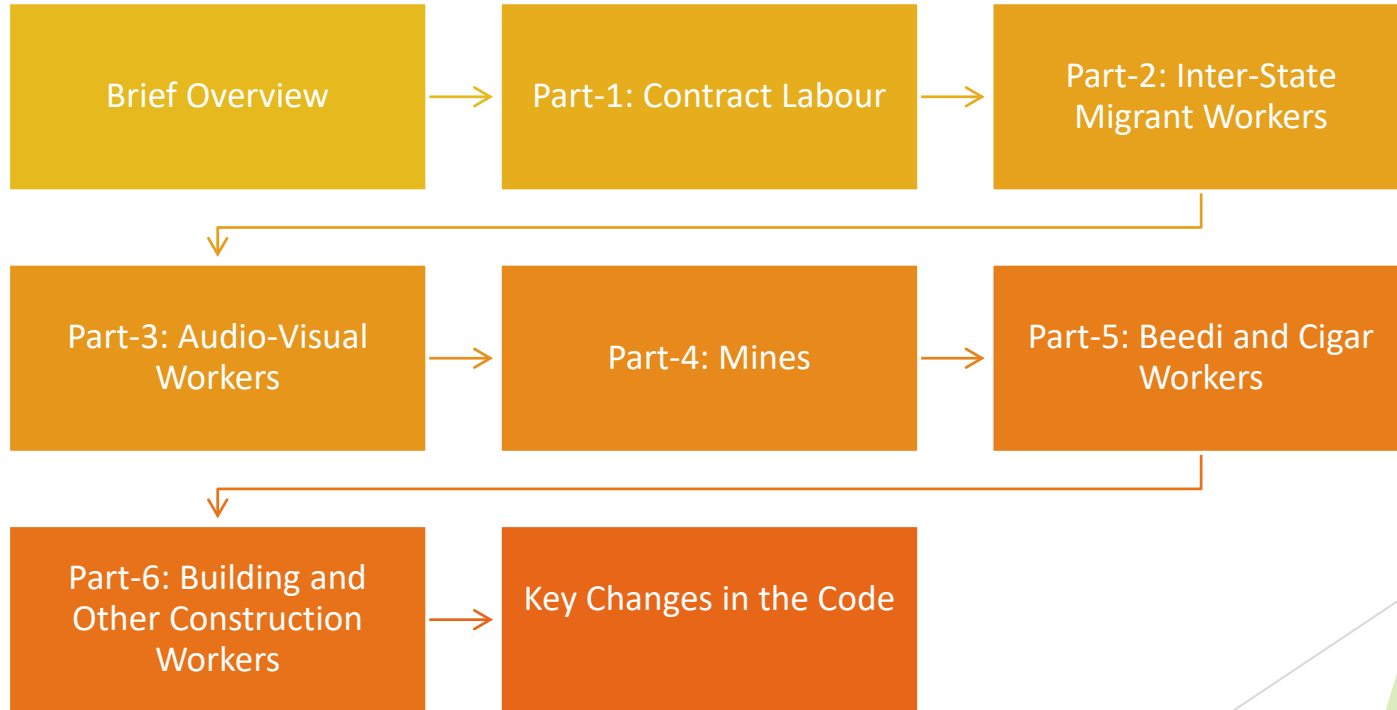
Legends used in the Presentation

Code	Occupational Safety, health and working conditions Code
Draft Rules*	Occupational Safety, Health and Working Conditions (Central) Rules, 2020
Sec	Section of the Code

* Draft Rules are framed on November 19th, 2020 and released for public comments till January 3rd, 2021

^ ^ In this presentation, this symbol indicates the provisions of the Draft Rules

Presentation Schema



Brief Overview

There are over 100 state and 40 central laws regulating various aspects of labour such as resolution of industrial disputes, working conditions, social security and wages

Since these vast number of legislations make the compliance procedures too complex, Ministry of Labour and Employment, in order to improve ease of compliance and ensure uniformity in labour laws, implemented consolidated legislations replacing 29 Central laws

They are, a) Code on Wages, 2019; b) Industrial Relations Code, 2020; c) Code on Social Security 2020; d) Occupational Safety, Health and Working Conditions Code, 2020

