

The Code on Wages, 2019

For presentation purpose only

7 October 2020



Subject matter experts

We will discuss...

- Objectives and Overview
- Key definitions and their salient aspects
- Chapters of the Code on Wages
- Employer's obligations
- Offences and Penalties
- Draft Code on Wages (Central) Rules, 2020 – Key provisions
- Next steps





Objectives and Overview

The Code on Wages, 2019

Legislations subsumed

The Payment of Wages Act, 1936



To ensure payment of wages to employees are disbursed on time and no undue deductions are made

The Minimum Wages Act, 1948



To enable fixing of minimum rates of wages in certain employments

The Payment of Bonus Act, 1965



To provide for payment of bonus to persons employed in certain establishments on the basis of profits or production or productivity

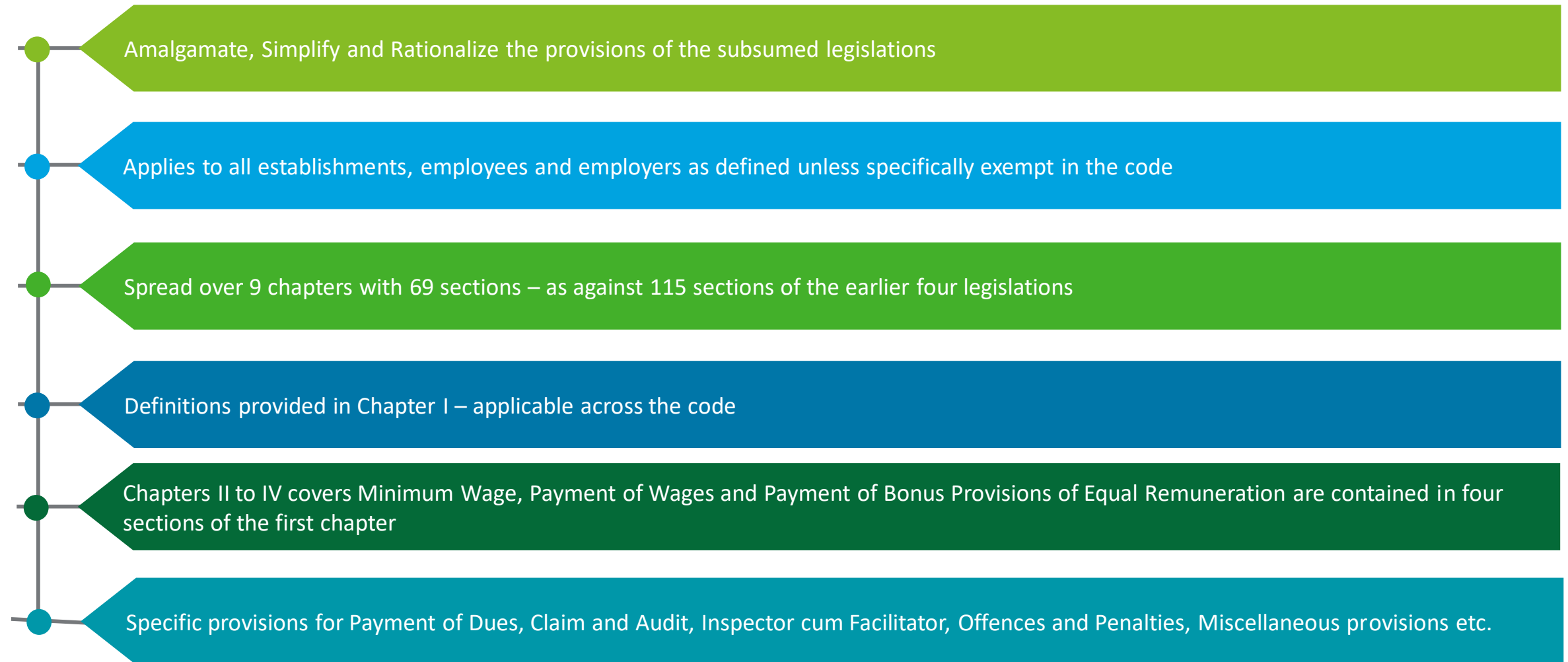
The Equal Remuneration Act, 1976



To mandate equal remuneration and to prevent gender discrimination in employment matters

