

Rules and Regulations Review

Draft Rules under Occupational Safety, Health and Working Conditions Code, 2020

Key Features of the Rules

- ◆ The Code provides that no worker will be allowed to work more than eight hours a day. The Draft Rules provide that (i) maximum weekly hours of work will be 48 hours, and (ii) the work day will not exceed 12 hours a day, inclusive of intervals for rest. The Rules contain exemptions (for urgent repairs, or exceptional work load, among others) wherein the work day may be extended beyond 12 hours.
- ◆ The Code provides that workers willingly working in excess of eight hours per day or 48 hours per week will be entitled to overtime pay at twice the wage rate. The Draft Rules provide that no worker can exceed 125 hours of overtime work in a quarter.
- ◆ The Draft Rules provide that every establishment employing 500 or more workers shall constitute a Safety Committee.
- ◆ The Code allows for the employment of women between the hours of 7pm and 6am with their consent and subject to provisions to ensure their safety. As per the Draft Rules employers must provide transportation facilities for pick-up and drop, and ensure well-lit workplace, including areas connecting to facilities such as washrooms.

Issues and Analysis

- ◆ The Draft Rules do not provide for certain matters for which the Code requires the government to frame rules. The Code empowers the central government to make rules on working conditions and welfare facilities to be provided by the employer. This may include prescribing requirements for cleanliness, washrooms, canteens, and appointment of Welfare Officers. Existing laws (being replaced by the Code) such as the Factories Act and the Mines Act, contain such provisions.
- ◆ The Draft Rules provide certain qualifications for contractors to obtain a licence to engage contract labour. However, a person whose licence has been revoked or suspended, would not be disqualified from obtaining another licence immediately. This varies from rules under the Contract Labour Act, and laws such as the Food Safety and Standards Act, and Drugs and Cosmetics Act, which disqualify a person whose licence has been revoked or suspended from obtaining another licence for varying periods.
- ◆ The Draft Rules require a qualified medical practitioner conducting a medical examination of mine workers to record their Aadhaar number. This may violate the Supreme Court's *Puttaswamy-II* judgement. The Court had ruled that the Aadhaar number may only be made mandatory for expenditure on a subsidy, benefit or service incurred from the Consolidated Fund of India.

In 2019, the central government consolidated 29 central laws regulating various aspects of labour into four codes. These Codes regulate: (i) wages, (ii) industrial relations, (iii) social security, and (iv) occupational safety, health and working conditions. All these Codes have been passed by Parliament. The Occupational Safety, Health and Working Conditions Code, 2020 replaces 13 existing Acts regulating health, safety and working conditions including the Factories Act, 1948, the Mines Act, 1952, and the Contract Labour (Regulation and Abolition) Act, 1970. Following the notification of the Occupational Safety, Health and Working Conditions Code, 2020, the government circulated the Draft (Central) Rules to the Code on November 19, 2020, for public feedback.

KEY FEATURES

The 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.

- **Registration:** The Draft Rules provide for electronic registration of all establishments on the Shram Suvidha portal. For a registration application that is complete, a certificate of registration is to be issued by the registering officer immediately, and no later than seven days. The Shram Suvidha portal (already in use for a limited set of Central Acts) is a single forum for registration of establishments, filing of returns, and submission of reports by Inspectors.
- **Work hours:** The Code provides that no worker will be allowed to work more than eight hours a day. The Draft Rules provide (i) for maximum 48 hours of work per week, and (ii) for the work day to not exceed 12 hours a day, inclusive of intervals for rest. The Rules contain exemptions (for urgent repairs, or exceptional work load, among other reasons) wherein the work day may be extended beyond 12 hours.
- **Overtime:** The Code provides that workers willingly working in excess of eight hours per day or 48 hours per week will be entitled to overtime pay at twice the wage rate. The Draft Rules provide maximum overtime of 125 hours in a quarter. The Rules also provide for the method of calculation of overtime hours such that, overtime of between 15 to 30 minutes will count as 30 minutes of overtime, and overtime of more than 30 minutes will be considered as one hour of overtime.
- **Free medical examination:** The Code requires periodic medical examination for workers: (i) in dangerous operations or hazardous processes in factories, and (ii) those with exposure to toxic substances in plantations. Further, the Code empowers the Rules to specify the class of employees for whom free annual health examination must be provided by the employer. The Draft Rules provide that employers of factory, dock, mine, and building or other construction work must arrange for free medical examination for every worker above the age of 45. The Rules also provide for initial and periodic medical examinations for all persons employed in mines, regardless of age.
- **Safety Committee and Safety Officer:** The Code provides for the constitution of a Safety Committee in such class of establishments as may be prescribed. The Draft Rules provide that every establishment employing 500 or more workers shall constitute a Safety Committee. The Code provides for the appointment of Safety Officers in factories with 500 or more workers (250 for factories carrying on hazardous processes), in building and other construction work with 250 or more workers, and in mines with 100 or more workers. The Draft Rules provide that every mine with 100 workers will appoint one safety officer for the first 500 workers. Thereafter, an additional officer is required for every 500 workers.
- **Employment of women at night:** The Code permits employment of women between 7pm and 6am, with the consent of the worker, subject to conditions to ensure their safety. As per the Draft Rules employers must provide transportation facilities for pick-up and drop, and ensure well-lit workplace, including areas connecting to facilities such as washrooms. In case of a below ground mine, not less than three women employees must be on duty at any place.