However, these Codes are yet to come into force

In this webinar, we shall continue with the provisions of Occupational Safety, Health and Working Conditions Code, 2020

Key Features of the Code

The Code aims at lessening the burden of the employers as it would replace multiple registrations under various enactments to one common registration

The workplace should be kept free from hazards that cause or likely to cause injury or occupational disease to the employees

Issuance of appointment letter to every employee on their appointment in the establishment

Employers are required to ensure the disposal of hazardous and toxic waste including e-waste

Employers are required to conduct free annual health check-up for their employees

The Code makes mandatory provisions for the employers to provide a safe working environment and trying to cover the risk of unfortunate incidents arising in the course of employment

Special Provisions for Specified Labour

Part-1: Contract Labour

Applicability

In any of the below mentioned cases, special provisions shall apply to contract labour

- Every establishment in which 50 or more contract labour are employed or were employed on any day of the preceding 12 months through contract
- Every manpower supply contractor who has employed, on any day of the preceding 12 months, 50 or more contract labour

Establishment in which work only of an intermittent or casual nature is performed is relieved from complying with the special provisions

Work performed in an establishment shall not be deemed to be of an intermittent nature,

- if it was performed for more than 120 days in the preceding 12 months; or
- if it is of seasonal character and is performed for more than 60 days in a year

Appointment of Designated Authority

The appropriate Government may appoint such persons as designated authority under section 119 (1) of the Code and



specify the limits of their jurisdiction and vest with such powers and duties including



dealing with issuance and revocation of licences electronically as may be specified therein

Sec 119 of the Code deals with obtaining common licence in respect of a factory, industrial premises for beedi and cigar work and for engaging contract workers or any combination thereof or single licence for any one of them under the Code

Licensing of Contractors

The Contractor to whom the special provisions apply shall supply or engage contract labour in any establishment or undertake or execute the work through contract labour only if,

- License under Sec 119 (1) is obtained by the Contractor after satisfying the qualifications or criteria prescribed; and
- Conditions as prescribed by the Appropriate Government are satisfied

^Qualification
 and Criteria of
 the Contractor

- Should not be undischarged insolvent
- Should not be convicted any time during the last 2 years of an offence which is criminal in nature
- Should not be convicted for offences which are liable for punishment for more than three months of imprisonment^

Contd.

Conditions of License

^Hours of work shall conform to the rules made under Section 25 of the Code

Wages shall be paid in accordance with the Code on Wages, 2019

If the contract worker of the contractor is working at the premises of the principal employer, then it shall be the responsibility of the principal employer to provide the facilities or amenities such as toilet, washroom, drinking water, etc.

All other facilities and entitlements shall be provided by the contractor

In case the contractor fails to make payment of minimum wages to the contract worker, then the Chief Labour Commissioner (Central) or his representative shall cause such payment to be made to the contract workers out of the security deposit maintained

He shall intimate within 15 days of the receipt of a contract work order about the details of the contract work order^

Procedure for Issue or Renewal of License

^Every application by a contractor for the grant of a license shall be made on-line electronically through Shram Suvidha Portal of the Ministry of Labour and Employment in Form-XIII to the licensing authority^

Single Licence for Contractor in more than one States or for whole of India

^If a contractor desirous of obtaining licence for supplying or engaging contract labour or undertaking or executing the contract works in more than one State or for the whole of India,



then he shall apply electronically on the Shram Suvidha portal of Ministry of Labour and Employment in Form-XIII to the licensing authority^

^Such license shall be valid for 5 years^

Forms, terms and conditions of license

^Every license granted shall be in Form-XIV

Every license granted or renewed shall be subject to the following conditions:

License shall be non-transferable

Number of workers employed as contract labour by the contractor shall not, on any day, exceed the maximum number specified in the license

Fees paid for the grant, or as the case may be, for renewal of the license shall be non-refundable

Rates of wages payable to the workers by the contractor shall not be less than the rates prescribed under the Code on Wages, 2019

Where the rates of wages have been fixed by agreement, settlement or award, the same shall not be less than the rates so fixed^

Procedure for issue of license

^Before a license is issued, bank guarantee for an amount calculated at the rate of Rs. 1000 for each of the worker to be employed as contract labour, in respect of which the application for license has been made,

shall be deposited by the contractor for performance of the conditions of the license and compliance with the provisions of the Code or the rules made thereunder^

^Wherein the issued contract license had expired, based on the request of the applicant in Form, the licensing officer may adjust the security deposit in respect of his application for new license^

^License shall be valid for a period of 5 years in respect of the number of contract labour specified therein and

in case the contractor wants to increase the number of the contract labour, he shall apply for the amendment to the licence to the designated authority and if

the licence is so amended, the number of contract labour shall be increased to such extent by depositing such security deposit as specified in the amended licence for the balance period^

Contd.

