



Aatma Capital
Nurturing Relationships



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

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Credits and Acknowledgments

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Legends used in the Presentation

Code	Occupational Safety, health and working conditions Code
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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-7: Factories

Approval and Licensing of Factories

The appropriate Government may make rules in respect of factory or class or description of factories for,

- submission of plans including specifications, nature and certification thereof
- previous permission for the site on which the factory is to be situated and for the construction or extension thereof; and
- licensing and renewal thereof including fees to be payable for such licensing and renewal, if required

If application for previous permission as mentioned above, accompanied by the plans and specifications sent to the State Government or Chief Inspector-cum-Facilitator in the electronic mode is not processed within maximum period of 30 days, the permission applied for in the said application shall be deemed to have been granted

Liability of Owner of Premises in Certain Circumstances

Where any premises or separate buildings are leased to different occupiers for use as separate factories,

the owner of the premises and occupiers of the factories utilising such common facilities which include safety and fire prevention and protection, hygiene, occupational health, crèches, etc.

shall jointly and severally be responsible for provision and maintenance of such common facilities and services as may be prescribed by the appropriate Government

Power to Apply Code to Certain Premises

Appropriate Government may, by notification, declare that all or any of the special provisions of the Code shall apply to any place wherein a manufacturing process is carried on with or without the aid of power or is ordinarily carried on irrespective of the number of workers working in the factory

After a place is so declared, it shall be deemed to be a factory for the purposes of this Code, and the owner shall be deemed to be the occupier, and any person working therein, a worker

Owner shall include a lessee or mortgagee with possession of the premises

Dangerous Operations

Appropriate Government may make Rules for factories which carry out dangerous operations for,

- specifying the manufacturing process or operation and declaring it to be dangerous
- prohibiting or restricting the employment of pregnant women in the manufacturing process or operation
- periodical medical examination before, or at any time during the employment to ascertain the fitness of a worker or employee for such employment on the cost of the occupier; and
- welfare amenities, sanitary facilities, protective equipment and clothing, and any other requirement necessary for dangerous operations

The maximum permissible limits of exposure of chemical and toxic substances in manufacturing process in any factory shall be of the value as may be prescribed by the State Government

Compulsory Disclosure of Information by Occupier

Occupier of every factory involving a hazardous process shall disclose all information regarding dangers, including health hazards and the measures to overcome such hazards

arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes,

to the workers employed in the factory, the Chief Inspector-cum-Facilitator or Inspector-cum-Facilitator, the local authority within whose jurisdiction the factory is situated and the general public in the vicinity

Contd.

The occupier shall, at the time of registering the factory involving a hazardous process, lay down a detailed policy with respect to the health and safety of the workers employed therein

Every occupier shall, with the approval of the Chief Inspector-cum-Facilitator, draw up an on-site emergency plan and detailed disaster control measures for his factory

Occupier shall make known to the workers employed therein and to the general public living in the vicinity of the factory the safety measures required to be taken in the event of an accident taking place

Every occupier of a factory shall, if such factory proposes to engage in a hazardous process at any time after the commencement of the Code, within a period of 30 days before the commencement of such process, inform the Chief Inspector-cum-Facilitator about the nature and details of the process

If the occupier contravenes the above provision, then license issued to such occupier shall be liable for cancellation

Specific Responsibility of the Occupier in Relation to Hazardous Processes

Every occupier of a factory involving any hazardous process shall

maintain accurate and up-to-date health records or, as the case may be, medical records, of the workers in the factory who are exposed to any chemical, toxic or any other harmful substances

appoint persons who possess prescribed qualifications and experience in handling hazardous substances and are competent to supervise such handling within the factory

provide at the working place all the necessary facilities for protecting the workers

provide for medical examination of every worker before such worker is assigned to a job involving the handling of, or working with, a hazardous substance

provide for medical examination of every worker while continuing in such job, and after he has ceased to work in such job, at intervals not exceeding 12 months

Right of Workers to Warn about Imminent Danger

Where the workers employed in any factory engaged in a hazardous process have reasonable apprehension that there is a likelihood of imminent danger to their lives or health due to any accident,



they may, bring the same to the notice of the occupier, agent, manager or any other person who is in-charge of the factory or the process concerned directly or through their representatives in the Safety Committee



and simultaneously bring the same to the notice of the Inspector-cum-Facilitator

It shall be the duty of such occupier, agent, manager or the person in-charge of the factory or process to take immediate remedial action if he is satisfied about the existence of such imminent danger and send a report forthwith of the action taken to the Inspector-cum- Facilitator

If the occupier, agent, manager or the person in-charge is not satisfied about the existence of any imminent danger as apprehended by the workers, he shall refer the matter forthwith to the Inspector-cum-Facilitator whose decision on the question of the existence of such imminent danger shall be final

