

Rules & Regulations Review

Draft Rules under Code on Wages, 2019

Key Features of the Rules

- ◆ The Draft Rules lay down the criteria for fixing the minimum rate of wages per day for central sector employees. These criteria include three consumption units per household, a net intake of 2700 calories per day per consumption unit, and 10% expenditure on rent.
- ◆ The minimum wages will be fixed after taking into account the type of area (metropolitan, non-metropolitan and rural areas) and the skill category of the employee (unskilled, semi-skilled, skilled and highly skilled employees). An endeavour will be made to revise the dearness allowance twice a year, before April 1 and October 1.
- ◆ The Draft Rules also allow the central government to decide the floor wage (below which minimum wage cannot be fixed) on the basis of minimum living standards taking into account food, clothing, and housing, for a family of three consumption units. The floor wage will be revised every five years and periodic adjustments may be made to accommodate variations in cost of living.

Issues and Analysis

- ◆ The Draft Rules provide a methodology to fix minimum wages based on various criteria, such as the consumptions units per family and expenditure on housing. Over the years, expert committees have presented varying views on the norms which may be used to calculate minimum wages.
- ◆ The Draft Rules do not prescribe a methodology to determine the floor wage. The Standing Committee on Labour (2019) which had examined the Code on Wages, 2017 had recommended that a methodology should be prescribed to decide floor wage to remove any arbitrariness or discretion in its determination. Further, while the Code on Wages, 2019 requires a revision of minimum every five years, no such mandatory requirement has been prescribed for floor wage. There is also no provision for revision of dearness allowance in the case of floor wage.

The Draft Rules under the Code on Wages, 2019, dated November 1, 2019

The central government is in the process of consolidating 29 central laws regulating various aspect of labour into four codes. These four codes relate to: (i) wages, (ii) occupational safety and health, (iii) social security, and (iv) industrial relations. While the Code on Wages, 2019 has been passed by Parliament, bills on the other three areas have been introduced in Parliament.

The Code on Wages, 2019 regulates wage and bonus payments in all employments in which any trade, industry, business or manufacturing is carried on. It replaces four laws. These are: (i) the Payment of Wages Act, 1936, (ii) the Minimum Wages Act, 1948, (iii) the Payment of Bonus Act, 1965, and (iv) the Equal Remuneration Act, 1976. Following the notification of the Code on Wages, 2019, the government circulated the Draft (Central) Rules to the Code on November 1, 2019 for public feedback.

KEY FEATURES

These Draft Rules will apply to all central sector establishments. These include: (i) railways, mines, oilfields, and banking companies, and (ii) establishments carried on by or under the authority of the central government.

- **Calculation of minimum wage:** The Draft Rules lay down the criteria for fixing the minimum rate of wages per day for employees. These criteria include: (i) three adult consumption units per household, (ii) daily intake of 2700 calories per consumption unit, (iii) 10% expenditure on rent, (iv) 20% expenditure of fuel, electricity, and miscellaneous items, and (v) 25% expenditure on education, medical requirements and contingencies.
- **Norms for fixing minimum wage:** Minimum wages will be calculated on the basis of the geographical area of employment and the skill category of an employee. For this purpose, the central government will divide the geographical area into three categories: metropolitan (population of 40 lakh or more), non-metropolitan (between 10 lakh and 40 lakh), and rural areas (all other areas). The Draft Rules categorise occupations into four skill categories: unskilled, semi-skilled, skilled and highly skilled. The central government will constitute a committee (Chair: Chief Labour Commissioner) to advise on modifications in skill categorisation of these categories of occupations. A separate technical committee may be constituted to recommend the fixing of minimum wages for working journalists.
- **Revision of dearness allowance:** The Draft Rules state that an endeavour will be made to revise the dearness allowance linked to the minimum wage twice a year; before April 1 and October 1 each year.
- **Calculation of floor wage:** According to the Code on Wages 2019, the central government will fix a floor wage. The minimum wage must be higher than the floor wage. The Draft Rules provide that the central government will decide the floor wage on the basis of minimum living standards taking into account food, clothing, and housing for a family of three consumption units. The floor wage may be revised every five years, and periodic adjustments may be made to accommodate variations in the cost of living.
- The floor wage will be decided in consultation with the Central Advisory Board and certain state governments as the central government deems necessary. The Board will consist of: (i) employers, (ii) employees (in equal number as employers), (iii) independent persons, and (iv) five representatives of state governments. The Board will advise the central government on various issues including minimum wage fixation.
- **Work hours:** The Draft Rules state that a normal working day will constitute a maximum of nine hours of work per day, with a maximum spread over of 12 hours including rest intervals. The spread over may be increased to 16 hours in certain cases, such as: (i) where employment is intermittent, and (ii) the employee is engaged in an unforeseen emergency. Further, every employee will be allowed one rest day per week. The employer may substitute the rest day for any other day of the week, which may fall within five days before or after the scheduled rest day. Substituted rest days will be eligible for overtime wages.
- **Inspection Scheme:** As per the Code, the appropriate government may specify an inspection scheme which will provide for the generation of web-based inspection and calling for inspection-related information under the Code electronically. The Draft Rules state that Chief Labour Commissioner (Central) will formulate an inspection scheme, with the approval of the central government.

