

**NEW LABOUR CODES –  
FINANCIAL EXPOSURE  
STRUCTURAL RISK, AND  
COMPLIANCE STRATEGY FOR  
PHARMA INDUSTRY**

# **PART 1**

# **COMPENSATION RISK**

## **WAGE DEFINITION AND THE 50% CAP – EPICENTER**

### **50% Rule – Not Optional**

- **It is statutory design.**
- **Exclusions beyond 50% automatically become wages.**

# CONT...

## IMPACTS:

- **PF**
- **ESIC**
- **Gratuity**
- **Bonus**
- **Leave encashment**

# **STEP 1**

## **WHAT IS DEFINITELY WAGES?**

**These are always wages:-**

- **Basic Pay**
- **Dearness Allowance**
- **Retaining Allowance (Seasonal employment)**

**This is the Core Wage.**

## **STEP 2: WHAT IS NORMALLY NOT WAGES? (CLAUSES “a TO k”)**

**These are excluded by default like:-**

- **HRA**
- **Bonus**
- **PF and Pension contributions**
- **Conveyance Allowance**
- **Overtime**

# CONT...

- **Gratuity**
- **Retrenchment Compensation**
- **Leave Encashment**
- **LTA**

# **STEP 3: THE 50% RULE (THE GAME-CHANGER).**

- **If you load too much pay into "Allowances" to shrink Basic + DA, the law pulls it back.**
- **If the excluded items (a to i) exceed 50% of all remuneration, the excess is re-classified as wages.**

**The law says: -**

**"You can structure pay... but don't get too clever."**

# **BIG TAKEAWAY:-**

- **All Remuneration = CTC.**
- **Wages is a subset of All Remuneration, controlled by the 50% rule.**

# HOW THE GOVERNMENT FAQ ILLUSTRATION SHOULD BE READ (CORRECT INTERPRETATION).

<b>Component</b>	<b>Amount</b>
<b>Basic + DA</b>	<b>Rs.20,000/-</b>
<b>Allowances</b>	<b>Rs.40,000/-</b>
<b>Terminal Benefits (Gratuity &amp; Retrenchment)</b>	<b>Rs.16,000/-</b>
<b>Total Remuneration</b>	<b>Rs.76,000/-</b>

# **KEY CLARIFICATIONS**

- 1. Terminal benefits are part of "All Remuneration" but they are not tested under the 50% rule.**
- 2. WHY?**

# **PROVISO**

**(Provided that for calculating the wages under this clause, if payments made by the employer to the employee under clauses (a) to (i) exceed one-half (50%) of all remuneration calculated under this clause, the amount which exceeds such one-half shall be deemed as remuneration and shall be accordingly added in wages under this clause)**

**Gratuity and Retrenchment fall under (clause 'j' and clause 'k').**

# **APPLYING THE 50% TEST CORRECTLY:**

- **50% of Rs.76,000/- = Rs.38,000/-.**
- **Allowances Tested = Rs.40,000/-.**
- **Excess = Rs.2,000/-**

**That Rs.2,000/- becomes wages.**

# **FINAL WAGE FIGURE**

## **(ITEM AND AMOUNT)**

**Basic + DA: Rs.20,000/-**

**Excess Allowance Added: Rs.2,000/-**

**Wages = Rs.22,000/-**

**Terminal benefits stay outside wages but;**

**They remain part of All Remuneration.**

# **DISGUISED EXCLUSIONS**

- **Items called allowances but treated as wages.**
- **These are the most litigated components.**

## **CORE TEST USED BY COURTS**

- **Is this payment universally, regularly and necessarily paid for work done?**
- **If yes, it is wages, irrespective of name**

# **EXHUASTIVE LIST OF DISGUISED EXCLUSIONS – INCLUSIONS**

**This will be treated as wages:-**

- **Special Allowance (paid uniformly every month)**
- **Other Allowance / Miscellaneous Allowance.**
- **Fixed Allowance**
- **Skill Allowance (Non-variable)**
- **Performance Allowance (without measurable performance criteria)**

# CONT...

- **Project Allowance (Long Term, Non-conditional)**
- **Attendance Allowance (if paid irrespective of attendance)**
- **Shift Allowance (If employees always work that shift)**
- **Transport Allowance (Fixed monthly amount)**

# CONT...

- **Education Allowance (paid without proof)**
- **Medical Allowance (Paid without reimbursement)**
- **Tool Allowance (fixed monthly)**
- **Site Allowance (permanent posting)**

