



8th May, 2021 / 7285

ગુજરાત વેપારી મહામંડળ

વલચલ થી કાર્યરત

Shri Santosh Kumar Gangwar
Hon'ble Minister of Labour & Employment
Ministry of Labour & Employment
Govt. of India
Shram Shakti Bhawan
Rafi Marg.
New Delhi-110001

Natubhai Patel
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Hemant N. Shah
Sr. Vice President

K. I. Patel
Vice President

Pathik S. Patwari
Hon. Secretary

V. P. Vaishnav
Hon. Secretary (R)

Sachin K. Patel
Hon. Treasurer

Sub: Request to clarify the term "wages" under the the New Labour & Industrial Laws

Respected Sir,
Greetings from Gujarat Chamber of Commerce and Industry (GCCCI).

Gujarat Chamber of Commerce and Industry (GCCCI), founded in 1949 is the apex body for promotion of Trade, Commerce, Industry and overall Economic Development in the State of Gujarat and for the Nation. GCCCI works to create and sustain an environment conducive to the growth of industry and trade in Gujarat, partnering both of them through advisory processes. With more than 4000 direct members which include over 200 Trade and Industry Associations and leading Chambers of Commerce of the State, and more than 2,00,000 indirect members across Gujarat, GCCCI represents all cross sections of trade and industry across segments ranging from large corporates to SMEs.

Sir, under the New Labour & Industrial Laws four major codes namely;

- (1) The Code on Wages-2019
- (2) The Industrial Relations Code-2020
- (3) The Code on Social Security-2020 and
- (4) Occupational Safety, Health and Working Conditions Code-2020 are codified.

(2) Definition of the term "wages" as defined in section 2(y) of the Code on wages is similar and identical to the definition of the term "wages" as given in Sec.2 (zq) of the Industrial Relations Code 2020, Sec. 2(zq) of the Code on Social Security 2020 and 20C 2(zzj) of the Occupational Safety, Health and Working conditions code-2020 respectively.



(3) Term wages as defined under Sec 2(y) of the Code on Wages is reproduced verbatim here-under, for reference to the context of this letter, for your ready reference.

2(y) "wages" means all remuneration whether by way of salaries, 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, payable to a person employed in respect of the employment or of work done in such employment, and includes,

- i) Basic Pay;
- ii) Dearness Allowance; and
- iii) Retaining Allowance, if any, but does not include-----
 - (a) any bonus payable under any law for the time being in force, which does not form part of the remuneration payable under the terms of employment;
 - (b) The value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government;
 - (c) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
 - (d) any conveyance allowance or the value of any travelling concessions;
 - (e) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment';
 - (f) house rent allowance;
 - (g) remuneration payable under any award or settlement between the parties or order of a court or Tribunal;
 - (h) any overtime allowance;
 - (i) any commission payable to the employee;
 - (j) any gratuity payable on the termination of employment; or
 - (k) any retrenchment compensation or other retirement benefit payable to the employee or any ex-gratia payment made to him on the termination of employment.

Provided that, for calculating the wages under this clause, if payments made by the employer to the employee under clauses (a) to (i) exceeds one half, or such other percent, as may be notified by the Central Government, of all remuneration calculated under this clause, the amount which exceeds such one half, or the percent, so

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notified, shall be deemed as remuneration and shall be accordingly added in wages under this clause: Provided further that for the purpose of equal wages to all genders and for the purpose of payment of wages, the emoluments specified in clauses(d), (f), (g) and (h) shall be taken for computation of wage.