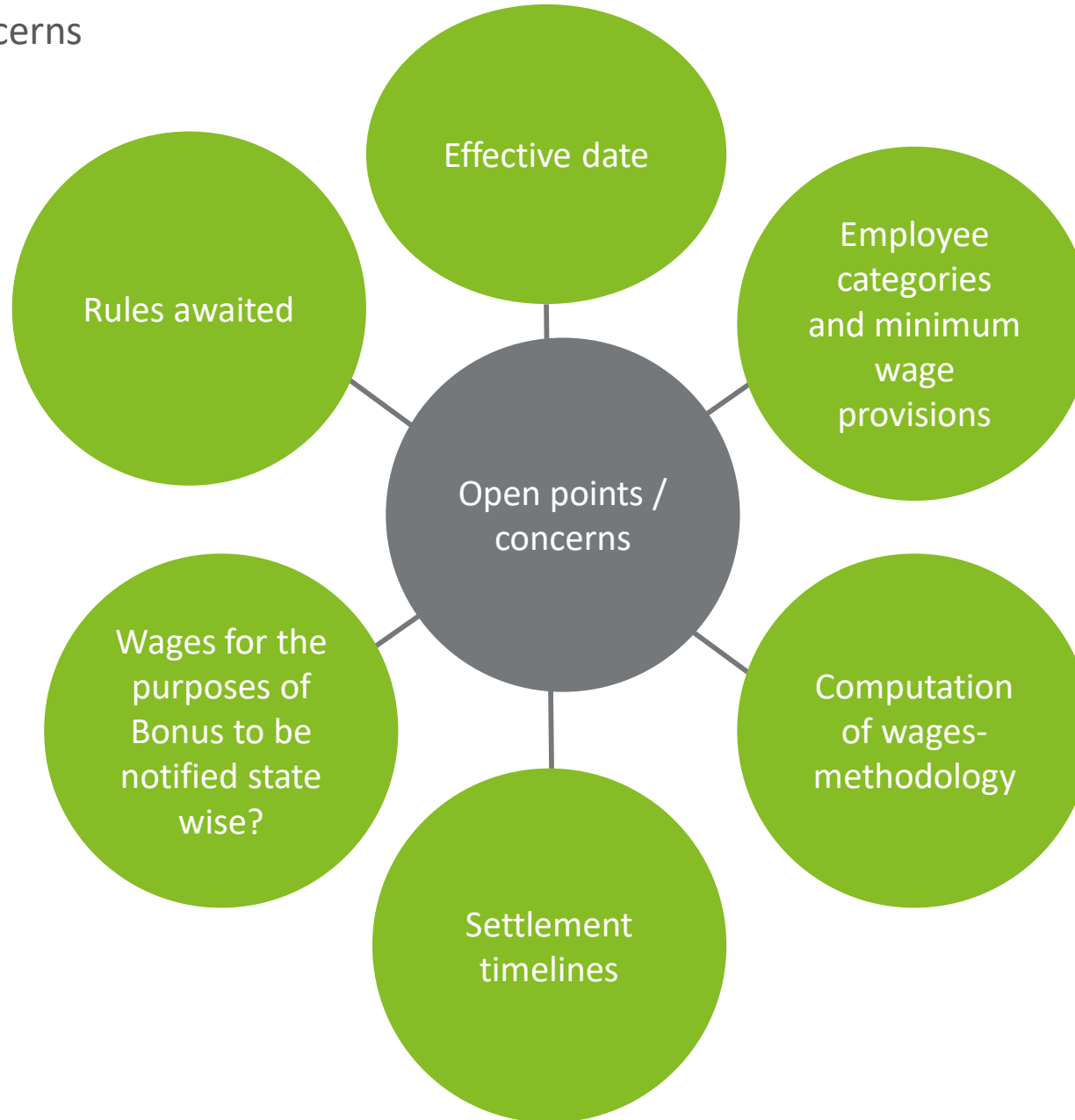
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Objectives and Overview



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Open points / concerns





Key definitions and their salient aspects

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Definition of wages

Means **all remuneration** whether by way of **salaries, allowances or otherwise**, expressed in terms of money or capable of being so expressed which would if the terms of employment, express or implied, were fulfilled, **be payable to a person employed in respect of his employment** or of work done in such employment, and includes,—

- a) Basic pay;
- b) Dearness allowance; and
- c) Retaining allowance, if any.