KEY ISSUES AND ANALYSIS

Rules on several provisions of the Code not specified

The Draft Rules do not contain provisions on certain matters for which the Code requires the government to frame rules. The Draft Rules do not specify standards for working conditions and welfare facilities to be provided by the employer, which would deny benefits and rights available to workers under the Code. The Rules also omit provisions to operationalise maintenance of an inter-state migrant worker database, and the Social Security Fund, among others. These issues are discussed below:

Working conditions and welfare facilities

The Code empowers the central government to make rules on the working conditions to be maintained and welfare facilities to be provided by the employer. The Rules may prescribe requirements for cleanliness, ventilation, potable drinking water, lighting, among other matters, to ensure healthy and safe working conditions. The Rules may also specify provisions for welfare including washrooms, canteens, appointment of Welfare Officers, among others. The central government is responsible for making rules on these matters for establishments under their authority including mines, dock works, and building and other construction work.

However, the Draft Rules do not contain provisions on working conditions and welfare facilities. One of the forms contained in the Rules (which provides a format for establishments to file their annual return) briefly refers to welfare amenities. This form requires the establishment to report the provision of some welfare

facilities (such as canteens in establishments with 100 or more workers, ambulance rooms in mines with 500 or more workers) that are not otherwise required by the Code or the Rules. It is unclear whether establishments are required to provide these amenities or merely to report their status.

Central laws such as the Factories Act, 1948, the Mines Act, 1952, and the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (all of which the Code replaces), contain chapters on health, safety, and welfare.^{1,2,3} These Acts provide that establishments must be clean, have adequate ventilation and lighting, and controlled temperature to protect the health of workers. They also provide for welfare facilities including maintenance of creches, canteens, and first-aid and medical facilities.

Other matters not specified in the Rules

Code:
Sections 21,
111, 114, 115

The Draft Rules do not specify: (i) the form and manner of maintenance of the inter-state migrant workers database by the central and state government, (ii) the manner of administration of the Social Security Fund, and (iii) matters related to imposition of penalty by the appropriate authority, such as manner of holding enquiry, and form and manner of filing appeal against the decision of the authority.

Qualifications for issuing licence to contractors

Code:
Section 97,
98

The Draft Rules provide certain qualifications for a person to obtain a licence to engage contract labour. The applicant must not: (i) be an undischarged insolvent, or (ii) have been convicted of a crime in the last two years carrying an imprisonment of *more than* three months. The Rules also provide certain grounds for suspension or revocation of a licence (such as contravention of conditions of the licence or provisions of the Code). These grounds attract imprisonment of *up to* three months. This would not disqualify a contractor from re-applying for a licence even if the previous licence was suspended or revoked. The rationale for not disqualifying a contractor whose licence was revoked or suspended from immediately obtaining another licence is unclear.

Draft Rules:
Rule 69

Note that this varies from the provisions of the existing contract labour rules (to be replaced by the Draft Rules). The Contract Labour (Regulation and Abolition) Central Rules, 1971 disqualify a person whose licence has been revoked or suspended from obtaining another licence for three years.⁴

Some other laws also disqualify a person whose licence has been suspended from immediately applying for another licence. For example, Rules under the Drugs and Cosmetics Act, 1940 provide that an applicant may be refused a licence to import certain drugs if their licence has previously been revoked or suspended.⁵ Regulations under the Food Safety and Standards Act, 2006 stipulate that a food business operator whose licence has been suspended or cancelled can reapply for a licence after a period of three months, if the operator demonstrates implementation of corrective measures required by the licensing authority.⁶

Requirement of Aadhaar may violate Supreme Court judgement

Draft Rules:
Rule 7, 98

The Draft Rules require that a qualified medical practitioner conducting a medical examination of mine workers record their Aadhaar number. This may violate the Supreme Court *Puttaswamy-II* judgement.⁷ In its judgement, the Court had ruled that the Aadhaar number may only be made mandatory for expenditure on a subsidy, benefit or service incurred from the Consolidated Fund of India. Applying this principle, the Court has struck down the mandatory linking of mobile number with Aadhaar. In this context, the requirement of Aadhaar to avail employer-provided medical examination could be in violation of the Supreme Court's directives.

