

RE : THE CODE ON WAGES BILL 2017

We thank you for giving us an opportunity to have an interaction and express our views / suggestions on the Code on Wages Bill 2017.

We are the recognized majority representative body of the officers of Syndicate Bank having the membership of nearly 95% of the officers in our Bank. We are affiliated to All India Nationalised Banks Officers' Federation (AINBOF) and All India Bank Officers' Confederation (AIBOC) who represent the Bank Officers at industry level and is the largest trade union in the banking industry. We are an independent and apolitical organization and are not affiliated to any of the Central Trade Unions. We also do not have any allegiance to any political party.

We observe from the press release dated 05.09.2017 of Ministry of Labour & Employment that as a part of labour law reforms, the Government has undertaken the exercise of rationalization of the 38 Labour Acts by framing 4 labour codes viz Code on Wages, Code on Industrial Relations, Code on Social Security and Code on occupational safety, health and working conditions and as a step towards the same, the Government has introduced the Code on Wages Bill 2017 in Lok Sabha on 10.08.2017. As per the Statement of Objects and Reasons, the proposed legislation intends to amalgamate, simplify and rationalize the relevant provisions of four central labour enactments relating to wages, namely the Payment of Wages Act, 1936; the Minimum Wages Act, 1948; the Payment of Bonus Act, 1965; and the Equal Remuneration Act, 1976. It is said that the amalgamation of the said laws will facilitate the implementation and also remove the multiplicity of definitions and authorities without compromising on the basic concepts of welfare and benefits to workers.

While we appreciate the intentions of the Government to amalgamate the four Acts relating to wages into a single Wage Code without compromising on the basic concepts of welfare and benefits to workers and also to widen the scope of minimum wages to cover all employees, we observe that a large number of employees who are now proposed be covered under the Bill enjoy better service conditions obtained by trade unions by negotiated settlement with their respective managements than what is ensured by the legislation and the banking industry is one such sector. In banking sector, we have been deciding our service conditions, both monetary and non-monetary, by bilateral settlements/ understandings both at industry level with IBA and also at individual bank's level with respective bank managements. We wish that the employees should continue to enjoy the right to have better working conditions through bipartite settlements by their trade unions than what is provided by legislation in all or any of the service matters.

Without prejudice to the employees' right to have better service conditions through negotiated settlements by their trade unions with the respective managements, we are submitting below our suggestions on the Code of Wages Bill 2017.

1. The Bill should explicitly recognize the right of trade unions to obtain better service conditions in all or any of the service matters covered under the Bill through negotiated settlement with their respective managements.

2. It is said that at present, the provisions of the Minimum Wages Act and the Payment of Wages Act do not cover substantial number of workers, as the applicability of both these Acts is restricted to the Scheduled Employments/ Establishments, whereas the new Code on Wages will ensure minimum wages to one and all and timely payment of wages to all employees irrespective of the sector of employment without any wage ceiling. Keeping the said objective in mind, in the definition of “employee” in Section 2 of the Bill, persons employed on wages to do operational supervisory, managerial and administrative and technical works are also included in addition to the persons employed to do skilled, unskilled, manual and clerical work as hitherto. But there is apprehension in certain corners that persons in supervisory, managerial and administrative cadre included in the definition of “employee” may not be referring to the persons placed in Senior and Top Management but may be restricting to the persons employed in only upto Middle Management. Since all the persons upto the top in an establishment, other than the owners having controlling interest, are employed on wages to do one or the other work listed in the definition of “employee” in the Bill, we suggest that the definition of “employee” may be made simple to say that all persons employed on wages by an establishment/ owners other than the owners who have controlling interest in the establishment are “employees” of that establishment.
3. While the Government has taken steps to bring all employees under the purview of Code of Wage Bill, it appears that the Government intends to keep certain class / category of employees outside the purview of Industrial Dispute. In Section 2 of the Bill “Industrial Dispute” is defined as any dispute or difference between employers and employees, or between employers and workers or between workers and workers which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person and also any dispute or difference between an individual worker and an employer connected with or arising out of discharge, dismissal, retrenchment or termination of such worker. Thus, the scope of Industrial Dispute is restricted only to the level of employers and workers and the other category of employees are excluded from the same. It may be noted that the employees engaged in supervisory, managerial and administrative work in an establishment may also face similar disputes or differences but the same are not treated as Industrial Dispute. We suggest that all disputes and differences between all category of employees and employer should be treated as Industrial Dispute.
4. The Bill introduces the term “National Minimum Wage” which connotes that there will be a uniform minimum wage for the entire country. But Section 5 of the Bill provides for different National Minimum Wage to be fixed for different states or different geographical areas, instead of providing for a uniform National Minimum Wage for the entire country. The said provision may give scope for lobbying by different groups for fixing lower minimum wage in their respective area / part of the country. Hence it is necessary that a uniform National Minimum Wage should be fixed for the entire country. The Bill may provide for fixing Area Allowance at different rates for different areas to be paid in addition to the National Minimum Wage to compensate the hardship of the employees at different places.