Specified Exclusions

Statutory bonus	Value of house accommodation/supply of water, light, medical attendance or other amenity	Employer's contribution to Provident fund, pension and interest accrued thereon	Conveyance allowance/ value of travelling concession
Sum paid to defray special expenses	House Rent Allowance	Remuneration payable under award or settlement	Overtime Allowance
Commission	Gratuity payable on termination	Retrenchment Compensation and Other Retiral Benefits/Ex-gratia	

- Exclusions – other than highlighted components - capped at 50% of total remuneration
- Remuneration in kind to be upto 15% of total remuneration

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Computation of wages

Particulars	Monthly Salary (in INR) – Situation A	Monthly Salary (in INR) – Situation B
	Support Role	Sales Employee
Basic salary (50%/ 40% of CTC)	25,000	20,000
House Rent Allowance - 50% / 40% of Basic Salary	12,500	8,000
Leave Travel Concessions	12,000	5,000
Conveyance/ Fuel reimbursements	3,000	3,000
Variable Pay (Fluctuates monthly)	-----	7,000
Employer Contribution to PF	3,000	2,400
Special allowance	4,500	14,600
Total	60,000	60,000
Mobile Reimbursements	-----	3,000

Computation of Wages:

Situation A:

- Wages = Basic + Special Allowance
- Wages = 25,000 + 4,500 = 29,500 + Adjustment for maximum cap of exclusions (500) = 30,000

Situation B:

- Wages = Basic + Variable Pay + Special Allowance
- Wages = 20,000 + 7,000 + 14,600 = 41,600
- Can mobile expense be regarded as sum paid to defray special expense and hence to be excluded?

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Key definitions

Employer	Means a person who employs whether directly or through any person or on his behalf or on behalf of any person, one or more employees in his establishment, and includes occupier and manager in case of a factory. In case of any other establishment, the person who has ultimate control over the affairs of the establishment, a manager or managing director who has been entrusted with the affairs. Also includes a Contractor and Legal Representative of the deceased employer
Employee	Any person other than an apprentice employed on wages by the establishment to do any skilled, semi-skilled, unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment are express or implied and also includes a person declared to be an employee by the appropriate government, does not include any member of the Armed Forces
Establishment	Means any place where any industry, trade, business, manufacture or occupation is carried on and includes Government establishment
Worker	Any person other than an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational clerical or supervisory work for hire or reward whether the terms of employees be express or implied. Also includes working journalists and sales promotion employees
Contractor	Means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or supplies contract labour for any work of the establishment as mere human resource and includes a sub-contractor



Chapters of the Code on Wages

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Minimum Wages

Particulars	Under the Code on Wages	Comments
Applicability	All employments – Not restricted to Scheduled Employment	Wider coverage – all entities would get impacted. Concept of scheduled employment done away with
Wages	Wide definition with specific exclusions - HRA covered under exclusions	The minimum wages act prevalent currently includes HRA
Rest day / Normal working hours	Rest day for every period of seven days Rules to specify the hours of work which would constitute a normal work day	Draft rules indicated 8 hours of work plus aggregate rest period of one hour.
Overtime wages	Applicable beyond normal working hours at twice normal wages	Relevant for employees for whom minimum rate of wages has been fixed under the code – broad based?
Criteria for determining minimum wages	Skill sets, Geography or both Arduousness of work, working environment	Change from existing act which focuses on fixing minimum wages employment wise – lesser number of categories
National Floor Wages	Concept of Floor wages brought under the Code itself. Central Govt. to fix National Minimum Wage (or Floor Wage).	Minimum wages cannot fall below the floor rate
Revision of minimum wages	Minimum wages be revised at-max within 5-year intervals	Provision is similar under the current Act