## **Key Rule**

**If it is predictable + unconditional + universal, it is wages.**

# **EXHAUSTIVE LIST OF BONUSES**

**(WHICH BONUS IS INCLUDED, WHICH IS EXCLUDED)**

## **BONUSES EXCLUDED FROM WAGES**

**(STATUTORILY SAFE)**

- **Statutory Bonus under Payment of Bonus Act.**
- **Productivity Bonus linked to output.**
- **Performance bonus clearly variable and conditional.**
- **Annual incentive.**

# CONT...

- **Profit linked bonus.**
- **Sales Incentive / commission (genuine)**
- **Exgratia (discretionary, non-contractual)**
- **Loyalty Bonus (conditional on tenure)**

**These remain outside wages**

**BUT THEY ARE PART OF ALL REMUNERATION.**

# **BONUSES THAT BECOMES WAGES (DISGUISED)**

**These will be treated as wages:-**

- **Guaranteed Bonus paid irrespective of profits and performance.**

**Courts say**

- **A bonus which is not contingent is not a 'bonus'.**

# **COMPONENTS FALLING OUTSIDE BOTH (NEITHER INCLUSION NOR EXCLUSION CLAUSES)**

**These are non-wage, non-salary contractual benefits.**

## **Exhaustive list:-**

- **Employer provided insurance health / life.**
- **Group Mediclaim**
- **Accident Insurance**
- **ESOPs / Stock options**
- **Loan facilities (housing / car loans)**

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- **Interest subsidiary on loans.**
- **Club membership.**
- **Professional membership fees.**
- **Joining bonus (one time, conditional)**
- **Garden leave payments (non-work period)**
- **Outplacement support**
- **Training cost**
- **Conference / seminar expenses**

# **COMPONENTS FORMING PART OF ALL REMUNERATION (Even if excluded from wages)**

## **EXHAUSTIVE LIST FORMING ALL REMUNERATION**

- **Basic Pay**
- **Dearness Allowance.**
- **Retaining Allowance**
- **All Allowances (HRA, Special, City, Shift)**
- **All bonuses statutory and non-statutory)**
- **Employer PF contribution.**
- **Employer Pension contribution.**

# CONT...

- **Gratuity accrual**
- **Retrenchment compensation.**
- **Incentives and commissions**
- **Exgratia (paid or contractually promised)**
- **Remuneration in kind (to the extent of 15%)**
- **Cash value of benefits.**

## **Rule of Thumb:**

**If it has a monetary value attributable to employment, it is remuneration.**

# **PURE REIMBURSEMENT / WELFARE MEASURES NOT FORMING PART OF TOTAL REMUNERATION**

**These are pure reimbursements or welfare measures.**

**Exhaustive List (Safe Exclusions):-**

- **Actual travel reimbursement**
- **Boarding and lodging (Actuals)**
- **Staff welfare expenses**
- **Gifts of nominal value**
- **Festival sweets / Hampers**

# MASTER SUMMARY TABLE (QUICK REFERENCE)

Sr.No.	Category	Included in Wages	Included in Remuneration
1.	Basic / DA	Yes	Yes
2.	Fixed Allowances	50% Test	Yes
3.	Variable Bonuses	No	Yes
4.	Statutory Bonus	No	Yes
5.	PF / Gratuity (Employer share)	No	Yes
6.	Pure Reimbursements / Welfare Measures.	No	No
7.	Insurance / ESOP	No	No
8.	In-kind benefits (Less than or equal to 15%)	Yes	Yes

# **WHEN ALLOWANCES CANNOT BE TREATED AS WAGE ?**

**For each allowance confirm:-**

- 1. Is it conditional? (Location, Shift, Performance, Proof based)**
- 2. Is it variable or can it fluctuate?**
- 3. Is it not paid universally to all employees?**
- 4. If NO to all three, to be treated as wages and included in 50% test.**

# **THE PROBLEM:**

- **Employees often want a higher take-home pay by maximizing tax-free allowances.**
- **While the Code pushes for a higher security base.**
- **The employer cannot split wages anymore.**
- **Minimum wage must be treated as a single, irreducible block.**

# **PART 2**

## **WORKFORCE STRUCTURING RISK .**

### **SALES FORCE CLASSIFICATION.**

- **Sales promotion employees included as workers.**
- **They now gain protection against arbitrary terminations.**

# **SALES PROMOTION EMPLOYEES AS WORKERS:**

- **These employees have been treated by employers as performing managerial / administrative jobs.**
- **Reclassifications claims.**
- **Courts look at nature of duties and not designations.**
- **Nature of dominant duties decides status.**

# **CONTRACT LABOUR IN CORE V/S NON-CORE ACTIVITIES**

- **Prohibition on Contract Labour in core activities.**
- **Exceptions :-**
  - **Specialized nature of jobs.**
  - **Sporadic work and**
  - **Short term surge.**