5. The Bill is silent on the formula to be adopted for fixing the minimum wage. The 15th ILC in 1957 had recommended the following norms for fixation of minimum wage
 - a. The cost of three consumption units- husband, wife and two children for one earner
 - b. Satisfy the minimum food requirements of 2700 calories per person
 - c. Clothing requirements of 72 yards per annum per family
 - d. Rent of the minimum area as specified by Government's Industrial Housing Scheme
 - e. 20% of minimum wage should be the cost of fuel and miscellaneous items of expenditure

Further, the Hon'ble Supreme Court, in the case of Raptakos & Co specified that 25% of the minimum wages should also account for Children's education, required medical expenses, minimum recreation including festivals/ceremonies and provision for old age, marriage, etc.

Based on this formula, the 7th Pay Commission recommended Rs. 18,000/- as minimum wage to Central Govt employees and the Central Government accepted the same. We suggest that the same formula with additional consumption units for parents be adopted for fixing the National Minimum Wage.

6. Sub Section 5 of Section 5 of the Bill also provides for fixing factors by which the minimum wages so fixed be multiplied for different types of work and Sub Section 6 lists various factors to be taken into consideration for this purpose. But these factors do not include the financial and other risks and also transferability involved in the employments. We suggest that while fixing the minimum wage, the financial and other risks involved and transferability should also be taken into account.
7. The Bill is also silent on Annual Increment to be paid to the employees. We suggest that the Bill should also prescribe the Annual Increment in terms of the % (say 5%) of the existing pay to be paid to an employee on a fixed day every year.
8. Section 8 of the Code on Wages, 2017 states that the appropriate Government shall review or revise minimum rates of wages at an interval of five years where as at present there is a provision in the Minimum Wages Act, 1948 for the revision of minimum wages as and when required, which must not exceed five years. It is a major bargaining point for trade unions and the said provision is being modified in the Code on Wages, 2017. Further the Bill virtually removes the time line for revision by introducing the words review or revise and make the revision optional. We suggest that the existing provision in the Minimum Wages Act in this regard should be continued.

9. Under Section 13 of the Bill, the Government can fix the number of hours of work, which shall constitute a normal working day. The same Section also provides for a day of rest in every period of 7 days to all employees. But the Bill permits exclusion of following category of employees:
- a. Employees engaged on urgent work or in any emergency, which could not have been foreseen or prevented;
 - b. Employees engaged in work of the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working in the employment concerned;
 - c. Employees whose employment is essentially intermittent;
 - d. Employees engaged in any work which for technical reasons must be completed before the duty is over; and
 - e. Employees engaged in a work, which could not be carried on except at times dependent on the irregular action of natural forces.

