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## **OPINION | The Labour Codes: To wait or not is the dilemma**

*States need to notify new rules that are in sync with the Codes. In the interim, the Codes can be partly implemented under the existing rules. This transition phase is likely to lead to an uncertain operating environment as the Codes' provisions on gratuity payments and contract hiring may trigger big changes*

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The four Labour Laws (**Codes**) that had been pending for several years were implemented on 21 November 2025 without any warning. This marks a landmark development in the space of Indian labour laws and addresses the eternal question that organizations have been asking for the last five years – when will these Codes be enforced!

The Codes are now in effect, but the method of their implementation leaves a lot to be desired.

### **Role of states in implementing the Codes**

To recap, these Codes were passed by Parliament in 2019 and 2020 but never notified to into force. Tripartite discussions occurred periodically, with both trade unions and industry bodies praising and criticising various elements of these Codes, but no steps were taken to address these comments.

Further, to fully operationalize any such new body of law, it is necessary for state governments to create local rules. These rules are required since State governments are the '*appropriate government*' with oversight over private and state enterprises, and are responsible to enforce central laws for such organizations.

After the Codes were released in 2020, various state governments slowly released draft rules for public consultation. Some states however held out, and as of date, the rules for all the Codes have not been prepared in every Indian state.

While the rules in several states are yet to be finalised, the Codes have now been brought into effect. By doing so, the existing body of 29 central labour laws has been repealed with effect from 21 November 2025, barring the Employees Provident Fund Act. States will now have no other option but to formalise local rules for the Codes at the earliest, or face the ire of industry which seeks clarity and certainty when it comes to matters of compliance.

### **Transition confusion**

After such a prolonged wait, stakeholders might have benefited from a more structured and advanced-notified introduction of this important legislation. The press release from 21 November makes matters even more confusing, since it states that during the "*transition...*

*existing labour Acts and their respective rules, regulations, notifications, standards, schemes, etc. will continue to remain in force”.*

This is misleading to the average employer, since the old Acts (barring the Employees Provident Fund Act) have in fact been repealed via the notifications passed on 21 November 2025. **The sections of the Codes that repeal the old laws *have been notified*. A press release cannot override that.** Therefore, it's erroneous to operate under the belief that the repealed laws are still somehow in force or will remain in force until the state level rules are implemented.

Several employers seem to be under this misconception and are adopting a 'wait-and-watch' approach under the belief that nothing needs to be done till the State rules are implemented. This could be a huge error.

### **Codes can be implemented even in the absence of new rules**

Many provisions of the Codes can be implemented *even in the absence of the pending state rules*, or can be implemented with reference to the pre-existing rules under the old laws (since the accompanying substantive provision has not changed under the Codes either).

This is also envisaged under the 'Repeal and Savings' provisions of the Codes, which state that any "*rule, regulation, notification, scheme, appointment, order or direction made*" under the old laws will remain in force "*till they are repealed under the corresponding provisions of this Code*", to the extent they are not contrary to the Code provisions.

### **On definition of wages and gratuity payments**

Organizations should be taking note of this complex legal structure and seeking expert advice on how to comply from now. Just as an example, it's arguable that the new definition of 'wages' contained in the Codes is now in force, and any future benefit payments, such as gratuity, must henceforth be calculated on this new definition. Compared to the repealed Payment of Gratuity Act, 1972, where gratuity was only calculated on the 'basic salary' and 'dearness allowance', a case could potentially be made under the new Codes that gratuity must be calculated on other guaranteed allowances also.

Thousands of employees are quitting or are being terminated every day as a matter of routine across the country, and organizations have to pay them gratuity within 30 days. This therefore needs immediate attention. Employers must take stock of the new wage definition, examine how their current compensation structure stacks up against it, and assess the impact on payments to employees as soon as possible. Deferring compliance till the state rules are released may prove costly.

### **Hiring contract workers may be tricky terrain**

There are several other areas under the Codes where compliance could be argued to commence immediately. Another example would be the OSH Code, which contains provisions prohibiting hiring of 'contract labour' in 'core activities' as a matter of default.

Under the repealed Contract Labour Act, the government had to issue a formal notification barring hiring of contract labour in certain activities or industries. Such notifications were few and far in-between, resulting in the rampant hiring of contract workers across all types of industries and sectors. The OSH Code has done away with this notification process.

Employers that rely heavily on contract labour must therefore take stock of this restriction and examine how it can impact their operations. Such changes go to the very root of organizational structure and workforce design. What functions can rely on contract labour, where would hiring of full-time employees be more prudent, could some positions be filled by fixed term employees or gig workers – these are just some of the questions that employers need to be thinking about carefully.

Even if the government will be slow to enforce these Codes against employers or impose penalties for non-compliance, the workers, who are increasingly better informed and aware, may not wait to seek the benefit of these new provisions. If organisations don't obtain proper advice and plan their way around these Codes, they could face more disputes from disgruntled workers who may believe they are being cheated out of the benefit of these Codes.

### **Some aspects of the Codes are not implementable right now**

Not everything in the Codes is actionable, however. Other than the state level rules, several other pieces of subordinate legislation and administrative bodies aren't in place yet, due to which some elements of the Codes will certainly take longer to effectively implement. For e.g., it's being lauded that the Codes usher in a new era of protection for gig, platform and unorganized sector workers. That's true, but this is only on paper for now.

The National Social Security Board, which is vested with the responsibility to create appropriate social security schemes for gig and unorganised sector workers, is not yet in place. Consequently, these schemes aren't in place either. In the meantime, some states have already created their own gig worker laws which envisage setting up of local welfare boards and State level schemes. These laws expect aggregators and platforms to make contributions at the State level and offer other 'employee-like' protections that even the Codes don't cover. We've moved from no protection at all to a duality of protection in some states. While gig workers certainly stand to benefit, it'll be some time before any real advantage will be available to them. Further, the complexity of compliance for the operators is concerning.

All in all, the Codes are certainly a step in the right direction, but the manner of their implementation leaves a lot to be desired. Organizations will need to grapple with several areas of confusion for some time to come.

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*Nothing here should be construed as legal advice. Views are personal and do not represent the stand of this publication.*