# CONT...

- **Sham contracts can still be pierced.**
- **No automatic absorption of Contract Labour .**

**HELD IN (Steel Authority of India v/s National Union Waterfront Workers, 2001 (7) SCC PAGE 1)**

- **SAIL judgment protects employers only if the contract is genuine.**

# **FIXED TERM EMPLOYMENT (FTE) –** **PURPOSE V/S RULE:**

- **FTE expiry is not retrenchment.**
- **No compensation payable.**
- **FTE statutorily recognized under Labour Codes.**
- **FTE gets the same benefits as the permanent workers on pro-rata basis.**

# CONT...

- **FTEs cannot be used in permanent roles just to avoid permanency.**
- **Courts have the power to lift the veil.**
- **FTEs cannot be used to replace your core permanent workforce.**

# **DISPUTE MANAGEMENT RISK - GRIEVANCE REDRESSAL COMMITTEE (A SMALL SWITCH RISK):**

- **Under the IR Code, the Grievance Redressal Committee (GRC) is mandatory for establishments with 20+ workers.**

## **IMPACT:**

- **A small grievance (like a dispute over leave or a minor deduction) if ignored acts as a legal trigger.**

# CONT...

- **If the GRC does not resolve the same within 30 days, the worker gains a direct right to approach the Conciliation Officer or Tribunal.**
- **Internal HR lapses become justiciable disputes.**
- **The Code converts HR failures into Industrial Disputes.**

# **STRATEGIC INPUT:**

- **Treat the GRC as a ‘safety valve’.**
- **If it works, you keep the dispute inside the factory gates.**
- **If it fails, you hand the employee a ticket to Court.**

# **READINESS CHECKLIST**

## **(A) Wage Structure and 50% Rule Compliance**

- **Have we mapped current salary structures employee-wise (fixed plus variable)?**
- **Is basic plus DA less than 50% of total remuneration in any category?**

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- **Do allowances exceed 50% of total remuneration (risk of automatic reclassification as wages)?**
- **Are allowances uniformly, ordinarily, and universally paid (litigation risk)?**

# CONT....

- **Have we identified allowances likely to be treated as wages under the code?**
- **Have we done a cost impact simulation if the 50% cap is enforced today?**

# **(B) PAYROLL, HRMS, AND SYSTEM READINESS**

- **Is our HRMS configured to compute PF, ESIC, gratuity, and bonus on revised wage definitions?**
- **Can the system dynamically identify statutory threshold breaches (PF/ESI)?**
- **Are leave accrual and encashment calculations aligned with 180 days and mandatory encashment rules?**

# CONT...

- **Are variable pay, incentives, and commissions clearly segregated and rule-based?**
- **Have payroll vendors been contractually aligned with code-based computation?**

# **(C) APPOINTMENT LETTERS AND** **HR POLICIES**

- **Do appointment letters permit statutory-driven salary restructuring?**
- **Are wage components clearly defined without purpose-based classification?**
- **Have we updated clauses relating to:-**
  - **PF, ESIC, gratuity references,**
  - **Bonus eligibility and computation,**
  - **Leave accrual, carry forward, and encashment?**

# CONT...

- **Is there a statutory alignment / change in law clause?**
- **Are policies uniformly applicable across locations and grades?**

# **(D) PROVIDENT FUND EXPOSURE**

- **Have we identified employees where PF is restricted to Rs. 15,000 despite higher wages?**
- **Are allowances used to suppress PF contribution defensible in law?**
- **Has management evaluated voluntary PF policies post-restructuring?**
- **Is there a risk of retrospective PF demand if allowances are reclassified?**

# **(E) ESIC EXPANDED COVERAGE**

## **RISK**

- **Have we mapped employees currently excluded or marginally above the ESIC wage threshold?**
- **Are field force, sales staff, and contract workers likely to fall within ESI to wage redefinition?**
- **Are contribution responsibilities clearly defined in the contractor agreements?**
- **Have we budgeted for new inclusions under ESI?**

# **(F) GRATUITY - LONG TERM LIABILITY** **MANAGEMENT**

- **Have we recalculated gratuity liability based on expanded wage definition?**
- **Is gratuity provisioning aligned with AS-15 actuarial assumptions?**
- **Have long-serving employees been identified for significant liability increase?**
- **Has the board been informed of future balance sheet impact?**

# **(G) BONUS STRUCTURAL IMPACT**

- **Have we reassessed bonus eligibility based on revised wage definition?**
- **Are exclusions and caps legally sustainable under the Code framework?**
- **Is bonus computation transparent and uniformly applied?**

