

**ATHENA LEGAL UPDATE ON OCCUPATIONAL SAFETY,
HEALTH AND WORKING CONDITIONS CODE 2020**



ATHENA LEGAL

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OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020

Overview

The Occupational Safety, Health and Working Conditions Code, 2020 (the “**Code**”) was enacted to consolidate and amend the laws regulating the occupational safety and health and working conditions of the persons employed in an establishment. The Code was passed by the Lok Sabha on September 22, 2020 and the Rajya Sabha on September 23, 2020.

The Code amalgamated the following thirteen central legislations on labour regulation:

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

Salient Features

The Code simplifies, amalgamates and rationalizes the provisions of the thirteen labour laws that it replaces. The objectives of the Code are:

1. To make the Code applicable for all establishments having ten or more workers, other than the establishments relating to mine and docks and also, the applicability of provisions for factories, the threshold has been set to twenty workers for factories with power and forty workers for factories without power.
2. To provide the concept of “one registration” for all establishments which have ten or more employees.
3. To mandate issuance of appointment letter by the employer in order to promote formalization of employment.
4. To include journalists working with electronic media such as in e-paper establishment or in radio or in other media within the definition of “working journalists”.
5. To provide free of cost annual health check-ups for employees above a certain age group in all or certain class of establishments by which it would be possible to detect diseases at an early stage for effective and proper treatment of employees.
6. To make provisions relating to Inter-State Migrant Workers applicable on establishments in which ten or more migrant workers are employed or were employed on any day of the preceding 12 months and also provide that the migrant worker may register himself as an Inter-State Migrant Worker on the portal on the basis of self-declaration and Aadhar.
7. To constitute the National Occupational Safety and Health Advisory Board to give recommendations to the Central Government on policy matters, relating to occupational safety, health and working conditions of workers.
8. To constitute State Occupational Safety and Health Advisory Board at state level to advise the State Government on such matters arising out of administration of the Code.
9. To provide for constitution of Safety Committee by the appropriate government in any establishment or class of establishments.
10. To make provisions of “common license” for factory, contract labour, beedi and cigar establishments and to introduce the concept of a single all India license for period of five years to engage the contract labour.
11. To enable courts to give portion of monetary penalties up to fifty percent to the worker who is victim of accident or to their legal heirs in case of his death, as compensation.

12. To provide overriding powers to Central Government to regulate general safety and health of persons residing in whole or part of India in the event.

Key Changes

1. The limit of female workers for the purpose of creating creche facility for the children below 6 years of age, would increase to 50 female workers from 30.
2. As per The Factories Act if any establishment has 500 or more workers, then the employer should appoint welfare officers but post implementation of this Code, limit shall be reduced to 250 employees.
3. The establishment employing 100 workers will be responsible for providing a canteen facility which is a reduction from current limit of 250.
4. Provisions have been made for the employment of female employees for working beyond 7 pm till 6 am with their consent and conditions relating to safety, holiday, working hours.
5. Workers cannot be required to work for more than 6 days / week and will be entitled to one day off for every 20 days of work & one day off every week.
6. Workers employed in Transport, Sales Promotion and Journalism have special work hour and leave requirements specified.
7. Employer in construction business cannot hire workers with defective vision, deafness, or a tendency for giddiness, if there's a reasonable apprehension of risk of accident.
8. Elaborative provisions related to inter-state migrant workers, employers of plantations and liabilities of contractors have been inserted.
9. Considering Covid-19, the Central Government has reserved its power to make regulation for general safety and health of persons in the event of declaration of an epidemic, pandemic or disaster. This has not been given effect to, by any other law for the time being in force.
10. The Code has made the registration process to be done electronically and thereby reducing physical contact
11. Key definitions of terms like Wages, Banking Company and Core Activity of an Establishment have been inserted.
12. Contrary to earlier provisions women workers are entitled to be employed in all establishments for all type of work including hazardous process subject to the conditions

that the government may require the employer to provide adequate safeguards prior to their employment in hazardous or dangerous operations.

Key Provisions and Compliances

1. Compulsory Registration

- a. Establishments under the Code are required to register within 60 days from the time of commencement with registering officers, appointed by the central or state government pursuant to which upon scrutinization of the application along with prescribed fee, the registering officer shall register the establishment and issue a certificate of registration to the employer.

2. Duties of Employer & Employees

- a. The duties casted upon the employers are: -
 - i. Ensure the workplace is safe and free from hazards and comply with the Occupational Safety and Health standards;
 - ii. Provide annual health examination, ensure proper disposal of hazardous substances;
 - iii. Issue a letter of appointment to each employee and take utmost responsibility for the health and safety of workers
- b. The duties casted upon the employees are: -
 - i. Take reasonable care of his health and safety and report any unsafe/dangerous situation to his employer;
 - ii. Co-operate and comply with the standards established.