Computation of wages

Case study

Example

Particulars	Amount (in INR per month) – Scale A	Amount (in INR per month) – Scale B
Basic salary (40% of CTC)	26,667	83,333
House Rent Allowance - 50% of Basic Salary	13,333	41,667
Leave Travel Concessions	3,333	37,500
Conveyance/ Fuel reimbursements	1,600	16,667
Variable Pay	4,167	8,333
Employer Contribution to PF	3,200	10,000
Gratuity included in CTC	1,283	4,008
Special allowance	13,084	6,825
Total	66,667	208,333







Amount of Wages

- Wages as defined under the Minimum Wages Act
 - Basic, special allowance and HRA to be included
- ***What would be the wages as per the Code***
 - Will threshold have an impact?
 - Quantum of overtime under the Code, impact white collared employees?

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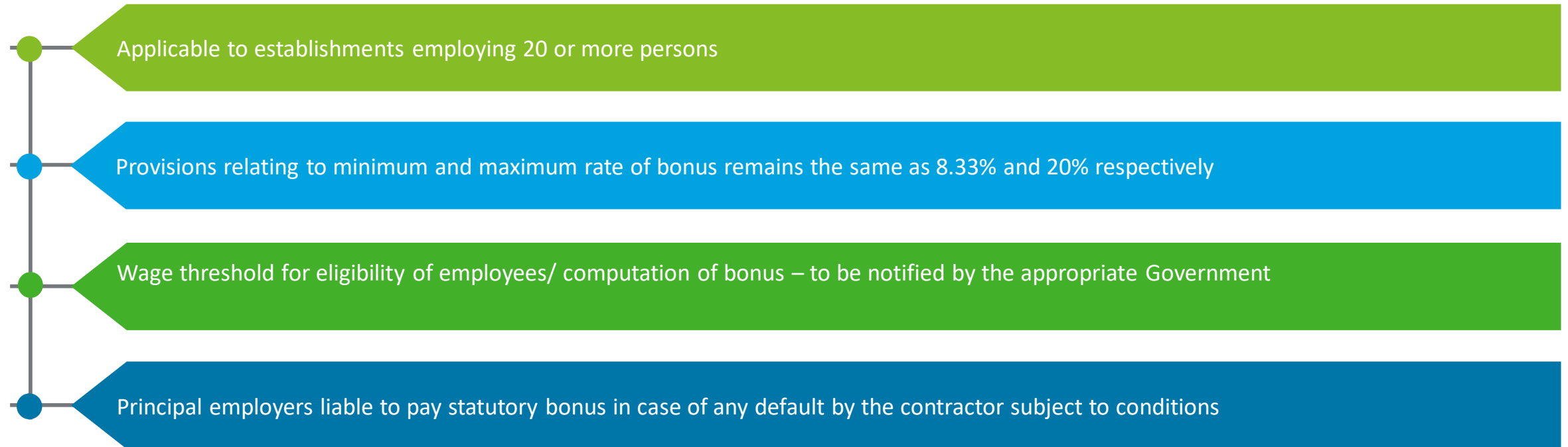
Payment of Wages

Changes from provisions in Payment of Wages Act

	Applicability	<ul style="list-style-type: none">• No wages threshold as against INR 24,000 in the current Act• All establishments covered as against specified industries/ factories under the current Act
	Meaning of wages	<ul style="list-style-type: none">• Conveyance allowance/ travelling concession, HRA, remuneration payable under any award or settlement or order of Court/Tribunal, any overtime allowance will be included as Wages for this chapter - specific exception to the exclusion
	Quantum of deductions	<ul style="list-style-type: none">• Permissible deductions are specified – aggregate deductions cannot exceed 50% - includes PF and Pension contributions, tax withholdings, advances, fines,
	Timelines for wage payment	<ul style="list-style-type: none">• Daily wage period – At the end of the shift• Weekly wage period – On last working day of the week• Fortnightly wage period – by end of the second day after expiry of fortnight• Monthly wage period – by seventh day of the succeeding month
	Wage period	Cannot exceed a month – challenge in managing new joinee payrolls?
	Final settlement for removal, resignation, dismissal, retrenchment	Extremely short timeline of 2 working days introduced – no defined timelines in the current Act

