

16.05.2017

From

To
The Director,
International Labour Organisation,
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India Habitat Centre,
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Sub: Draft Labour Code on Social Security & Welfare – defects and deficiencies – role of the ILO – clarification – sought for.

Ref: 1. Memo No. Z-13025/ 13 /2015-LRC dated 16.03.2017 of the Ministry of Labour & Employment, Government of India, New Delhi.
2. Letter No. M-13014/01/2017-LRC dated 25.04.2017 of the Ministry of Labour & Employment, Government of India, New Delhi (*Copy enclosed*).
3. Summary Record of the discussions held in the Consultation Workshop with the Secretaries of States and UTs on 02.05.2017 on the draft Labour Code.

Sir,

The Secretary, Ministry of Labour & Employment, Government of India, New Delhi has, during the "Consultation Workshop with the Principal Secretaries / Secretaries of the State /UT Governments in charge" on 02.05.2017, said that the draft Labour Code put in public domain on 16.03.2017, was "the outcome of prolonged discussions with the ILO and ISSA experts". I find that two representatives from the ILO, Dr. Marckus and Ms. Divya, had also attended the aforesaid 'Consultation Workshop' on 02.05.2017.

As the Ministry of Labour & Employment claims that there had been prolonged discussions with the ILO experts for and before preparing the draft Labour Code, I request you to kindly spare some of your precious time to reply whether the ILO had, actually, discussed and agreed to the following provisions / aspects of the said Code:

1. Please intimate whether the ILO has supported the proposal to omit altogether the four important benefits pertaining to Employment Injury, provided through Sec. 51-B, Sec. 51-C, Sec. 51-D and Sec. 51-E of the ESI Act, while drafting the Labour Code. Did the ILO consider that these benefits are not required to the Indian workforce any more?

2. When the ESI Act provides about 90% of the wages of an employee to his dependant family as "Dependants Benefit" in the event of **death of that employee due to employment injury**, how did the draft Labour Code reduce it to 50%? Did the ILO agree to this kind of

reduction of benefits in the Labour Code?

3. The Drafting Team has dropped the very important word “**substantially**” in Part L of the draft Labour Code dealing with Exemptions, without recording anywhere the reason why that Team chose to delete it? Did the ILO agree with such omission?

4. Kindly intimate whether the ILO is agreeable to the provisions in Sec. 1.8 of the Labour Code which enables the employer to get out of the purview of the Code by exerting undue influence on his workers. Kindly keep in view the fact that the **ILO had, in its ‘World Social Security Report’ released on 16.11.2010** said that there were many “informal labour practices” in India and that the people of India are exposed to “very high vulnerability” to poverty.

5. Is the ILO aware of the possible effect of this provision in Sec. 1.8 of the Code on the coverage of Household workers?

6. There is no provision analogous to Sec. 89 of the ESI Act in the proposed Labour Code, necessitating consultation with the Social Security Organisation before granting exemption. It means, the proposed Social Security Organisation is not going to be the monitoring agency of the Social Security net stated to be provided to the working population. So, the Social Security Organisation created by the Code will have **no say in the matter of exemption** sought by the employers. Did the ILO agree to such a drafting?

7. Sec. 89 ensures that the ESIC carries out the Constitutional mandate as per Art. 41. Reasonable opportunity was there for the ESIC to represent its case, when employers seek exemption. But, the present Code makes the Social Security Organisation a helpless spectator. Sec. 17 (2) of the EPF Act was also similar to it and it uses the phrase “not less favourable” instead of “substantial” in the ESI Act. **Why were these provisions diluted and dispensed with in the Code?** Did the ILO agree to such a proposition?

8. The present Labour Code is an attempt to amalgamate 15 labour laws. There have been various representative bodies to enforce those laws. The supreme bodies of these organizations do have in all not less than 59 employers’ representatives and 59 employees’ representatives. When all of them are brought together under a single umbrella body, the National Council under the Labour Code, there must, at least, be **15 representatives each for employers and employees**. But, the draft Labour Code shows that there would be only 3 representatives each.