3. Health and Welfare Facilities

- a. The employer has to ensure that the following health & safety conditions have to be necessarily complied with: -
 - i. Cleanliness and hygiene;
 - ii. Proper ventilation, temperature and humidity;
 - iii. Dust, smoke free environment;
 - iv. Adequate standard of humidification, lighting;
 - v. Portable drinking water;
 - vi. Prevent overcrowding;

vii. Separate urinal arrangements for men, women and transgender

- b. The employer shall be responsible for providing the following welfare facilities: -
- i. Adequate separate facilities for washing, separate bathing places for male, female and transgender employees, canteen facility;
 - ii. Easily accessible first-aid boxes, ambulance room in every factory, mine & other construction work;
 - iii. Separate rest-rooms for male, female and transgender employees, appointment of welfare officer, provide temporary living accommodation to all building workers.

4. Working Hours and Leave

- a. Work hours for different classes of establishment and employees will be notified by the central or state government;
- b. For overtime work, the worker must be paid twice the rate of daily wages. Prior consent of workers is required for overtime work;
- c. Female workers may work past 7 pm and before 6 am with their consent, and if approved by the government;
- d. Journalists cannot work more than 144 hours in four weeks;
- e. Workers cannot be required to work for more than six days a week. Further, they must receive one day of leave for every 20 days of work per year.

5. Maintenance of Registers, Records and Returns

The Code requires the employer to maintain a register containing particulars about the work performed, number of hours of work, days of rest allowed, wage paid and receipt, leave and leave wages and employment of adolescent.

6. Special Provisions for Contract Labour

- a. The Code has introduced the concept of 'work specific license' for contractors, if they do not meet the criteria to be prescribed by the Government for grant of license for supply of contract labour or for execution of work through contract labour. This work specific license will serve the needs of project – specific contract labour deployment;

- b. Contractors will be required to submit work order information to the Government prior to supplying contract labour or executing contract labour arrangements with principal employers.
- c. The contractor or principal employer has to submit an experience certificate to each contract labour on an annual basis, specifying details of work done;
- d. If a principal employer engages any contract labour through an unlicensed contractor, then such contract labour shall be deemed employee of the principal employer;
- e. The Government is entitled to notify certain operations for which contract labour cannot be deployed, and some factors that could influence this determination include whether or not it would be sufficient to employ considerable number of whole-time workers, or whether similar work is done by regular workers of the Establishment, etc.

7. Special Provisions for Factories

- a. Government can declare any place wherein manufacturing process is being carried out as a factory, and for any persons working at such premises to be classified as workers;
- b. The Code allows maintenance of registers, and the filing of returns under the Code, in an electronic form;
- c. As opposed to the earlier threshold of 30 women workers prescribed under the Factories Act, a creche facility is now required to be provided by all Establishments (including factories) where more than 50 workers are ordinarily employed.

8. Special Provisions for Mines, Beedi and Cigar Makers

- a. The owner and agent of the mine will be jointly responsible for providing a safe work environment. Additionally, no worker below the age of 18 or apprentice/trainee below the age of 16, may work in a mine;
- b. License required for beedi and cigar establishments (except for family establishments). Contractors must either obtain a five-year license or obtain work-specific licenses.

9. Special Provisions for Building and Other Construction Workers

No employer can hire workers with defective vision, deafness, or a tendency for giddiness, if there is a risk of accident.

Offences and Penalties

- a. Monetary penalty of up to two lakhs is applicable if an employer breaches any provisions of the Code, which is not otherwise subject to a specific penalty;
- b. Causing obstruction to any officer, failure to produce any document, failure to comply with any order issued by him will attract 3 months imprisonment or a penalty up to one lakh rupees or both;
- c. Penalty for non-maintenance, production of the statutory register, plan, record shall not be less than fifty thousand rupees which may extend to one lakh rupees;
- d. Punishment for fabricating false records is 3 months imprisonment or a fine of one lakh rupees;
- e. Penalty for contravention of the provisions of duties relating to hazardous processes is two years imprisonment along with fine up to five lakh rupees;
- f. Penalty for contravention of provisions of duties relating to safety provisions resulting in an accident in case of death is two years imprisonment or fine of five lakh rupees or both and in case of serious bodily injury is one-year imprisonment or fine of two lakh rupees not exceeding four lakh rupees, or both;
- g. Exemption from liability is available for persons in-charge if they are able to prove that due diligence was exercised by them, or that the offence was committed without their knowledge, consent or connivance;
- h. Compounding option is available to employers for offences that are punishable only with fine, for a sum of up to 50% of the maximum fine so prescribed.

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