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Payment of Bonus



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Equal Remuneration



Applicability

- Applicable to all establishments;
- Reference changed from Male / Female to Gender
- No discrimination to be done on the ground of sex for work of same or similar nature – term “experience” included in addition to skill, effort and responsibility



Remuneration/ Wages

- Wider definition – now covers all remuneration;
- Conveyance allowance/ travelling concession, HRA, remuneration payable under any award or settlement or order of Court/Tribunal, any overtime allowance excluded subject to threshold
- Basis for determining equal wages to all genders



Employee

- Specific definitions for employee and worker;
- Employee refers to individual employed in an establishment and worker to one employed in an industry



Employer's obligations Offences and Penalties

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Employer's obligations

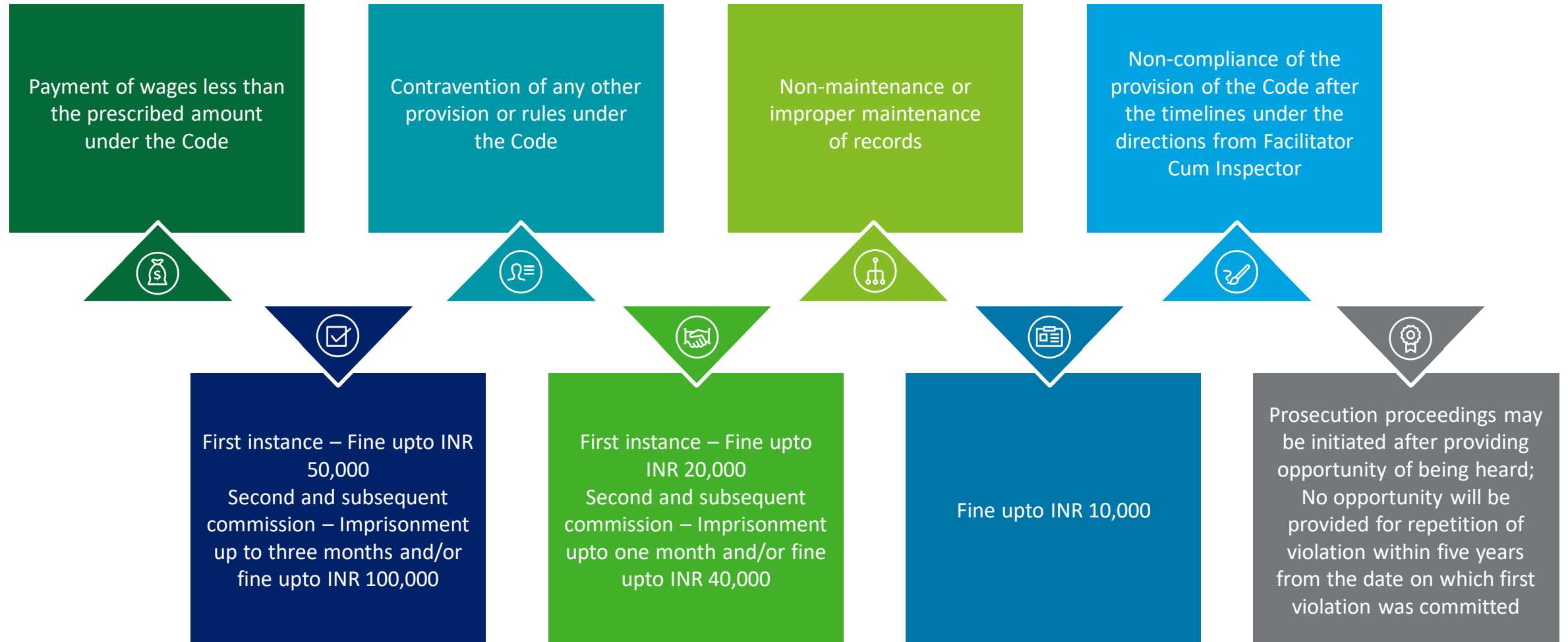
Particulars	Code on Wages
Responsibilities	<ul style="list-style-type: none">• Ensuring payment of minimum and overtime wages• Payment of wages within the timelines prescribed – for monthly wage period – before seventh of the succeeding month, for wages paid on a fortnightly basis – by second day after end of the fortnight; for dismissed/ resigned employees wages to be settled within 2 working days:• Adhering to the limits specified for deductions from wages• Complying with the limits relating to working hours and provide days of rest as specified
Records/ Registers	Maintenance of employee registers in prescribed form electronically/ otherwise
Wage Slips	Issuance of wage slip in prescribed form and manner to each employee
Notice display	Display of notice on the notice board at prominent place of the establishment
Payment of dues on death	In death cases, dues to be paid to the person nominated or to be deposited with the specified authority (being deputy chief labour commissioner (central)) within 3 months/ 6 months

