

# The 50% Wage Rule under Labour Code 2019

-Dinesh Gupta

Chief Consultant DSB Law Group

## DO YOU KNOW ?

### 1. FINANCIAL IMPACT:

#### FOR EMPLOYERS

- ⇒ Employee Benefit Expenses have increased from 50% to 75% under the New Labour Code
- ⇒ **PENALTIES AND FINES HAVE INCREASED MANIFOLD AND PROSECUTIONS PROVISIONS INITIATED FOR NON COMPLIANCE/ VIOLATIONS**
- ⇒ PF, ESI, Gratuity, Bonus, Earned leaves, etc. have increased
- ⇒ Higher Provisioning for Company Assessee in Financial Statements leading to lower profits

#### FOR EMPLOYEES

- ⇒ **LOWER IN HAND SALARY**

### 2. ONE SHOULD KNOW FOR COMPLIANCE AND LOWERING EXPENDITURE

- ⇒ Effective from 21<sup>st</sup> November 2026- Wages Redefined
- ⇒ 50% wage rule cannot be applied mechanically to be understood and applied/ wage structure needs to be reviewed as per law.
- ⇒ Wages definition has been redefined and made consistent for all 4 labour codes
- ⇒ Labour codes applicable to all establishments/ factories employing no.of workers 1 to any
- ⇒ Labour Code applicable to all workers

***If not done, do it immediately to avoid penalties and prosecutions***

## RESTRUCTURING/ REDESIGNING SALARY/WAGE STRUCTURE COMPLIANCE TO 50% BASIC WAGE RULE

### How to Redesign Salary Structures for 50% Basic Wage Rule Compliance

- ⇒ The **Code on Wages 2019** mandates 50% of the Gross Salary to be the **Wages** with certain exclusions. The said "**Wages**" shall be taken for all the employee benefits e.g. PF, ESI, Gratuity, Earned Leaves, Maternity Benefits etc.

- ⇒ The Exclusion specific components shall not exceed 50% of the total salary in excess of the same would be included in “**Wage**”.
- ⇒ Any Component not eligible under the Exclusions will be treated as “Wage” which may exceed the Wage by more than 50% leading to *higher Employee benefit expenses* and also lower *Employee in hand Salary*.

### Step-by-Step Redesign Process

1. **Audit Current Structure**
2. **Identify Non-Wage Components and Exclusions**
3. **Recalculate Wage.**
4. **Redistribute Allowance**
5. **Communicate increased Benefits to Employees**
6. **Update Payroll**
7. **Review Employment Contracts**
8. **Review Fixed Term Employment**
9. **Review Contractor Employment**

**Example- 50% Wage rule: ₹82,000 Monthly CTC**

#### Old (Non-Compliant)

S.No.	Component	Old Amount	%
⇒	Basic	₹20,000	24.4%
⇒	HRA	₹25,000	30.5%
⇒	Special Allowance	30,000	₹36.6%
⇒	Conveyance	5000	6.1%
⇒	Medical	2000	2.4%
⇒	Total CTC	82,0000	100%
⇒	Service	10 years	

[Note: Assuming the benefits payable to employees are without any ceilings]

**PF(old Case)** : Basic; ₹20K → Employer and Employee Contribution PF: ₹2,400/per month

**PF (New Components on same structure):** Basic+Spl Allowance+ Medical= 52000

Increased Employer and Employee Contribution (**as per new definition of Wage**) =6240/-

Increase in Employer Benefit Exp and Employee in hand = 3840 i.e. 160%

**Redesign** : The “**Wage**” can be redesigned subject to compliance, which can reduce employer’s liability in respect of employee benefit expenses and employees’ in hand salary.

### **Common Challenges + FixedTimeline (Do this week only)**

#### **Legal Requirements**

- **Wage Slips**
- **Advance to Employees:** Notice 15-30 days in advance (employment contract).
- **Records:** Maintain consent copies 5 years
- **No Unilateral Cut**

#### **Legal Position Under Section 2(y)**

Section 2(y) **excludes** from wages:

- Overtime
- Bonus (non-statutory)
- Commission on sales
- Value of accommodation
- Employer PF/ESIC/gratuity contributions

**50% Rule:** Excluded components capped at 50% total remuneration. Excess adds back to wages.

#### **FAQs with short answers**

1. **What does the term “wages” mean under the Labour Codes?**  
Wages include all remuneration (salaries, allowances, etc.) payable for employment, including basic pay, dearness allowance, and retaining allowance.
2. **What components are excluded from wages?**  
HRA, conveyance allowance, employer PF/pension contributions, statutory bonus, overtime, commission, gratuity, retrenchment compensation, and value of amenities like housing or medical aid
3. **What is the 50% rule for allowances?**  
If exclusions as mentioned in Point 2 above (excluding gratuity and retrenchment compensation) exceed 50% of total remuneration, the excess is added back to wages for statutory purposes.
4. **Is overtime included in the 50% wage calculation?**  
Yes, overtime allowance is part of the exclusions under clauses (a)-(i), and excess over 50% is added to wages.
5. **Are employer PF contributions part of total remuneration for the 50% rule?**  
Yes, statutory employer PF/pension contributions are included in total remuneration, but excluded from wages (subject to 50% cap).

6. **Does the wage definition apply to all Labour Codes?**  
Yes, this single definition applies uniformly across all four Labour Codes for statutory calculations.
7. **Give an example of the 50% rule calculation.**  
Total remuneration ₹76,000; Basic+DA ₹20,000; Allowances ₹40,000; Others ₹16,000.  
Max allowances allowed: ₹38,000. Excess ₹2,000 added to wages, so statutory wages = ₹22,000.
8. **Are ESOPs part of wages?**  
No, ESOPs are not part of wages.
9. **Is leave encashment part of allowances under the 50% rule?**  
No, leave encashment is not part of allowances or wages.
10. **What is the impact on gratuity calculation?**  
Gratuity is calculated on the revised wages (post-50% adjustment), effective from 21 Nov 2025.
11. **Can minimum wages and contractual wages be the same?**  
No, minimum wages are the statutory floor fixed by government; wages are per employment terms but cannot fall below minimum.
12. **Does the 50% rule apply retrospectively?**  
No, the definition applies prospectively from 21 Nov 2025.
13. **whether performance based incentives or variable pay falls within wages or exclusions as per FAQ 3 of ministry of labour**  
Yes, performance-based incentives and variable pay are generally excluded from "wages" as per Ministry of Labour FAQ #3  
**Direct Answer from Ministry FAQ #3**  
*"Performance based incentives, Employee Stock Option Plans (ESOPs), variable part of the component or reimbursement-based payments to the employee shall not be part of the wages."*  
**FAQ #4** also confirms: **"Annual performance-based incentives do not form a part of 'wages' for computation under the Labour Codes.**

**For further Queries: mail: [info@dsblawgroup.com](mailto:info@dsblawgroup.com)**