The Draft Rules also provide for the letter of appointment issued by an employer to contain the employee's Aadhaar number. If the letter is to be issued based on information furnished by the employee, it is unclear whether it will be mandatory for an employee to provide their Aadhaar number. If employees are compelled to provide their Aadhaar number for the purposes of obtaining a letter of employment, it may violate the Supreme Court judgement for reasons outlined above.

Provisions related to length of workday

Code:
Sections 25,
27

The Draft Rules differ from the existing law with respect to provisions on length of work day. The Code provides for maximum eight hours of work per day, and requires the Rules to specify the length of a work day, including intervals for rest. The Draft Rules provide that the work day may extend to 12 hours a day, including intervals for rest. There are exemptions from this limit in certain situations such as for urgent repair, or exceptional increase in work load, among others. In these situations, the Rules provide that the work day shall exceed 12 hours.

Draft Rules:
Rules 28, 56

Note that the Factories Act, 1948 provides for shorter work day, and imposes lower ceiling for exemptions. The Act provides for maximum nine hours of work per day. The work day, including intervals for rest, may extend to 10.5 hours a day, (though the Chief Inspector may permit the work day to extend up to 12 hours for individual establishments).⁸ Further, while the Act allows states to make rules to provide exemptions from this limit under certain situations, the exemption is limited such that the length of the work day cannot exceed 12 hours.⁹ These differences are summarised in the table below.

Table 1: Differences between the Factories Act and the Draft Rules

Topic	The Factories Act, 1948	The Draft Rules, 2020
Length of workday including intervals	▪ 10.5 hours, extendable to 12 hours on order by Chief Inspector	▪ 12 hours
Provisions governing exemptions	▪ Work day of up to 12 hours.	▪ Work day shall exceed 12 hours.

Sources: The Factories Act, 1948; The Draft Rules, 2020; PRS.

Lack of clarity in application of certain provisions of the Rules

Constitution of Safety Committee

Code: Section 22
Draft Rules: Rule 19, Form IX

The Code provides for the constitution of a Safety Committee in establishments as prescribed by the appropriate government. The Draft Rules require every establishment with 500 or more workers to constitute a Safety Committee in the prescribed manner (Rule 19). One of the forms (Form IX) contained in the Rules (which provides a format for establishments to file their annual return) requires establishments to disclose the existence of a Safety Committee. The form makes the requirement of a Safety Committee applicable to: (i) establishments and factories employing 500 workers or more, (ii) factories carrying on hazardous process and building and other construction work employing 250 workers or more, and (iii) mines employing 100 or more workers. Form IX is inconsistent with the provision in Rule 19.

Responsibility of contractor

Code: Sections 47(3), 53, 55
Draft Rules: Rule 70

The Code requires the Rules to prescribe conditions of licence to be granted to contractor. Conditions provided in the Draft Rules include: (i) that the contractor must ensure the principal employer provides welfare facilities and amenities such as washroom, drinking water, first-aid box, canteen, and creche, and (ii) the contractor must provide “all other facilities and entitlements”. The Code assigns the responsibility of providing prescribed working conditions, and welfare facilities for contract labour to the principal employer, whereas the contractor is responsible for payment of wages. The responsibility of the contractor with respect to provision of working conditions and welfare facilities is unclear.

1. The Factories Act, 1948, https://www.indiacode.nic.in/bitstream/123456789/1530/1/A1948_63.pdf.
2. The Mines Act, 1952, <https://www.indiacode.nic.in/bitstream/123456789/2168/3/A1952-35.pdf>.
3. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, https://www.indiacode.nic.in/bitstream/123456789/1989/1/A1996_27.pdf.
4. The Contract Labour (Regulation and Abolition) Central Rules, 1971, [https://upload.indiacode.nic.in/showfile?actid=AC_CEN_6_6_00003_197037_1517807318008&type=rule&filename=The%20Contract%20Labour%20\(Regulation%20and%20Abolition\)%20Central%20Rules,%201971.pdf](https://upload.indiacode.nic.in/showfile?actid=AC_CEN_6_6_00003_197037_1517807318008&type=rule&filename=The%20Contract%20Labour%20(Regulation%20and%20Abolition)%20Central%20Rules,%201971.pdf).
5. The Drugs and Cosmetics Rules, 1945, https://upload.indiacode.nic.in/showfile?actid=AC_CEN_12_13_00023_194023_1523353460112&type=rule&filename=Drugs%20and%20Cosmetics%20Act,%201940%20and%20Rules,%201945.pdf.
6. The Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011, https://www.fssai.gov.in/upload/uploadfiles/files/Licensing_Regulations.pdf.
7. Justice K.S. Puttaswamy Vs. Union of India, Supreme Court, Writ Petition (Civil) 494 of 2012, September 26, 2018, <https://sflc.in/updates-aadhaar-final-hearing/aadhaar-judgement>.
8. Section 56, the Factories Act, 1948.
9. Section 64 (2), the Factories Act, 1948.

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