Part-8: Plantation Workers

Facilities for Workers in Plantation

Every employer of plantation industry shall make provision for,

Necessary housing accommodation including drinking water, kitchen and toilet to every worker employed in the plantation (including his family)

Crèches facilities where 50 or more workers (including workers employed by any contractor) are employed or were employed on any day of the preceding 12 months

Educational facilities for the children of the workers employed in the plantation where there are more than 25 children between the ages of six to twelve

Health facilities to every worker employed in the plantation (including his family) or provide coverage under the Employees State Insurance Act, 1948

Recreational facilities for the workers employed in the plantation

Safety

In every plantation, arrangement shall be made by the employer to provide for the safety of a worker in connection with the use, handling, storage and transport of insecticides, pesticides and chemicals and toxic substances

State Government may prescribe for special safeguards for employment of women or adolescents in using or handling hazardous chemicals

The employer of a plantation shall appoint persons possessing the prescribed qualifications to supervise the use, handling, storage and transportation of insecticides, chemicals and toxic substances in his plantation

Every employer of a plantation shall ensure that every worker in plantation employed for handling, mixing, blending and applying insecticides, chemicals and toxic substances, is trained about the hazards involved in different operations in which he is engaged

Contd.

Every worker in a plantation who is exposed to insecticides, pesticides, chemicals and toxic substances shall be medically examined periodically

Every employer of a plantation shall maintain health record of every worker in plantation who is exposed to insecticides, pesticides, chemicals and toxic substances which are used, handled, stored or transported in a plantation, and every such worker shall have access to such record

Every employer of a plantation shall exhibit such precautionary notices in the plantation as may be prescribed by the State Government indicating the hazards of insecticides, pesticides, chemicals and toxic substances

Offences and Penalties

General Penalty for Offences

Save as otherwise expressly provided in the Code, if in, or in respect of, any establishment, there is any contravention of the provisions of the Code or regulations or rules,



the employer or the principal employer of the establishment, as the case may be, shall be liable to penalty of Rs. 2 lakhs to 3 lakhs, and



if the contravention is continued after the conviction, then, with further penalty which may extend to Rs. 2000 for each day till such contravention continues

Punishment for Causing Obstruction to Authorities

Whoever wilfully prevents or causes obstruction to a Chief Inspector-cum-Facilitator or Inspector-cum-Facilitator or an officer of the appropriate Government or a person authorised to discharge any duty or to exercise any powers under the Code,

he shall be punishable with imprisonment for a term which may extend to 3 months, or with fine which may extend to Rs. 1 lakh, or with both

Where any person convicted of this offence is again convicted of the same offence, then, he shall be punishable with imprisonment for a term which may extend to 6 months, or with fine which shall be Rs. 1 lakh to Rs. 2 lakhs, or with both

Penalty for Non-maintenance of Statutory Documents

Any person, who is required under the Code or the rules or regulations or bye-laws or order made thereunder to maintain any register or other document or to file returns, produce any register or plan or record or report or any other document



omits or fails to maintain such register or document or to file such returns or produce such register or plan or record or report or such other document,



he shall be liable to a penalty amounting to Rs. 50,000 to Rs. 1 lakh

Where any person convicted of this offence is again convicted of the same offence, then, he shall be liable to a penalty amounting to Rs. 50,000 to Rs. 2 lakhs

Punishment for Contravention of Provisions of Duties Relating to Hazardous Processes

Whoever fails to comply with or contravenes any of his duties relating to hazardous processes shall, in respect of such failure or contravention,

be punishable with an imprisonment for a term which may extend to 2 years and with fine which may extend to Rs. 5 lakhs, and

in case the failure or contravention continues, with additional fine which may extend to Rs. 25,000 for every day during which such failure or contravention continues, after the conviction for the first such failure or contravention

If the above-mentioned failure or contravention continues beyond a period of 1 year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to 3 years or with a fine of Rs. 25 lakhs, or with both

Offences by Employees

If any employee employed in a workplace contravenes any provision of the Code or any rules or orders made thereunder, imposing any duty or liability on employee, he shall be punishable with penalty which may extend to Rs. 10,000

Where an employee is convicted of an offence mentioned above, the employer of the establishment shall not be deemed to be guilty of an offence in respect of that contravention, unless it is proved that he failed to take all reasonable measures for its prevention

Social Security Fund

Social Security Fund

There shall be established by the appropriate Government a social security fund for the welfare of the unorganised workers



to which there shall be credited the amount received from composition of the offence and the amount of the penalty as specified by officers of appropriate government

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

Conclusion

The Code will improve the working condition of the workers and will also reduce employer's burden as it will substitute multiple registration into one common license

Additionally, the clarification and procedure in relation to different establishment provided in the Code shall bring uniformity across the establishments thereby promoting ease of doing business and reducing administrative bottleneck



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