^Fees to be paid for the grant of a license shall be as specified in the table below^

No license is required up to 49 contract labour	Nil.
50 but does not exceed 100 contract labour	Rs. 1000
101 but does not exceed 300 contract labour	Rs. 2000
301 but does not exceed 500 contract labour	Rs. 3000
501 but not exceeding 1000 contract labour	Rs. 5000
1001 but not exceeding 5000 contract labour	Rs. 10000
5001 but not exceeding 10000 contract labour	Rs 20000
10001 but not exceeding 20000 contract labour	Rs 30000
20001 and above contract labour	Rs.40000

Renewal of License

^Every contractor shall apply electronically on the Shram Suvidha portal of the Ministry of Labour & Employment to the licensing authority for renewal of the license

Every such application shall be submitted on the said portal at least 30 days prior to expiry of license period but not before 90 days of such expiry of license

The security deposit and the fee chargeable for renewal of the license shall be the same as for the grant of license

If the application for renewal is not received within the time specified above, an additional fee of 25%, shall be payable for such renewal

It shall be the responsibility of the authority concerned to renew license within 30 days^

Information Regarding Work Order to be Given to the Appropriate Government

^Every contractor shall within 15 days of the receipt of a contract work order intimate about the contract work order to designated authority, containing the details such as:

- name of the principal employer
- address of the premises where work is being undertaken
- date of commencement of the contract work
- number of contract labour employed under that work order
- duration of work orders

Details of work order shall be sent by the contractor or his authorized representative

The intimation shall be sent electronically on the Shram Suvidha portal or e-mail of the Chief Labour Commissioner or his representative as may be notified on the website of Chief Labour Commissioner (Central)^

Responsibility of Payment of Wages

A contractor shall be responsible for payment of wages to each contract labour employed by him and such wages shall be paid before the expiry of [^]7th day after the last day of the wage period in respect of which the wages are payable[^]

[^]The contractor shall fix the wage periods in respect of which wages shall be payable and no wage period shall exceed one month

The wages shall be disbursed through bank transfer or electronic mode only

Where it is not practicable to disburse payment in the mode specified in this section, then, the payment shall be made in such manner as may be prescribed by the appropriate Government[^]

[^]In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then,

the principal employer shall be liable to make payment of the wages in full or the unpaid balance due, as the case may be, to the concerned contract labour employed by the contractor and

recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor[^]

Other Provisions

Welfare facilities specified in the Code shall be provided by the principal employer of the establishment to the contract labour who are employed in such establishment

Where any principal employer of an establishment is employing contract labour through a contractor who is required to obtain a licence under the Code, but he has not obtained such licence,

- then, such employment shall be deemed to be in contravention of the provision of the Code

Every concerned contractor shall issue on demand, experience certificate in ^Form-XV^ to the contract labour giving details of the period, work performed, experience gained in various fields performed by such contract labour

Employment of contract labour in core activities of any establishment is prohibited

Contd.

Principal employer may engage contract labour through a contractor to any core activity in the following cases:

Normal functioning of the establishment is such that the activity is ordinarily done through contractor

Activities are such that they do not require full time workers for the major portion of the working hours in a day or for longer periods, as the case may be

Any sudden increase of volume of work in the core activity, which needs to be accomplished in a specified time

Part-2: Inter-State Migrant Worker

Applicability

- ▶ Inter-state migrant worker is a person who:
 - ▶ has been recruited by an employer or contractor for working in another state, or
 - ▶ who moves on his own to another state and obtains employment there; and
 - ▶ who is earning a maximum of Rs 18,000 per month

Special provisions apply to every establishment in which 10 or more inter-State migrant workers are employed or were employed on any day of the preceding 12 months