List of deductions from wages – key items:

Fines imposed, deductions for absence from duty, deductions for damage or loss of goods, deductions for employer provided house accommodation, amenities/ facilities or services provided, deduction for recovery of advances, income tax deductions, contributions to pension/ social security fund or scheme

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Offences and Penalties



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Case study

- Invincible Private Limited ('IPL') is into management consulting business and uses Care Solutions Private Limited ('CSPL') for housekeeping services.
- IPL makes salary payment to its employees on a monthly basis. CSPL makes wage payment to its employees on a fortnightly basis.

Questions

- IPL pays salary relating to January 2021 on 15 February, 2021. Will this be an issue?
- CSPL has paid wages less than the prescribed minimum for a category of employees from the effective date of the Code? What will be the penalty exposure?
- What happens when Invincible Pvt. Ltd pays CSPL within the prescribed timelines and yet CSPL still does not pay wages to its employees? What would be penalty exposure and on whom the penal exposures would lie?
- If CSPL had paid lower wages in a previous instance (prior to the effective date of the Code), will it have an impact on the penalty quantum?



Draft Code on Wages (Central) Rules, 2020 – Key provisions

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Draft Code on Wages (Central) Rules, 2020 – Key provisions



Manner of calculation of minimum wages

- Broadly, 6 criterion have been prescribed
- Standard working class family to comprise of 4 members equivalent to 3 adult consumption units.
- Yardsticks for food, clothing, shelter specified
- Expenses on utility, healthcare, education, recreation etc. factored



Norms for fixation of minimum wage rate

- CG to divide the concerned geographical area into 3 viz. metropolitan, non-metropolitan and rural area
- CG to also categorise employee occupations into 4 viz. unskilled, semi-skilled, skilled and highly skilled.
- Occupations specified in Schedule E to the rules, with a provision for modification/ addition/ deletion therein.



Time Intervals for revision of DA

- The rules specify COLA and cash value of concessions to be computed once before April 01 and October 01 every year
- Would impact DA payable to the employees



Number of hours of work

- Normal working day to comprise of 8 hours of work with an aggregate rest period of 1 hour
- Work day inclusive of rest intervals not to spread over more than 12 hours on any day



Rest Day

- Employee to be allowed a day of rest every week
- Preferred rest day to be Sunday – but employer can fix any other day as a weekly rest day
- Substituted rest day if employee works on stipulated day of rest.
- For working on a rest day employee to be paid at overtime rates and for substituted rest day at normal rate.



Recoveries from Wages

- Where deductions from wages exceed 50% - excess to be carried forward and recovered from succeeding wages of the wage period
- For imposition of fines, Deputy Chief Labour Commissioner (Central) shall be the authority
- Employee to be given an opportunity to offer an explanation – for recoveries relating to damages or loss

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Draft Code on Wages (Central) Rules, 2020 – Key provisions



Payment of Dues and Claims

- In death cases, dues to be paid to the person nominated or to be deposited with the specified authority (being deputy chief labour commissioner (central)) within 3 months/ 6 months
- Rules prescribe a maximum timeframe of seven years for disbursement of dues.
- Possible to file a combined application by employees for claiming dues



