



Union of IT & ITES Employees (UNITE)'s

# **Amendments/Recommendations** on the Draft (Central) Rules on Code on Wages 2019

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## Chapter II - Minimum Wages

### Rule - 3 (1)

#### Recommendations:

The Rules 3 (1) - the manner of calculating the minimum wages-should be incorporated in the main body of the Act to make it enforceable and justiciable, after recasting the proposed criteria formulated in Rules 3(1) as under;

- **Rule 3 (1)-** For the purpose of sub-section (5) of section 6, the minimum rate of wages shall be fixed on the **monthly** basis keeping in view the following criteria, namely:-
- **Rule 3 (1) (I)** the standard working class family which includes a spouse , **parents/dependant such as widowed/unmarried sisters and disabled family members** and two children apart from the earning worker; an equivalent of **six** adult consumption units;
- **Rule 3 (1) (III)** 66 meters cloth per year per standard working class family (**It shall be increased in proportion to six consumption units**)
- **Rule 3 (1) (IV)** Housing rent expenditure to **constitute 30 percent of minimum wage;**

#### Reasons:

- The minimum wage should be fixed on a monthly wage basis.
- Secondly, the maintenance and care of the parents and dependents such as widow/unmarried sisters and disabled family members have emerged as a big social issue in our society. Moreover, there is a legal obligation to maintain elderly parents as per the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. So the consumption units must be progressively revised to reflect the reality-as Six.
- With regard to HRA, there are studies including the Central Pay Commission Report which suggested that now working people have been spending more than 30% of their earnings on rent.

### Rule - 3 (2)

#### Recommendations:

The Rules 3 (2) - shall be deleted and substituted by the following.

- Rule 3 (2) - The minimum wage should be fixed on a monthly wage basis as calculated strictly in accordance with the formulations provided Rule 3(1) on the basis of current price level.
- Rule 3 (2) (I) - For arriving at daily rate of wages at the minimum level, monthly minimum wage rate shall be divided by twenty six and such daily wage amount shall be divided by eight for fixing the rate of wages for an hour; and in such division and

multiplication the factors of one-half and more than one-half shall be rounded as next figure and the factors less than one-half shall be ignored.

- Rule 3 (2) (II) - The minimum rate of wage, thus, arrived in fraction, if any, shall be rounded off to the next higher rupee.

**Reason:**

This is necessary to include the provision for paid weekly-off days in minimum wage calculation.

**Rule - 4 (2)**

**Recommendation:**

- **Rule 4 (2)** should be deleted.

**Reason:**

Section 8 of the Code on Wages which deals with procedure for fixing and revising minimum wage, envisages the tripartite committees only and mandated to submit its reports to the Central Minimum Wage Advisory Committee constituted u/s 42. But Rule 4 violates the spirit of the Act - on both counts, that is to say constituting the technical committee fully loaded with bureaucrats for skill categorization and empowering the Central Government to decide thereupon without taking the tripartite Advisory Board into confidence.

**Rule - 5**

**Recommendations:**

- **Rule 5 (1) - Time Interval for revision of dearness allowance:-** The cost of living allowance and the cash value of the concession in respect of essential commodities at concession rate shall be computed once before 1st April and 1st October in every year to revise the dearness allowance payable to the employees on the minimum wages **for providing 100% neutralization based on CPI of industrial workers.**
- **Rule 5 (2)** - In case there is any decline in the All India Consumer Price Index, as a result of which dearness allowance would apparently decrease, in that case there shall be no impact on notified, applicable minimum rate of wages for different categories of workers/employees.
- **Rule 5 (3)** - Amount of Dearness Allowances in fraction, if any, shall be rounded off to the next higher rupee.

## Reasons:

- This rule deals with the grant of dearness allowance twice a year from 1st April and 1st October. This exercise should be legally binding and obligatory one and thus, the diluting term “endeavour” shall be deleted in Rule 5.
- At present the minimum wages notified by the central government provides 100% neutralization on each different category of wages.
- That is to say that there is separate DA for unskilled, semi-skilled, skilled and highly skilled applicable to different areas.
- This facility should be brought into the Rule. It can be included in this Rule as we suggested above.

## Rule - 6 (1)

### Recommendations:

The proposed Rule 6(1) for the purpose of Section 13 of Code on Wages, shall be reconstructed based upon the following premises.

- **Rule 6 (1) (a) - Weekly working hours:** Forty eight hours in any week.
- **Rule 6 (1) (b) - Daily working hours:** Eight hours in a day subject to the sub- section
- **Rule 6 (1) (c) - Upskilling hours:** The period of a work day of a worker in any employment shall exclusively dedicate Two hours for upskilling of the worker.
- **Rule 6 (1) (d) - Interval of rest:** The periods of work of a worker in any employment shall be so fixed that no period shall exceed four hours and that no worker shall be required or allowed to work for more than four hours before he has an interval for rest at least half an hour.
- **Rule 6 (1) (e) - Spread-over:** the period of work of a worker shall be so arranged that, inclusive of his intervals for rest and upskilling hours, it shall not spread over more than ten hours in any day.
- **Rule 6 (1) (f) - Overtime:** Where an employee/worker, whose minimum rate of wages has been fixed under this Code by the hour, by the day or by the month, works on any day in excess of the eight of hours subject to sub-section (a) in a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess, at the overtime rate which shall not be less than twice the normal rate of wages. The employer should obtain the consent of the worker in writing for engaging him in any overtime job.