We suggest that the employees who belong to the 5 categories mentioned above should be compensated either by allowing staggering hours of duties so that their total hours work is restricted to the prescribed limit or by payment of appropriate amount of compensation at a rate not less the rate of overtime allowance.

10. Under Section 18 of the Bill, employer is permitted to effect deductions from the wage for various reasons / purposes. While some of the deductions are to be done as per the authority given by the employee, some are permitted to be done arbitrarily by the employer without giving show cause to the employee. We suggest that no deductions from the salary, without authority from the employee or without giving an opportunity to show cause should be permitted. Otherwise the employer may misuse this provision for making arbitrary, punitive and vindictive deductions from the workers.
11. Section 20 of the Bill permits the employer to deduct the wages for eight days, if ten or more employees remain absent. This appears to be a step to curb the trade union rights of the workers. To unite and organize and to protest, participate in demonstration and strike is the fundamental right accorded to the citizens of India and hence the said provision in Section 20 needs to be removed.
12. Section 26 of the Bill provides for payment of bonus to only a section of the employees. As per this Section employees who earn the wage above the limit fixed by the Government are not entitled for the payment of bonus. Bonus is a deferred wage and hence all employees irrespective of the wage earned and the position held by them in the establishment should be entitled to receive the bonus. Hence, we suggest that the provision for the Government to determine the eligibility for bonus on the basis of the amount of wage earned should be removed.

13. The right of the workers or their unions to question the accuracy of the Balance Sheet of the company or demand clarifications, to ascertain 'allocable surplus' while bargaining for bonus above the minimum level, which is available in the present Bonus Act is totally done away with in the Bill. Section 31(2) of the Bill states that 'audited accounts of companies shall not normally be questioned'. Such a provision may lead to fudging of Balance Sheets by the employer as happened in the case of 'Satyam Computers'. The said provision is contrary to the stated object of the Bill which states that the measure of amalgamating of the existing Acts in a single Code would bring transparency. We suggest that the employees should be given access to the accounts of the establishment and the employers should be compelled to submit any information about the affairs of the establishment as required by the employees and their unions.
14. Section 42 of the Bill provides for constitution of Central Advisory Board by Central Government and State Advisory Board by the State Government and the same will include persons representing employees also. Since the Advisory Board will be required to advise the Government/s on various issues concerning various sectors of employment, we suggest that the employees' representatives should be selected from all sectors and representative of employees of particular sector should be nominated by the trade unions of that particular sector and not by the Government. Further it should be made mandatory for the Government/s to accept the recommendations of the Advisory Committee.
15. As per Section 42 of the Bill, the Advisory Board is required to advise the Central Govt on various issues one of them being providing increasing employment opportunities to women. Taking into consideration the specific problems (both physical and social) faced by the women, we suggest that the Bill should provide for "work from home" for women employees. The Advisory Board should be asked to identify the sectors and the type of work where the women employees can be allowed to work from home.
16. Under Chapter VIII of the Bill, the penal provisions to employers for the violations of the provisions of the Act are diluted. Whereas under the Minimum Wages Act, 1948, payment of less than minimum wage is punishable with imprisonment upon the first offence, in the proposed bill, there is a shift from criminal liability to civil liability in matters pertaining to wages, payment of wages and payment of bonuses. Those who commit offences can be acquitted if the offences are compounded. It may be noted here that in the case of Sanjit Roy v. State of Rajasthan (1983), the Supreme Court has observed that non-payment of minimum wages amounts to constitutionally prohibited forced labour. The dilution in the penal provision may lead to more violations by the employers there by failing the objectives of the Bill. Hence, we suggest that the penal provisions for violation of the Act by the employers should be made very stringent.

We are sure that this Committee will take into consideration our suggestions in right perspective to incorporate in the bill before the same is adopted by the Hon'ble Parliament.

Yours faithfully,

(SANJAY A MANJREKAR)

GENERAL SECRETARY