Explanation – Where an employee is given in lieu of the whole or part of the wages payable to him, any remuneration in kind by his employer, the value of such remuneration in kind which does not exceed fifteen percent; of the total wages payable to him, shall be deemed to form part of the wages of such employee;

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(4) On reading the above-mentioned definition, the following ambiguities have led to conflicting interpretations by the employers namely –

(A) Under sub-clause (a) of the excluding clauses of the term wages, any bonus payable under any law for the time being in force, which does not form part of the remuneration payable under the terms of employment is mentioned which needs clarification. Because bonus being paid once a year, in that case the month in which it is paid will definitely inflate the total of clauses (a) to (i) of the excludary clauses and will result in remarkable increase in excess amount exceeding one half of the remuneration calculated under this clause hence the wages for the particular month in which bonus is paid will be very high.

In order to curtail this abnormal situation, the minimum statutory bonus @ 8.33% requires to be divided into twelve equal instalments and be paid along with the wages of the employee every month.

(B) Provided that, for calculating the wages, under this clause, if payments made by the employer to the employee under clauses (a) to (i) exceeds one half, or such other percent, as may be notified by the Central Government, of all remuneration calculated under this clause, the amount which exceeds such one half, or the percent, so notified, shall be deemed as remuneration and shall be accordingly added in wages under this clause:

As a result of ambiguous wordings “exceeds one half of all remuneration calculated under this clause” interpretation of the

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term "One half of all remuneration calculated under this clause" has created great confusion amongst the employers.

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on account of dual interpretation viz :-

1st interpretation

For the purpose of calculating one half of all remuneration payable under this clause, following amounts are taken into considerations as remunerations namely Basic plus D.A. plus, retaining allowance plus all allowances other than those enumerated in clause (a) to (i). Total of these amount after dividing by two, one half is obtained, and if the total of sub clauses (a) to (i) exceeds one half so obtained earlier than the excess amount is deemed remuneration and shall be accordingly added in wages.

The above interpretation is illustrated in the attached statement and marked as "Annexure-A" to this letter.

2nd interpretation

Some employers while interpreting the term one half of all remuneration payable under this clause take into account gross value of Basic plus D.A plus retaining allowance plus all allowances whether they fall in sub clause (a) to (i) or not and treat such amount as all remuneration payable under this clause, and in case total of excludary clauses (a) to (i) exceeds this one half, then the excess amount is treated as deemed remuneration and accordingly is added in wages.

This interpretation is illustrated in the attached statement and marked as "Annexure-B" to this letter.

[D] As a result of dual interpretation of the term one half of all remuneration payable under this clause by the employers on account of ambiguous wordings in the statute has given rise to conflicting and obnoxious interpretation which are likely to harm the underlying objective of the enactment (code). Hence clarity by way of explanation is needed as to total of which remuneration should be considered for arriving at one half of that figure.

(5) Under the aforesaid premises, clarity by way of explanation is needed to be added to the definition of the term wages in Sec. 2(y) of the code on wages 2019, in order to remove the ambiguity so arisen.

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(6) Explanation clarifying the following: -

a) Whether minimum statutory bonus [8.33%] payable every year can be divided in twelve equal installments and paid along with monthly wages every month?

And further, in a case where the carried forward allocable surplus for the succeeding years is so high to make employer liable to pay bonus at the rate higher than 8.33% but limited to 20% as provided u/s 36 (i) of the Code on Wages-2019, in that case the employers may be permitted to pay the bonus not exceeding 20% in twelve monthly instalments alongwith monthly wages to the employees.

b) Where an employer is paying conveyance allowance as well as value of travelling concession in that case whether both the items are excluded or either of the two?

c) Which amounts are required to be totalled for arriving at "One half" of all remunerations calculated under this clause?

Hence in view of what is stated herein above and with a view to minimize litigations on account of conflicting interpretation of the term "Wages" it is extremely essential and inevitably needed in the interest of justice as well as to maintain the literal objective underlying the enactment of statute, to add explanations as sought for in Sec 2(y) and avoid obnoxious interpretations, at your earliest and oblige.

We request your kind positive intervention in the matter.