## Reasons:

- Though the Rule 6 defines the number of working hours as eight hours which constitute the normal working day plus one or more intervals of rest which shall not exceed one hour, it fumbles on the definitions like spread-over and virtually ignores other working hours related definitions like weekly working hours, overtime.
- The Rule 6 (1) (c) - Upskilling hours is required as we are at a juncture of an epoc where the rapidity of technological change is high, as per WEF Future of Jobs 2018 document.

Workers of all the industry should have paid reskilling hours to address the challenge of creating a workforce that is future-ready. Failing to do that would simply mean that we will end up with a situation of “jobless growth” and, to put it mildly, a socio-economic disaster that no country can afford.

- When we read Rule 6(2) with Rule 9(i) and 99 (ii) we could understand the ambiguity in the “spread-over” as the former defines 12 hours and later stipulates 16 hours. Moreover, the Rules 9(i) and 9(ii) are – in other words trying to override the Rule 6. Thus all these amendments are necessary.

## **Rule - 9**

### **Recommendation:**

- Rule 9 (i) & 9 (ii) be deleted.

### **Reason:**

On the pretext of emergency work, it surreptitiously brings back long working hours of colonial time into our statute book against ILO Convention No. 1 and the spirit of our constitutional mandate that “state shall create humane working conditions”.

## **Chapter III - Floor Wages**

### **Rule - 11**

#### **Recommendation:**

- Rule 11 should be restructured and revised as under Floor Level Minimum Wage should be calculated strictly in accordance with formulation made vide Rules 3 (1) (Suggested to be incorporated in the main body of the Act)

#### **Reason:**

- The very purpose of this enactment has been defeated by the present content of Rule 11.

## **Chapter IV - Payment of Wages**

#### **Recommendations:**

For the purpose of Chapter IV- under the heading “Payment of Wages” in the draft Rules on Code on Wages, 2019- the meaning of term ‘wage’ ought to have the meaning as it was defined in the Payment of Wage Act, 1936 and should be incorporated, accordingly, in the Rules as well as in the body of this Act itself in the following manner.

- For the purpose of Chapter IV - “Payment of Wages” , ”wages” means all remuneration (whether by way of salary, 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. any remuneration payable under any award or settlement between the parties or order of a Court;
  - b. any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;
  - c. any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);
  - d. any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;
  - e. any sum to which the person employed is entitled under any scheme framed under any law for the time being in force.

**Reasons:**

- As this Code is being enacted by consolidating the laws relating to wages and bonus and matter connected therewith and incidental thereto, that means it does not means deals with the fixation and payment of minimum wages only, but it includes all payments- , holiday and other leave payment, bonus , terminal benefits and any entitlements from any Schemes, if any.
- The wage definition and its enabling proviso para u/s 2(y) of the Code on Wage have not sufficiently covered all the above mentioned items.
- It could be used only for minimum wage, TA, OT and HRA alone. The rest would be left out of the preview of the Act.
- That was why the Minimum wage Act, 1948, while dealing with the payment of minimum rate of wages under section 12(1) , it has had added one additional provision under section 12(2) of the Minimum Wage Act that “Nothing contained in this section shall effect the provisions of the Payment of Wage Act,1936”.
- As four Acts have now been amalgamated into one Code, our above mentioned proposal becomes all the more necessary so as to legally ensure the payment of all money accruing to the worker.

**Recommendations:**

- Accordingly Responsibility for payment of “wages” as defined in the Payment Wages Act, 1936 should be fixed as we suggested as under–

(1) Every employer shall be responsible for the payment of all wages required to be paid under this Chapter to persons employed by him and in case of persons employed,–

(a) in factories, if a person has been named as the manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948);

(b) in industrial or other establishments, if there is a person responsible to the employer for the supervision and control of the industrial or other establishments;

(c) upon railways (other than in factories), if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned;

(d) in the case of contractor, a person designated by such contractor who is directly under his charge; and

(e) in any other case, a person designated by the employer as a person responsible for complying with the provisions of the Code, the person so named, the person responsible to the employer, the person so nominated or the person so designated, as the case may be, shall be responsible for such payment.

(2) Notwithstanding anything contained in sub-section (1), it shall be the responsibility of the employer to make payment of all wages required to be made under this Code in case the contractor or the person designated by the employer fails to make such payment.

- All Rules for deductions from wage under this Chapter should be in conformity with the Payment of Wage Act, 1936.

**Reason:**

- As the Code on Wages, 2019 subsuming the Payment of Wages Act, 1936 all these provisions related to the payment of “all wages” (not only minimum wages) must be incorporated accordingly.