KEY ISSUES AND ANALYSIS

Overview of recommendations on determining a minimum wage

Code:
Section 6(6);
Draft Rules:
Rule 3(1)

The Draft Rules lay down the criteria for fixing the minimum rate of wages per day. These criteria include: (i) three consumption units per household, (ii) a net intake of 2700 calories per day per consumption unit, (iii) 10% expenditure on rent, (iv) 20% expenditure of fuel, electricity, and miscellaneous items, and (v) 25% expenditure on education, medical requirements, recreation and other contingencies. Over the years, various expert bodies have presented differing views about the norms to be used for fixing a methodology for determining minimum wage.

For example, on the issue of daily calorie intake, the 15th Labour Conference (1957) recommended a daily calorific intake of 2700 calories.¹ In comparison, the Expert Committee (2019) which examined the methodology to determine a National Minimum Wage (that is, a floor wage) relied on the NSSO Consumer Expenditure Survey (2011-12) and other literature to suggest that calorie consumption requirements for an adult worker have declined over the years, since a lower proportion of adult workers are now engaged in heavy work compared to earlier years.² The Draft Rules fix the calorific intake at 2700 calories.

Similarly, expert bodies have differed on the size of an average household, which determine the number of consumption units per working family (i.e., the number of persons each wage earner supports) adjusted for age and gender. The number of consumption units is one of the factors used for determining minimum wage. As per the 15th Labour Conference (1957), an average household comprises four people (or an equivalent of three consumption units).² The National Commission on Rural Labour (1991) reiterated this recommendation.³ This is also the basis on which the Draft Rules have recommended fixing a minimum wage based on three consumption units. However, the 2019 Expert Committee relied on data from the NSSO Consumer Expenditure Survey (2011-12) to suggest that the population composition has changed over time to an average household size of 4.4 people. This changed composition corresponds to 3.6 consumption units per household.²

Table 1 summarises the recommendations made by various Committees on the norms to fix a minimum wage.

Table 1: Recommendations of Committees on norms for fixing minimum wage

Source of Report	Calorific Requirements	Non-food expenditure	Other requirements	Consumption Units
Indian Labour Conference 1957	<ul style="list-style-type: none"> 2700 cal per unit 	<ul style="list-style-type: none"> Clothing requirement of 66 metres per family. Rent corresponding to minimum area given under Industrial Housing Scheme (now repealed). 	<ul style="list-style-type: none"> Fuel, lighting, and other items of expenditure to constitute 20% of the minimum wage. 	<ul style="list-style-type: none"> 3
Study Group on Wages, Income, and Prices 1978 (i.e. the floor wage)	-	-	<ul style="list-style-type: none"> Per capita income adjusted for the labour participation rate. The average national income per consumption unit. Per capita rural consumption expenditure 	<ul style="list-style-type: none"> Between 1 and 2
National Commission on Rural Labour 1991 (i.e. the floor wage)	<ul style="list-style-type: none"> 2400 cal in rural areas and 2100 cal in urban areas 	-	<ul style="list-style-type: none"> Must be independent of employment. 	<ul style="list-style-type: none"> 3
Expert Committee on Methodology for Fixing the National Minimum Wage 2019 (i.e. the floor wage)	<ul style="list-style-type: none"> 2400 cal 	<ul style="list-style-type: none"> Rs 591 per month for essential expenditure, and Rs 175 per month for non-essential expenditure 	<ul style="list-style-type: none"> Based on geographic regions and prevailing socio-economic conditions 	<ul style="list-style-type: none"> 3.6
2019 Draft Rules	<ul style="list-style-type: none"> 2700 cal per unit 	<ul style="list-style-type: none"> Clothing requirement of 66 metre per family; 10% of minimum wage on housing rent expenditure; 25% of minimum wages for expenditure on education, healthcare, and contingencies. 	<ul style="list-style-type: none"> Fuel, lighting, and other items of expenditure to constitute 20% of the minimum wage. 	<ul style="list-style-type: none"> 3

Sources: Various Committee Reports, PRS.

No provision for mandatory revision of dearness allowance

Code:
Section 8;
Draft Rules:
Rule 5

The Draft Rules state that an *endeavour* will be made to revise the dearness allowance linked to the minimum wage twice a year; before April 1 and October 1 each year. The dearness allowance refers to the cost of living allowance and the cash value of the concession in respect of essential commodities (at concession rate). The Draft Rules do not make it mandatory to revise the dearness allowance at these intervals. Currently the central government revises dearness allowance twice a year (in April and October), on the basis of changes in the Consumer Price Index for Industrial Workers, for certain occupations such as agriculture, mining, and construction work.⁴

Nature and determination of floor wage

Code:
Section 9;
Draft Rules:
Rule 11

As per the Code on Wages, 2019, the central government may fix a floor wage for the country. We highlight some issues with the formula for calculation of floor wages and its revision.

