

How employees' working hours, annual leave will change under the new labour laws

Synopsis

Four new labour laws have been passed by the Parliament. However, the effective date of implementation of these laws is yet to be notified. Here's how new labour laws will change the working hours of an employee, the annual leave he/she is eligible for and how does they differ from existing rules and regulations.



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To revamp the regulations governing employer-employee relationship and reform the labour laws the government has released four Labour Codes. The newly enacted Labour Codes lay down an array of reforms relating to wages, social security ([pension](#), [gratuity](#)), labour welfare, health, safety and working conditions (including that of women). In the ever-changing globalised corporate world, there was an urgent need to regulate, formalise and rationalise working conditions, including [working hours](#) and leave.

Impact on working hours

Currently, the working hours and leave (paid/privilege leave) of employees are governed by the Factories Act, 1948 at the central level and relevant Shops and Establishment Act at the state level. The major focus of the government is to streamline the working hours and leave of factory workers as well as service industry in tandem.

The government has made an attempt to fill these gaps by introducing the new Labour Codes. These Labour Codes would be applicable to every industry. Though, the respective state governments can still regulate the working hours and leave through the Shops and Establishment Act, but issuance of state rules on the lines of Labour Codes and the draft central rules suggests that state government(s) are aligned with the central government, specially in relation to the aspects of working hours and leave.

It should be noted that under the new Labour Codes, the government is willing to provide the benefits to the employees being categorised as workers only. The government have not touched upon the working hours and leave of managerial, administrative and supervisory staff, who shall still be governed by the respective Shops and Establishment legislation of the state government.

The definition of 'workers' under the new Labour Codes are on the lines of definition of workers as provided under the Factories Act, however, the same does not imply that the aforementioned benefits are only applicable for blue collar workers, as in the case of factories.

Keeping in mind the uniform application of new Labour Codes to all industries including service sector, under the new regime every individual contributor (person not engaged mainly in managerial/administrative or supervisory role- for supervisor the limit of Rs 18,000 of wages per month has been prescribed), irrespective of the work assigned to him/her or remuneration drawn (except in case of supervisor), should ideally qualify as worker under the new Labour Codes.

For e.g. a software developer, who is an individual contributor having no managerial, administrative and supervisory duties and having a CTC of Rs 20 Lakh p.a., would likely to be considered as a worker under the new Labour Codes. Since, the law does not restrict the definition of workers to factories anymore it would be considered to be applicable to a software development company as well.

Having said that, there are still factions in the Indian corporates, which does not support aforementioned view and accordingly, the Government has time and again being requested from professional/legal firms/industry bodies to provide necessary clarity in this regard.

Under the new Labour Codes, the daily and weekly working hours have been capped at 12 hours and 48 hours, respectively. This has effectively paved way for implementation of a 4-day work week (assuming 12 working hours every working day in the week).

Additionally, the maximum number of overtime hours for workers has been increased from 50 hours (under the Factories Act) to 125 hours (in new labour codes) in a quarter across industries. This would give headroom to companies to adopt the 4-day work week and employ workers on the weekend, if necessary.

The 4-day work week can act as a dual-edged sword, as on one hand, the workers would benefit from elongated period of rest, but on the other hand, it entails longer working hours during the weekdays, which may result in deterioration of workers' health.

Similarly, the increase in the overtime limit may result in additional earnings in the hands of workers but at the expense of longer working hours or probably working on weekends as well.

Impact on [annual leave](#)

Apart from the working hours, the government has also aimed to rationalise -

- (i) the leave a worker can avail during the course of his/her employment,
- (ii) carry forward of leave to succeeding year, and
- (iii) encashment of leave during the tenure of employment.

The new Labour Codes have reduced the eligibility requirement for leaves from 240 days of work to 180 days of work in a year. This would mean that as per existing laws, when a new employee joins, he/she needs to work 240 days to be eligible to take a leave. However, the new labour codes have reduced the number of days of work for a new employee to 180 days to be eligible for leave.

However, the quantum of leave earned will remain unchanged, i.e., 1 day of leave earned for every 20 days of work. Similarly, no change has been proposed in the limit on carry of forward of leaves which remain at 30 days. Although, the provisions regarding leave, barring eligibility criteria, have not changed, yet it is a welcome move, considering that the provisions of leave which were only applicable to manufacturing units have now been made mandatory for every sector under the new Labour Codes.

On one hand the government has made an attempt to universally enforce the provisions of leave on all sectors, on the other hand it has made leave encashment mandatory on part of the employer under the new labour codes, wherein the leave of the worker are more than the maximum permissible limits of carry forward at the end of the year.

For instance, assuming an employee has 45 days of leave at the end of the calendar year, then in such a scenario, an employer will be required to pay leave encashment of 15 days to a worker and balance 30 days of leave will be carried forward to the next calendar year.

The existing Shops and Establishment Act, it usually provides for leave encashment only at the end of the employment period (i.e., at the time of resignation or retirement).

All-in-all, it can be said that the new Labour Codes are welfare legislation which make an attempt to balance the welfare of the workers and the cost of workers to a company., However, it is yet to be seen whether state governments would play along and make necessary changes in their respective Shops and Establishment Acts to clarify the existing doubts. .

Above all, Work From Home (WFH) which is a prevalent market practice across sectors specially after the outbreak of the covid-19 pandemic, has been recognised by the central government in the draft model standing order applicable to the service industry.

However detailed guidelines would help the industry to formulate the parameters for the same, including regulation of working hours, overtime, leave, etc. Companies may also need to have some guiding principles regarding Work From Home in order to ensure work-life balance of the employees.