Facilities to Inter-State Migrant Workers

It shall be the duty of every contractor or the employer, of an establishment employing inter-State migrant workers in connection with the work of that establishment,

to ensure suitable conditions of work to such worker having regard to the fact that he is required to work in a State different from his own State

in case of fatal accident or serious bodily injury to any such worker, to report to the specified authorities of both the States and also the next of kin of the worker

to extend all benefits to such worker which are available to a worker of that establishment and the facility of medical check-up as available to a worker under the Code

Journey Allowance

The employer shall pay, to every inter-State migrant worker employed in his establishment, in a year a lump sum amount of fare for to and fro journey from the place of his employment to the place of residence in the home state

- ^if he has worked for a period of not less than 180 days in the concerned establishment(s) in preceding 12 months^

^Journey allowance shall be given to an inter-state migrant worker once in 12 months^

Other Provisions

The appropriate Government shall make schemes to provide,

option to an inter-State migrant worker for availing benefits of public distribution system either in his native State or the destination State where he is employed; and

for portability of the benefits of the inter-State migrant worker working for building or other construction work out of the building and other construction cess fund in the destination State where such inter-State migrant worker is employed

^A Toll-Free help-line number shall be provided by Ministry of Labour and Employment, to address queries and grievances of the inter-state migrant workers^

^The Central Government may identify the studies to be carried out to promote safety, health and welfare of inter-state migrant workers^

Part-3: Audio Visual Workers

Agreement for Audio-Visual Worker

No person shall be employed as an audio-visual worker in or in connection with production of any audio-visual programme unless the following condition is satisfied

1. An agreement in ^Form – XVI^ writing is entered into.

- with such person by the producer of such audio-visual programme; or
- with such person by the producer of such audio-visual programme with the contractor, where such person is employed through such contractor; or
- with such person by the contractor or other person through whom such person is employed

2. Such agreement is registered with the competent authority, to be notified by the appropriate Government, by the producer of such audio-visual programme

Contents of the Agreement

The Audio-Visual worker Agreement shall include,

Nature of assignment

wages and other benefits (including provident fund, if covered under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952)

Health and Working conditions

Safety and hours of work

Welfare facilities

Dispute resolution process or mechanism, the constitution and other details of which shall be prescribed by the appropriate Government

Part-4: Mines

Appointment of Managers

Every mine shall be under a sole manager who shall have such qualifications as may be prescribed by the Central Government

Owner or agent of every mine shall appoint a person having such qualifications to be the manager

Owner or agent may appoint himself as manager if he possesses the prescribed qualifications

Manager shall be responsible for the overall management, control, supervision and direction of the mine

Non-Application of the Code in Certain Cases

The provisions of the Code, except those contained in sections 35, 38, 40, 41 and 44*, shall not apply to,

A. any mine or part thereof in which excavation is being made for prospecting purposes only and not for the purpose of obtaining minerals for use or sale subject to conditions specified below

- ^1. not more than 20 persons are employed on any one day in connection with any such excavation
2. the depth of the excavation measured from its highest to its lowest point nowhere exceeds six meters or, in the cases of an excavation in coal, fifteen meters; and
3. no part of such excavation extends below superjacent ground^

Contd.

B. any mine engaged in the extraction of gravel, shingle, ordinary sand, ordinary clay, building stone, slate, road metal, earth, fullers earth, lime stone, etc. subject to conditions specified below

^i. the working do not extend below superjacent ground; or

ii. where it is an opencast workings-

- 1. the depth of the excavation measured from its highest to its lowest point nowhere exceeds six meters;
- 2. the number of persons employed on any one day does not exceed fifty; and
- 3. explosives are not used in connection with the excavation^

*Sections 35, 38, 40 and 41 of the Code deals with provisions relating to Inspector-cum-Facilitator and Section 44 deals with adequate safety of employment of women in dangerous operation

Employment of Persons below 18 years of Age

No person below 18 years of age shall be allowed to work in any mine or part thereof

However, apprentices and other trainees, of 16 years of age or more, may be allowed to work, under proper supervision, in a mine or part thereof by the manager

However, prior approval of the Chief Inspector-cum-Facilitator or an Inspector-cum-Facilitator is required to be obtained for allowing other trainees to work in a mine