Detailed methodology to fix floor wage not specified

As per the Code on Wages, 2019, the central government may fix a floor wage for the country. Different floor wages may be decided for different geographic regions. Minimum wages can't be fixed lower than the floor wage.

The concept of a floor wage was introduced in 1996 based on the recommendation the National Commission on Rural Labour (1991).³ A floor wage was recommended as a baseline wage to combat low minimum wages and state-wide disparities in the fixation of minimum wages across various scheduled employments.² The Draft Rules allow the central government to decide the floor wage on the basis of minimum living standards taking into account food, clothing, and housing, for a family of three consumption units. However, the Draft Rules do not specify the exact norms for fixing the methodology for a floor wage based on these criteria. Further, the Draft Rules do not clarify whether the floor wage will be fixed for the entire country or for different geographic regions.

Note that under the current legal framework, the floor wage is fixed on the basis of the recommendations of the 15th Indian Labour Conference (ILC), 1957 and a judgement of the Supreme Court (1992), which were re-iterated at the 44th ILC (2012) and 46th ILC (2015).^{1,2,5} These norms are identical to the norms specified for fixation of minimum wage. These include: (i) three consumption units, (ii) calorific requirement of 2,700 calories per adult per day, and (v) 20% of total minimum wage for fuel, lighting, and other miscellaneous items. The Standing Committee (2019), which had reviewed the Code on Wages, 2017, had endorsed this formula.⁶ The Committee had stressed on the need to adopt this methodology to remove arbitrariness and unwarranted discretion in fixing a floor wage.

No provision for mandatory revision of floor wages or revision of dearness allowance

The Draft Rules do not make it mandatory to revise the floor wages periodically. While the Draft Rules specify that the minimum wages *must* be revised every five years, the floor wage *may* be revised every five years. Note that under the current legal framework, the floor wage is revised every two years.² The National Commission on Rural Labour (1991) had recommended that the floor wage could be revised every two years.³ The 2019 Expert Committee recommended that the consumption basket expenditure used in the estimation of minimum wages be revised every five years, on the basis of data compiled by the National Sample Survey Organisation.²

Further, while the Code provides for revision of dearness allowance twice a year in the case of minimum wage, a similar provision has not been provided for in the case of a floor wage. The Draft Rules provide that the central government may undertake adjustments for variations in the cost of living periodically in consultation with the Central Advisory Board. However, the period for such adjustment has not been specified.

In this context, the National Commission on Rural Labour (1991) had noted that the base wage must be a subsistence wage, and so the dearness allowance component must be revised every six months, on the basis of the Consumer Price Index.³ The 2019 Expert Committee recommended that there should intermediate adjustments to consumption basket expenditure on the basis of the Consumer Price Index, to reflect changes in the cost of living.²

Absence of limit on weekly work hours may violate an ILO Convention

The Draft Rules state that a normal working day will comprise nine working hours. However, they do not specify a limit on the number of working hours per week. This may violate an ILO Convention ratified by India, which fixed the maximum weekly work hours for industrial establishments at 48 hours.⁷ Note that the current Minimum Wages (Central) Rules, 1950 specify that the normal working week will comprise 48 hours per week.⁸

¹ “Minimum Wages”, Press Information Bureau, Ministry of Labour and Employment, March 19, 2012, <https://pib.gov.in/newsroom/PrintRelease.aspx?relid=81227>.

² Report of the Expert Committee on Determining the Methodology for Fixing the National Minimum Wage, Ministry of Labour and Employment, January 8, 2019, https://labour.gov.in/sites/default/files/Committee_on_Determination_of_Methodology.pdf.

³ Report of the National Commission on Rural Labour, Ministry of Labour Report, 1991, <https://www.indianlabourarchives.org/bitstream/123456789/190/1/Report%20of%20the%20National%20Commission%20on%20Rural%20Lab%20our.pdf>.

⁴ S.O. 186(E)-193(E), Gazette of India, Ministry of Labour and Employment, January 19, 2017, <https://labour.gov.in/sites/default/files/MW%20Final%20%281%29.pdf>.

⁵ Workmen represented by Secretary v. Reptakos Brett & Co Ltd (1992) 1 SCC 290.

⁶ “Report No. 43: The Code on Wages Bill, 2017”, Standing Committee on Labour and Employment, December 17, 2018, https://www.prsindia.org/sites/default/files/bill_files/SCR-%20Code%20on%20Wages%20Bill%2C%202017%20%281%29.pdf.

⁷ Convention C001 – Hours of Work (Industry) Convention, 1919, International Labour Organisation, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312146:NO.

⁸ The Minimum Wages (Central) Rules, 1950, https://labour.gov.in/sites/default/files/TheMinimumWages_Central_Rules1950_0.pdf.

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