# **(H) MINIMUM WAGES PAN-INDIA - RESET**

- **Are wages compliant with floor wage / minimum wage expectations across states?**
- **Have we moved away from scheduled employment based classification?**

# **(I) LEAVE, ATTENDANCE AND ENCASHMENT**

- **Are earned leave accrual rules aligned with Code thresholds?**
- **Is leave accumulation capped in policy?**
- **Is mandatory encashment accounted for financially?**

# **(J) CONTRACT LABOUR AND VENDOR COMPLIANCE**

- **Have contractors restructured wages in line with Code definition?**
- **Do contracts contain:-**
  - **Statutory compliance warranties**
  - **Cost escalation clauses.**
  - **Indemnity and audit rights.**
- **Is contractor payroll periodically audited?**

# **(K) GOVERNANCE, LITIGATION, AND CHANGE MANAGEMENT**

- **Has a labour Codes Impact Note been placed before the senior management board?**
- **Are HR, finance, and legal aligned on a single implementation roadmap?**
- **Is employee communication planned to manage expectation and IR risk?**

# CONT...

- **Are Union or work committees likely to raise objections?**
- **Is there a litigation response strategy for PF, ESI, and gratuity challenges?**

# **RECENT LANDMARK DECISIONS**

# **CASE LAW NO – 1**

**REGIONAL PROVIDENT FUND  
COMMISSIONER WEST BENGAL**

**V/S**

**VIVEKANANDA VIDYA MANDIR.  
DECIDED ON 28.02.2019.**

**SUPREME COURT**

# CONT...

- **This judgment is the spine of the new wage definition under the codes.**
- **If an allowance is universally, necessarily, and ordinarily paid, it is wages, no matter what name you give it.**

# CONT...

## **What the Supreme Court held?.**

- **Special allowance, conveyance allowance, and education allowance paid to all employees as part of their monthly salary cannot be excluded from basic wages for PF.**

**This judgment is why the Labour Codes cap exclusions at 50%.**

# **STRATEGIC TAKEAWAY:**

- **You cannot do allowance engineering to defeat social security.**
- **Cosmetic restructuring is legally unsustainable.**

# **LEAVE ENCASHMENT IS A PROPERTY RIGHT**

## **CASE-LAW - 2**

**TUKARAM SAWANT AND ANOTHER  
V/S**

**VIDARBHA KONKAN GRAMIN BANK  
(BOMBAY HIGH COURT)**

**(affirmed by various High Courts  
including Gujarat High Court in  
Ahmedabad Municipal Corporation v/s  
Sadgun Bhai).**

# THE GIST

- **Can an employer deny leave encashment by citing internal administrative rules or dismissal?.**
- **Leave Encashment is akin to salary, which is a property under Article 300A of the Constitution.**

# CONT...

- **It is a statutory right; it cannot be taken away by executive instructions or even resignation.**
- **Leave cannot be treated as a discretionary perk anymore.**
- **It is a constitutional property right of an employee.**

# CONT...

- **The new Code's mandate for annual encashment is simply making this right operational.**
- **It is a statutory right.**

# **CASE – LAW 3**

**DR. KAVITA YADAV**

**V/S**

**SECRETARY, THE MINISTRY OF HEALTH &**

**FAMILY WELFARE DEPARTMENT**

**(SUPREME COURT)**

**DECIDED ON 17.08.2023)**

# **FACTS**

- **The employee was employed on contract basis from 12.06.2016 to 11.06.2017. ‘**
- **She applied for Maternity Benefits on 24.05.2017, seeking leave starting from 01.06.2017.**
- **The employer granted only 11 days maternity leave as her contract was to come to an end on 11.06.2017.**
- **The claim for 26 weeks of maternity benefits was rejected by the Central Administration Tribunal and the High Court.**

# HELD

- **The benefits are to be granted even beyond the duration of a fixed term employment contract.**
- **A woman employed on fixed term basis who meets the eligibility criteria is therefore entitled to the whole Maternity Benefits, even if the period of that benefit exceeds the duration of the employment contract.**

# CONCLUSIONS

- **Courts do not interfere with business decisions;**
- **They interfere with unfairness.**
- **You are free to restructure,**
- **You are free to automate,**

# CONT...

- **You are free to engage fixed-term employees.**
- **But you are not free to disguise reality**

# CONT...

- **Because in labour jurisprudence,**
- **Designation does not override duty.**
- **Contract does not override control.**
- **Drafting does not override substance.**
- **And more importantly intent shows through paperwork.**

# TAKE AWAY

- **Labor compliance is no longer about avoiding inspectors.**
- **It is about designing because disputes today are not emotional, they are documentary,**
- **And whoever controls the documents controls the narrative.**

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**THANK YOU**

# Q & A