Part-5: Beedi and Cigar Workers

Licence to Industrial Premises and Person

No employer shall use or allow to use any place or premises as an industrial premises unless he holds a valid licence issued under Sec 119 and no such premises shall be used except in accordance with the terms and conditions of such licence

Application for obtaining licence shall specify the maximum number of employees proposed to be employed at any time of the day in the place or premises and shall be accompanied by a plan of the place or premises

The designated authority shall consider the following matters before granting or refusing to grant a licence

Suitability of the place or premises which is proposed to be used for the manufacture of beedi or cigar or both

Previous experience of the applicant or he has employed experienced person or has entered into agreement with the experienced person for employment for the period of licence

Financial resources of the applicant including his financial capacity to meet the demands arising out of the provisions of the laws for the time being in force relating to welfare of labour

Whether the application is made *bona fide* on behalf of the applicant himself or in benami of any other person

Welfare of the labour in the locality, the interest of the public generally and such other matters as may be prescribed by the State Government

License granted under this provision shall be valid for a period of 5 years

Permission to Work by Employees Outside Industrial Premises

State Government may permit the wetting or cutting of beedi or tobacco leaves by employees outside the industrial premises on an application made to it by the employer on behalf of such employees, subject to such conditions as may be prescribed

Employer shall maintain the record of the work permitted to be carried on outside the industrial premises

No employer shall require or allow any manufacturing process connected with the making of beedi or cigar or both to be carried on outside the industrial premises

However, this provision shall not apply to any worker who is given raw material by an employer or a contractor to make beedi or cigar or both at home

Self-employed Persons in Private Dwelling Houses

The special provisions shall not apply to the owner or occupier of a private dwelling house, not being an employee of an employer

who carries on any manufacturing process in such private dwelling house with the assistance of the members of his family (excluding children) living with him in such dwelling house and dependent on him

Private dwelling house means a house in which persons engaged in the manufacture of beedi or cigar or both reside

Part-6: Building or Other Construction Workers

Prohibition of Employment of Certain Persons

No person, about whom the employer knows or has reasons to believe that he is a deaf or he has a defective vision or he has a tendency to giddiness,



shall be required or allowed to work in any such operation of building or other construction work which is likely to involve a risk of any accident either to the building worker himself or to any other person

Key Changes in the Code

Special provisions for Contract Labour apply only if contractor / employer employs 50 or more contract labour in the preceding 12 months whereas in the erstwhile Contract Labour (Regulation & Abolition) Act, 1970, the limit was 20 contract labour

Under the Code, wages shall be payable to the Contract Labour before expiry of 7th day from the end of the wage period whereas in the erstwhile Regulations, it shall be payable before expiry of 7th and 10th day from the end of wage period if the contract labour employed is less than 1000 and 1000 or more respectively

Provisions for prohibiting employment of contract labour in core activity are prescribed in the Code whereas the same is not prescribed in the erstwhile Regulations

•Under the Code, employer in construction business cannot hire workers with defective vision, deafness, or a tendency for giddiness, if there's risk of accident whereas the same is not prescribed in the erstwhile Regulations

Contd.

Under the Code, Inter-State migrant worker's scope is restricted to monthly income of Rs. 18,000 whereas such threshold criteria is not prescribed under the erstwhile Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979

Special provisions for Inter-State migrant workers apply under the Code if 10 or more inter-State migrant workers are employed in the establishment in the preceding 12 months whereas the erstwhile Regulation is applicable if 5 or more Inter-State migrant workers are employed in the preceding 12 months

Under the Code, journey allowance is payable by the employer to the Inter-State migrant worker only if such worker has worked for a period of not less than 180 days in the concerned establishment(s) in preceding 12 months whereas in the erstwhile Regulation, journey allowance is payable irrespective of the days worked

Under the Code, Government shall make schemes to provide option to an inter-State migrant worker for availing benefits of public distribution system either in his native State or the destination State where he is employed whereas such provision is not prescribed under the erstwhile Regulation



Aatma Capital
Nurturing Relationships



Scan the QR Code to Join our
Research Group on WhatsApp

Thank You!



Scan the QR Code to explore more
Research from our Website

DVS Advisors LLP

India-Singapore-London-Dubai-Malaysia-Africa

www.dvsca.com

Copyrights © 2020 DVS Advisors LLP

A member of



Independent legal & accounting firms