## Chapter VI - Central Advisory Board

### Rule - 28

**Recommendations:**

- Rule 28 (5) may be reconstructed as we suggested as under so as making the Central Advisory Board as a Tripartite body in the real sense of the term- in the ratio of 11:1 “The Central Government shall, while nominating the members of the Board, take into account the independent members under sub-rule (3) [pl note it is wrongly printed as sub-rule (2)] including the representatives from the State Governments under sub-rule (4) shall not exceed one-third of the total members of the Board and one-third of the members of the Board shall be women”.
- Accordingly sub-rule (3), (4) and (5) of Rule 28 should be modified.



**Reason:**

- The Governments'- both Central as well as States- representatives should not exceed one-third. Then only the Board could remain tri-partite and/accordingly to maintain the representative ratio 1:1:1

**Rule - 34**

**Recommendation:**

- The para first of proviso to the Rule 34 should be deleted.

**Reason:**

- In order to avoid any room for arbitrariness in the disposal of the business of the Board, this proviso should be deleted.

**Rule - 39**

**Recommendations:**

- Rule 39 - Add the following as sub-rule (2) to Rule 39.  
“(2) A non-official member of the Board nominated to fill a casual vacancy shall hold office for the remaining period of the term of office of the member in whose place he is nominated”.
- Add the following new rule numbering as Rule 39 A  
“39 A. Nomination of substitute members: If a member is unable to attend a meeting of the Committee or the Board the Central Government or the body which nominated him may, by notice in writing signed on its behalf and by such member and addressed to the Chairman of the said Committee or the Board, nominate a substitute in his place to attend that meeting. Such a substitute member shall have all the rights of a member in respect of the meeting”.

**Reason:**

The practice of nomination of substitute members is in vogue. And Minimum Wage (Central) Rules, 1950 has provided for such substitute, but now it is missing.

**Rule - 42**

**Recommendation:**

- The Rule 42 be deleted and insert the following;  
“An outgoing member shall be eligible for re-nomination for the membership of the Committee, the Advisory Committee or the Board of which he was a member”.

**Reason:**

- The nominations and re-nominations should be left to the discretion of the Nominating Organisation - in our case the Central Trade Unions. We have quoted the relevant provision from the Minimum Wage (Central) Rules, 1950.

## **Chapter VII - Payment of Dues, Claims, etc.**

### **Rule - 48**

**Recommendation:**

- The Rule 48 (2). Add the following words at the end of the last sentence of Rule 48(2).  
“...as well as in the area where worker’s permanent residence addresses fall under”.

**Reason:**

- This amendment is necessary for migrant workers who are most vulnerable to such eventualities.

## **Chapter VIII - Forms, Registers and Wage Slip**

### **Rule - 52**

**Recommendation:**

- The Rule 52 on Wage slip. Delete the words “electronically or otherwise” from this Rule; instead, insert the words “in hard copy”.

**Reason:**

- Given the socio-economic-educational status of our workforce wage slips in hard copy is all important and necessary.

### **Rule - 54**

**Recommendation:**

- The Rule 54. Delete it.

**Reasons:**

- We are against compounding as it reduces the deterrent values of penalties being imposed under the Code. Accordingly Code itself has to be amended thereby compounding would be permitted.
- Without prejudice to what we suggested above, the power of compounding should not be given to a Gazetted Officer. This is against the Principles of Natural justice as the complainant is not given any role in this process.

## Chapter IX - Miscellaneous

**Rule - 52****Recommendation:**

- The Rule 55 - Add the following proviso to Rule 55.,  
“Notwithstanding anything contained in the Rule 55, it shall be the responsibility of the employer to make payment of all wages required to be made under this Code in case the contractor or the person designated by the employer fails to make such payment.”

**Reason:**

- This Rule 55 ensures the payment wages from principal employer to contractor. But it is keeping silent on the payment of wages from the contractor to the worker and the contractor's default thereon.

**Rule - 56****Recommendations:**

- The Rule 57 – On Inspection Scheme - The full-fledged inspection scheme in accordance with the ILO Convention 81 must be placed as the integral part of Code and Rules after holding tripartite consultations.
- Inspection scheme must provide for both regular periodical inspection and also complaint based inspection. Inspectors must perform the duty of both regular and complaint based inspection as a part of their mandated duty as an inspector and take concrete corrective action based on the findings of inspection. And for performing their mandated duties they should not require any prior approval of higher authority and should be held accountable for inaction on any complaint of violation of the Act.

**Reason:**

- It is against ILO Convention 81. In fact; the Inspection is the lifeline of enforcement of the Act where most of the employers are the habitual violators. Leaving such an important component of a legislation to CLC(C), an individual officer, is a great injustice to the principle of rule of Law. For that adequate number of inspectors in both central and state level must be ensured. Also a full fledged inspection cum enforcement scheme and not inspection cum facilitation) should be put in place and made part of the rules.

## Schedule E

**Recommendation:**

- To include employees working under IT & ITES companies in appropriate skill categories.

**Reasons:**

- As part of regulating and formalizing IT & ITES companies classifying employees based on roles and responsibilities required.
- Classification of roles and responsibilities and fixing minimum wage will help to provide a livable condition to the lower strata of IT & ITES industry.

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