With warm regards,

Natubhai Patel
President

Encl: Annexure A & B as mentioned in the letter

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ANNEXURE - A

Particulars	Basic	D.A.	HRA	Conveyance	Child. Edu. Allowance	Medical Allowance	Settlement Wages	Overtime	Special Allowance	Books & Periodicals	Gross Salary
Monthly Rate	10000	-	4000	1000	2000	1000	-	3100	1500	-	22600
Wether falls in Exclusion clauses from (a) to (i) of the term "Wages" as per Code on Wages 2019	No	No	Yes	Yes	No	No	Yes	Yes	No	No	

Note : 1) Employer's share of P.F. Contribution in this case will be Rs.1200 which also falls in Exclusion clauses from (a) to (i) of the term "Wages" as per Code on wages 2019.

2) Total Gross Salary in the above case inclusive of Employer's share of P.F. contribution will be Gross Salary + Employer's PF Contribution
 $= \text{Rs.}22,600 + \text{Rs.}1,200$
 $= \text{Rs.}23,800$

3) Total of all items fall in Exclusion clauses (a) to (i)
 $= \text{Rs.}4,000 + \text{Rs.}1,000 + \text{Rs.}3,100 + \text{Rs.}1,200$
 $= \text{Rs.}9,300$

4) All Remuneration = Basic + Child. Edu. Allowance + Medical Allowance + Special Allowance
 $= \text{Rs.}10,000 + \text{Rs.}2,000 + \text{Rs.}1,000 + \text{Rs.}1,500$
 $= \text{Rs.}14,500$

50% of Rs.14,500 = Rs.7,250

5) Amount exceeded 50 % of Rs.14,500 in amount of Exclusion clauses
 $= \text{Rs.}9,300 - \text{Rs.}7,250$
 $= \text{Rs.}2,050$

6) Therefor wages as per Code on Wages 2019
 $= \text{Wages as per col. 4 above} + \text{exceeded amount as per col. 5 above}$
 $= \text{Rs.}14,500 + \text{Rs.}2,050$
 $= \text{Rs.}16,550$

Note: This is as per 1st interpretation

ANNEXURE - B

Particulars	Basic	D.A.	HRA	Conveyance	Child. Edu. Allowance	Medical Allowance	Settlement Wages	Overtime	Special Allowance	Books & Periodicals	Gross Salary
Monthly Rate	10000	-	4000	1000	2000	1000	-	3100	1500	-	22600
Wether falls in Exclusion clauses from (a) to (i) of the term "Wages" as per Code on Wages 2019	No	No	Yes	Yes	No	No	Yes	Yes	No	No	

Note : 1) Employer's share of P.F. Contribution in this case will be Rs.1200 which also falls in Exclusion clauses from (a) to (i) of the term "Wages" as per Code on wages 2019.

2) Total Gross Salary in the above case inclusive of Employer's share of P.F. contribution will be Gross Salary + Employer's PF Contribution
 $= \text{Rs.}22,600 + \text{Rs.}1,200$
 $= \text{Rs.}23,800$

3) Total of all items fall in Exclusion clauses (a) to (i)
 $= \text{Rs.}4,000 + \text{Rs.}1,000 + \text{Rs.}3,100 + \text{Rs.}1,200$
 $= \text{Rs.}9,300$

4) All Remuneration = Gross Salary + Employer's PF contribution
 $= \text{Rs.}22,600 + \text{Rs.}1,200$
 $= \text{Rs.}23,800$

50% of Rs.23,800 = Rs.11,900

5) Amount exceded 50 % of Rs.23,800 in amount of Exclusion clauses (Rs.9,300) = Nil because it is less than 50% of the total remuneration shown in item 4 above

6) Therefor wages as per Code on Wages 2019
 $= \text{Basic} + \text{Child Edu. Allowance} + \text{Medical Allowance} + \text{Special Allowance}$
 $= \text{Rs.}10,000 + \text{Rs.}2000 + \text{Rs.}1000 + \text{Rs.}1500$
 $= \text{Rs.}14,500$

Note: This is as per 2st interpretation