Forms, registers and wage slips

- Rules permit filing of forms, maintenance of registers and issuance of wage slips electronically.
- Fines/ deductions and realisations thereof to be recorded in a register prescribed in Form I.
- Form for composition of offense can be filed in a prescribed Form VI.
- Need for modification to systems / technological updates to ensure compliance



Other Provisions

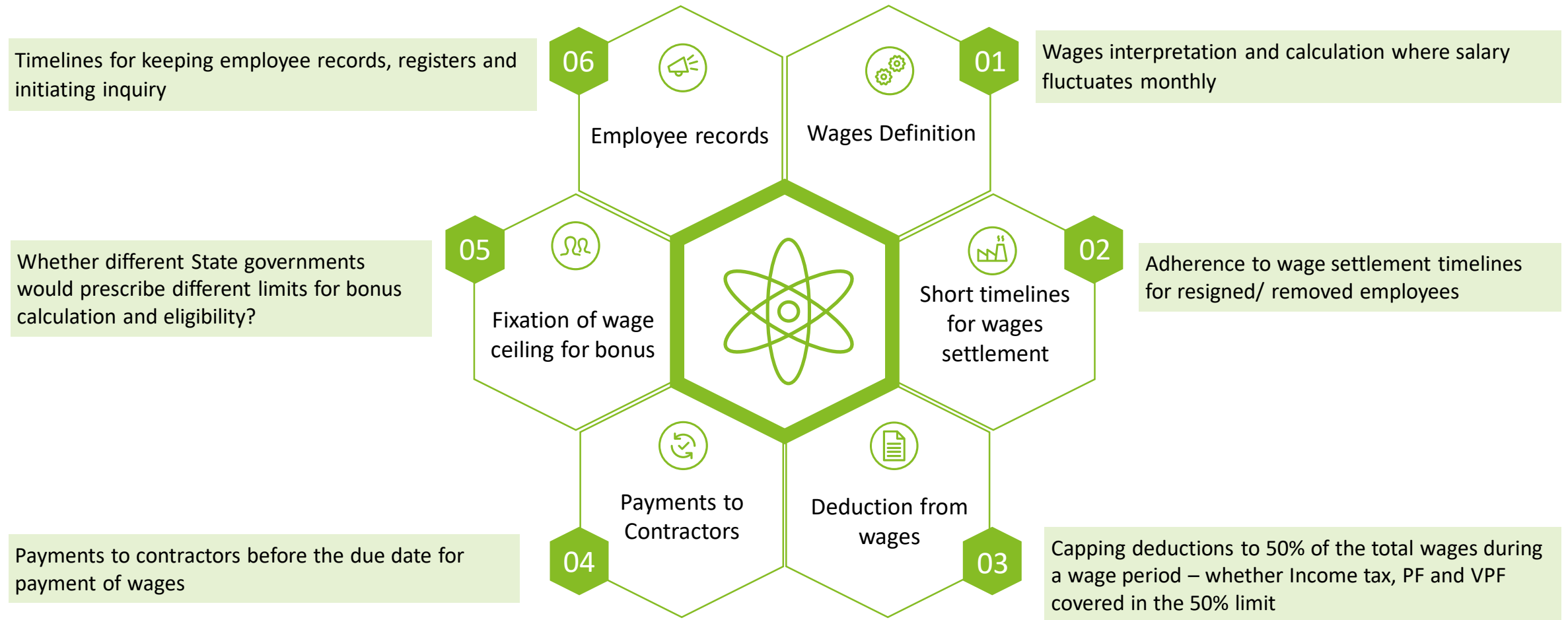
- Inspection scheme under the code to be formulated by the Chief Labour Commissioner (Central).



Next steps

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Ambiguities / Compliance challenges



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Action list for employers

Review employee's salary structure

- Is your current compensation structure built primarily on tax efficiency?
- Will the provisions under the labour codes necessitate a revisiting?

Assess the financial impact

- Will the changes in the wage definition have a hit on the financial statement?
- Will extension of coverage for overtime impact your P&L?
- What would be the exposure?
- Steps required to meet the additional cost

Identify gaps/ exposure

- How do your current policies, process and procedures map with the requirements in the code on wages?
- Have you built in the technology solutions expected for compliance envisaged in the code on wages?

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