

Implementation of the Labour Codes, where are we?

This edition of the JSA Employment Monthly Newsletter provides a quick review of the status of implementation of the State and Union Territory draft rules under the upcoming labour codes and also discusses some of the recent interesting judicial precedents spread across several employment legislations.

The Labour Codes

In 2019 and 2020, 29 central labour laws were amalgamated, rationalised and simplified into four Labour Codes, that is, the Code on Wages, 2019; the Industrial Relations Code, 2020; the Code on Social Security, 2020; and the Occupational Safety, Health & Working Conditions Code, 2020 (collectively “**Labour Codes**”). The new laws are aligned with the changing labour market trends and at the same time accommodating the minimum wage requirement and welfare needs of the unorganised sector workers, including the self-employed and migrant workers, within the framework of legislation. Labour reforms are progressing steadily as most States and Union Territories in India have pre-published draft rules for the Labour Codes.

As labour is in the concurrent list of the Constitution of India, under the Labour Codes, rules are required to be framed by the central government as well as by the state and union territory governments. The central government has pre-published the draft rules for all four codes. Now States and the union territories are required to frame regulations on their part. There are reports that the four codes are likely to be implemented by the next fiscal year. In the coming editions, JSA will have a dedicated section highlighting the key differences between the erstwhile legislations and the Labour Codes.

Presently, the total number of rules published (yet to be notified) by the States/ Union Territories are as follows:

- Code on Wages, 2019: **27**
- Industrial Relations Code, 2020: **23**
- Occupational Safety, Health & Working Conditions Code, 2020: **18**
- Code on Social Security, 2020: **21**

State/Union Territory	Code on Wages, 2019	Industrial Relation Code, 2020	Occupational Safety, Health and Working Conditions Code, 2020	Code on Social Security, 2020
Andhra Pradesh	Awaited	Awaited	Awaited	Awaited
Arunachal Pradesh	Pre-published the draft	Pre-published the draft	Pre-published the draft	Pre-published the draft
Assam	Pre-published the draft on October 20, 2021	Pre-published the draft on November 17, 2021	Awaited	Pre-published the draft on October 20, 2021

State/Union Territory	Code on Wages, 2019	Industrial Relation Code, 2020	Occupational Safety, Health and Working Conditions Code, 2020	Code on Social Security, 2020
Andaman and Nicobar	Awaited	Awaited	Awaited	Awaited
Bihar	Pre-published the draft on February 08, 2021	Pre-published the draft on February 22, 2021	Pre-published the draft on November 08, 2021	Pre-published the draft on February 26, 2021
Chhattisgarh	Pre-published the draft on May 25, 2021	Pre-published the draft on May 25, 2021	Pre-published the draft on May 25, 2021	Pre-published the draft on May 27, 2021
Chandigarh	Pre-published the draft on December 28, 2021	Pre-published the draft on December 28, 2021	Pre-published the draft on December 28, 2021	Pre-published the draft on December 28, 2021
Delhi	Pre-published the draft on November 26, 2021	Awaited	Awaited	Awaited
Dadar and Nagar Haveli & Daman and Diu	Awaited	Awaited	Awaited	Awaited
Gujarat	Pre-published the draft on October 5, 2021	Pre-published the draft on October 5, 2021	Pre-published the draft on December 30, 2021	Pre-published the draft on November 16, 2021
Goa	Pre-published the draft on September 23, 2021	Pre-published the draft on October 21, 2021	Pre-published the draft	Pre-published the draft on November 25, 2021
Haryana	Pre-published the draft on September 16, 2021	Pre-published the draft on September 16, 2021	Pre-published the draft on September 16, 2021	Pre-published the draft on September 16, 2021
Himachal Pradesh	Pre-published the draft on August 07, 2021	Pre-published the draft on September 29, 2021	Pre-published the draft on November 23, 2021	Pre-published the draft on October 30, 2021
Jharkhand	Pre-published the draft on July 14, 2021	Pre-published the draft on July 14, 2021	Pre-published the draft on August 27, 2021	Pre-published the draft on August 3, 2021
Jammu & Kashmir	Pre-published the draft on January 15, 2021	Pre-published the draft on January 15, 2021	Pre-published the draft on February 9, 2021	Pre-published the draft on January 15, 2021
Karnataka	Pre-published the draft on March 2, 2021	Pre-published the draft on May 3, 2021	Awaited	Awaited
Kerala	Pre-published the draft on December 14, 2021	Pre-published the draft on December 30, 2021	Pre-published the draft on December 15, 2021	Pre-published the draft on December 16, 2021
Ladakh	Awaited	Awaited	Awaited	Awaited
Lakshadweep	Awaited	Awaited	Awaited	Awaited
Madhya Pradesh	Pre-published the draft on December 23, 2021	Pre-published the draft on February 9, 2021	Pre-published the draft on February 9, 2021	Pre-published the draft on February 26, 2021