Sl. No.	Name of the Organisation	Supreme Body	No. of employers’ and employees’ representatives.
1	ESI Act, 1948	ESI Corporation	10 + 10
2	EPF Act, 1952	Central Board	10 + 10
3	UWSS Act, 2008	National Board	7 + 7

4	Gratuity Act, 1972	Trust	
5	Cine Workers Act, 1981 (Rule 3)	Central Advisory Committee	7 + 7
6	Mica Mines Labour Welfare Fund Act, 1946	Central Advisory Committee	6 + 6
7	Limestone and Dolomite Mines Labour Welfare Fund Act, 1972	Central Advisory Committee	6 + 6
8	Iron Ore Mines, Manganese Ore Mines, Chrome Ore Mines Labour Welfare Fund Act, 1976	Central Advisory Committee	6 + 6
9	Beedi Workers Welfare Fund Act, 1976	Central Advisory Committee	7 + 7
	Total Members representing all these categories of employees		59 + 59
	No. of representatives proposed for the National Council under the Labour Code (Sec. 3.3)		3 + 3

Democracy means more noise and less problems. But, did the ILO recommend to such throttling of voice of the working population in the supreme body, the National Council?

7. Why has the **Permanent Disablement Benefit reduced** to 60% and Temporary Disablement Benefit reduced to 50% in the Code, when the ESIC provides about 90% in all such cases? Did the ILO agree to such a reduction?

8. When the ESIC provides about 70% of the wages as Sickness Benefit for 91 days in two consequent contribution periods, the present Sec. 63 (1) (a) and (b) of the Labour Code maintains **total silence about the period and quantum of Sickness benefits** and has left it for decision through Subordinate Legislation. How can the people know whether this Code is meant to improve the benefit or reduce the benefit that is already available to the insured persons covered under the ESI Act? Did the ILO agree to such a dilution?

9. When the ESIC provides **medical benefit to an insured person and his family right from the day of his entry** into insurable employment, the Code does not assure any such benefit. Does the ILO agree to such a proposition?

10. Why does the Code ignore Reg. 103-B (1) of the ESI Act, that enables the Permanently Disabled Persons to get **medical benefit until his superannuation** for him and his wife? Does the ILO agree to such a proposition?

11. Why does the Code not have any provision similar to Reg. 103 (B) (2) to enable a **retired insured person and his spouse to have medical cover** forever on payment of Rs. 120 pm? Does the ILO agree to such a proposition?

12. When ESIC provides attractive **unemployment allowance** of about 50% of wages for 12 months, why does Sec. 24 (5) (i) of the **Code does not give any such assurance**? Does the ILO agree to such a proposition?

13. Sec. 22.6 of the Code paves way for an enabling provision for providing "**subsidy**" to "**the employer**" under Sec. 22.6 (b) **from** the Welfare Funds, by the State Board and to provide for "**defraying the cost**" of "**provision of cost of transportation to and from work**" for the employees under Sec. 22.6 (d) (vi). Were the circumstances under which payment of "subsidy" was contemplated in these cases brought to the notice of the ILO by the ESIC authorities? Does the ILO know that it is totally contrary to Sec. **51-C. which provides benefits for Accidents happening while travelling in employer's transport**? Does the ILO agree to such propositions?

14. Sec. 88.2 of the Code says, that "the intermediate agency, for grant of license, shall satisfy the eligibility norms as may be stipulated, including minimum capital requirement, past track record, ability to provide guaranteed returns, cost and fees, geographical reach, customer base, information technology capability, human resources and such other matters as may be stipulated." Is it not clear from this provision that the intention is to allow private players to have a field day in the matter of social security? Will the ILO inform the country in which such action has been taken earlier and **found to be successful, in the long run**?

15. Already, the ILO has, in November 2010, had accused India for its informal labour practices. "India has performed poorly in providing social security protection to its people until recently with 'very high vulnerability' to poverty and informal labour practices in the world, according to a report released by the International Labour Office (ILO) today" Times of India - 16.11.2010. In its first comprehensive 'World Social Security Report', the ILO has suggested that India has not done enough in the arena of social security protection, which is reckoned as the "human face of globalisation, in line with its fiscal status". Does not the Government of India, through the Labour Code, reduce the benefits already being given? Does the ILO support this stand of the Government of India?

16. The draft Labour Code vests the disciplinary and penal powers to regulate the private agencies, in the State Board and Central Board, as bodies, as per Sec. 90 and 93 of the Labour Code, and not in the Director General or the Commissioners of the respective states. It is intended to save the errant middle-men agencies from being punished. These sections will facilitate lobbying through politicians. Does the ILO agree to such a proposition?

It would be helpful, if you could clarify these doubts so that the role played by the ILO in the matter of preparation of Labour Code is understood in right perspective by the workforce of India.

Yours faithfully,

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