State/Union Territory	Code on Wages, 2019	Industrial Relation Code, 2020	Occupational Safety, Health and Working Conditions Code, 2020	Code on Social Security, 2020
Maharashtra	Pre-published the draft on September 3, 2021	Pre-published the draft on December 3, 2021	Awaited	Pre-published the draft on August 27, 2021
Manipur	Pre-published the draft on November 19, 2021	Pre-published the draft on November 19, 2021	Pre-published the draft on November 19, 2021	Pre-published the draft on November 19, 2021
Meghalaya	Awaited	Awaited	Awaited	Awaited
Mizoram	Pre-published the draft on November 10, 2021	Awaited	Awaited	Awaited
Nagaland	Awaited	Awaited	Awaited	Awaited
Odisha	Pre-published the draft on March 10, 2021	Pre-published the draft on May 18, 2021	Pre-published the draft on July 01, 2021	Pre-published the draft on June 8, 2021
Puducherry	Pre-published the draft on November 9, 2021	Pre-published the draft on November 3, 2021	Awaited	Awaited
Punjab	Pre-published the draft on March 24, 2021	Pre-published the draft on May 5, 2021	Pre-published the draft on May 17, 2021	Pre-published the draft on March 25, 2021
Rajasthan	Pre-published the draft on July 14, 2021	Awaited	Awaited	Awaited
Sikkim	Pre-published the draft on January 27, 2022	Awaited	Awaited	Awaited
Tripura	Pre-published the draft on June 01, 2021	Pre-published the draft on June 19, 2021	Awaited	Pre-published the draft on September 28, 2021
Tamil Nadu	Awaited	Awaited	Awaited	Awaited
Telangana	Pre-published the draft on September 29, 2021	Pre-published the draft on September 29, 2021	Pre-published the draft on January 28, 2022	Pre-published the draft on January 28, 2022
Uttar Pradesh	Pre-published the draft on February 25, 2021	Pre-published the draft on February 18, 2021	Pre-published the draft on March 23, 2021	Pre-published the draft on March 3, 2021
Uttarakhand	Pre-published the draft on February 25, 2021	Pre-published the draft on February 25, 2021	Pre-published the draft on March 2, 2021	Pre-published the draft on February 26, 2021
West Bengal	Awaited	Awaited	Awaited	Awaited

Case Law Ratios

Retrenchment compensation not required on termination of fixed term employee

In the case of *Rajendrabhai Chandubhai Gondaliya vs. Dy. Engineer and Ors., 2022 LLR 151 (Guj. HC)*, the petitioner/workman was terminated by the respondent/employer without issuing any notice, notice pay or retrenchment compensation. He contended that his termination was in breach of Sections 25F, 25G and 25H of the Industrial Disputes Act, 1947 ("ID Act") and prayed for reinstatement with full back wages. The respondent/employer filed its written statement claiming that the petitioner/employee had been employed only for seasonal work during specific periods of the year. That each service period started and ended with the season with the petitioner/employee not working for more than 240 days in any given year. According to the terms of their seasonal appointment, there was no requirement of issuance of any notice.

The Supreme Court held in favour of the respondent/employer while observing the following: (i) petitioner's appointment was for a fixed period and for a fixed season, inviting the exception of Section 2 (oo) (bb) of the ID Act and thus the situation cannot be termed as retrenchment, (ii) since the petitioner was not in continuous service under Section 25(B) of the ID Act, the respondent authority is not supposed to follow the provisions of Section 25(F) of the ID Act, and (iii) as retrenchment was out of the equation it would automatically invalidate the application of Sections 25G and 25H of the ID Act.

Termination of a probationer on the ground of unsatisfactory performance would not be stigmatic and holding of enquiry is not necessary

In the case of *The Management of Manganese Ore India Ltd vs Naseem Ahmad., 2022 LLR 183 (Bom HC)*, the respondent/employee alleged that the appellant/employer had kept her on probation for an unreasonable amount of time and thereafter she was wrongfully terminated by the respondent without even conducting an enquiry. She further claimed that she had become a permanent employee on the expiry of an entire year of probation and was entitled to its accorded benefits. The appellant/employer contended that throughout the respondent's probationary period, she had been continually late to work and often missed entire work-days. Despite being informed several times, her performance had not improved. The Supreme Court held in favour of the appellant and stated that there was no requirement for an enquiry for terminating a probationer and neither is terminating on grounds of unsatisfactory performance be considered as stigmatic. The respondent's continual absenteeism, lack of interest in work and untruthful claims of illness preventing her from tending to her duties were good enough reasons for termination on grounds of unsatisfactory performance.

Statutory leave period pertaining to maternity leave must be excluded in calculating total duration of leave taken by an employee

In the case of *K.R. Kanimozhi Versus State of Tamil Nadu and Others [2022] 1 LLJ 186.*, the petitioner/employee had taken a total of 7 months and 11 days leave from work owing to her pregnancy complications. The respondent/employer terminated the petitioner for contravening Rule 18(1) of the Tamil Nadu Government Fundamental Rules ("TNGF Rules") which limited the period of leave taken by a government servant for a continuous period within 6 months at a time. The Madras High Court held in favour of the petitioner/employee while observing that the Maternity Benefit Act, 1961 provided women with 12 weeks of statutory leave which must be excluded while calculating the total duration of leave for the purposes of Rule 18(1), TNGF Rules. Therefore, the total duration coming to be 4 months 11 days which is well within the prescribed limit under the abovementioned clause – the petitioner/employee is entitled to be reinstated with continuity benefits.

Voluntary retirement cannot be denied in absence of employee being subjected to departmental enquiry for any misconduct of a serious nature

In the case of *Rais Ahmed Siddiqui Versus State of Maharashtra, Through its Secretary and Others [2022] 1 LLJ 152.*, the respondent/ University had recalled the earlier acceptance of voluntary retirement submitted by the petitioner/employee. The petitioner/employee did not wish to continue on account of ill health and had not claimed salary for 1481 days (treated as leave without wages). The Court held in favour of the petitioner/employee and set aside the order levied by the respondent/University recalling the acceptance of voluntary requirement while observing the following: (i) that the petitioner/employee had no charges levelled upon him and no departmental enquiry had been conducted or was pending against him, (ii) that the petitioner/employee truly was suffering from serious medical infirmities and (iii) the only reason behind refusing voluntary retirement to an eligible candidate was to prevent mischievous employees seeking the same so as to escape the clutches of law and avoid a stigmatic removal/ punishment – which was not the case in the present situation.

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