



137. How does the definition of "wages" in Section 2(y) of the Code on Wages, 2019 ensure fairness and clarity in employee compensation, and what implications do the inclusions and exclusions have on wage calculations and compliance with statutory requirements?

Section 2(y) of the *Code on Wages, 2019* defines "wages" in a comprehensive manner, capturing both direct and indirect forms of remuneration payable to employees. The definition aims to clarify what constitutes wages for various legal purposes such as minimum wage determination, payment of wages, and equal pay for equal work, among other objectives.

Broad Structure of the Definition:

- 1. Inclusion of Remuneration (General Definition):** "Wages" include **all remuneration** expressed in monetary terms, or capable of being expressed in money, that an employer owes to an employee for services rendered. This is true whether the terms of employment are **express or implied**, meaning whether they are explicitly stated in the contract or inferred from practice or expectations.
- 2. Specific Components Included:** The term "wages" specifically includes three key components:
 - **(i) Basic Pay:** This is the core, fixed component of an employee's salary that does not fluctuate with performance or other variables.
 - **(ii) Dearness Allowance (DA):** A cost of living adjustment allowance paid to employees to counteract the effects of inflation.
 - **(iii) Retaining Allowance (if any):** An allowance given to retain an employee, particularly in industries where work might be seasonal or temporary in nature.
- 3. Exclusions from Wages:** The Code explicitly excludes certain payments from being considered as part of wages, which generally serve special purposes or are paid in kind. These include:
 - **(a) Bonus:** Any bonus paid under existing laws that are not part of the regular remuneration. For instance, performance bonuses or statutory bonuses.

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- **(b) Value of House Accommodation and Other Amenities:** Benefits like housing, electricity, water, medical services, or other services that are excluded from wage calculation by a government order.
- **(c) Employer Contributions to Pension/Provident Fund:** Contributions towards long-term savings schemes like pensions or provident funds, as well as the accrued interest on these contributions, are excluded.
- **(d) Conveyance Allowance/Travelling Concessions:** Any payments made for transportation or travel purposes, such as travel allowances or vehicle fuel reimbursements.
- **(e) Special Expense Reimbursements:** Payments made to cover expenses due to the nature of work, such as clothing or tools required for specific jobs.
- **(f) House Rent Allowance (HRA):** A common salary component to cover rental housing costs.
- **(g) Remuneration Under Awards, Settlements, or Court Orders:** Any payment made under a legal settlement or an award from a tribunal or court is excluded.
- **(h) Overtime Pay:** Payments made for extra work beyond normal working hours are excluded from wages.
- **(i) Commission:** Any commission paid to the employee for services rendered, such as sales commissions.
- **(j) Gratuity:** Gratuity, which is paid at the time of employment termination, is excluded.
- **(k) Retrenchment Compensation/Retirement Benefits:** Payments related to retirement, retrenchment, or ex gratia payments on termination of employment are excluded from wages.

Important Provisos (Clarifications):

1. **Threshold for Exclusion of Certain Allowances:** The first proviso is a significant one. It states that for the purpose of calculating wages, if the **total sum of allowances** or payments made under clauses (a) to (i) exceeds **50%** (or any other percentage notified by the government) of the total remuneration, the excess amount over this threshold will be added back to the wage. This provision ensures that the majority of the employee's compensation is not

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made up of allowances or fringe benefits, which could be used to lower the base wage unfairly.

For example, if an employee's total remuneration is ₹100,000 and allowances under (a) to (i) amount to ₹60,000, the excess ₹10,000 (60,000 - 50,000) will be considered as wages.

2. Equal Wages for All Genders & Wage Computation: The second proviso ensures **gender equality in wages** by stating that certain allowances like **conveyance allowance (d), house rent allowance (f), remuneration under settlements (g), and overtime (h)** will be included in the computation of wages when determining equal wages for all genders and for wage payment purposes. This emphasizes the intent to eliminate gender-based wage disparities.

3. Remuneration in Kind: The explanation clarifies that if an employee is paid in kind (non-monetary benefits), such as goods, food, or services in place of wages, up to **15% of the total wages** can be considered as part of the wage. If the value of the in-kind remuneration exceeds 15%, the excess will not be included in the calculation of wages.

For instance, if an employee receives a portion of their compensation in the form of housing or meals, and the value of these benefits is less than 15% of the total wage, it will be counted towards the wage. However, if it exceeds this threshold, only up to 15% will be included.

Interpretation and Implications:

- The **inclusion** of basic pay, DA, and retaining allowance provides a clear foundation for calculating wages. These components are essential as they form the fixed and guaranteed portion of an employee's compensation.
- The **exclusions** are targeted at variable or special-purpose payments, such as bonuses, commissions, allowances, and benefits. This ensures that items like overtime pay, which are not consistent, do not distort the employee's base wage. These exclusions prevent employers from manipulating the base salary by including non-essential allowances and benefits to avoid statutory obligations like provident fund contributions, gratuity, or minimum wage compliance.
- The **50% rule** effectively ensures that allowances and special payments do not overwhelm the base wage. By limiting the extent to which allowances can form part of an employee's compensation, the law protects employees from being

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underpaid in their basic salary and helps ensure that statutory benefits are calculated based on a fair wage.

- The inclusion of gender equality in wage computation through the **second proviso** is a direct effort to enforce the principle of equal pay for equal work across genders, in line with India's commitment to gender equality in the workplace.
- The **remuneration in kind** clause provides flexibility for industries where part of the compensation might be given in non-monetary forms, such as agricultural or hospitality sectors. By capping the non-monetary portion at 15%, the law ensures employees still receive the majority of their compensation in cash, which is important for financial independence.

In summary, the definition of wages under the *Code on Wages, 2019* is designed to provide a comprehensive and inclusive framework that addresses both the fixed and variable aspects of employee compensation.

Sample Structure in line with Section 2(y):

Component	Exp. 01 Amount (₹)	Exp. 02 Amount (₹)	Included in Wages?	Explanation
Basic Pay	25,000	25,000	Yes	Included as part of wages.
Dearness Allowance	5,000	5,000	Yes	Included as part of wages.
Retaining Allowance	1,000	1,000	Yes	Included if applicable.
Total – A (Wages)	31,000	31,000	This is the total "wages" as defined by the Code on Wages, 2019 for wage calculation.	
House Rent Allowance	8,000	18,000	No	Excluded as per clause (f) but included for the purpose of equal wages to all genders under the second proviso.
Conveyance Allowance	3,000	3,000	No	Excluded as per clause (d) but included for equal wages to all genders under the second proviso.
Bonus	4,000	4,000	No	Excluded as per clause (a)
Employer's Contribution to PF	3,600	3,600	No	Excluded as per clause (c)
Overtime Payment	2,000	2,000	No	Excluded as per clause (h) but included for equal wages to all genders under the second proviso.

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Commission	3,000	3,000	No	Excluded as per clause (i)
Medical Allowance	1,500	1,500	No	Excluded as per clause (e)
Retrenchment Compensation (if any)	0	0	No	Excluded under clause (k).
Gratuity (if applicable)	0	0	No	Excluded under clause (j).
Special Expense Reimbursement	1,000	1,000	No	Excluded as per clause (e).
Total – B (Excluded Components)	26,100	36,100	These components are excluded from wages but are part of the total salary structure.	
Grand Total – A+B	57,100	67,100	Total Salary.	

50% Threshold Rule Analysis:

Exp. 01:

- **Total Salary (A + B):** ₹57,100
- **50% of Total Salary:** ₹57,100 / 2 = ₹28,550
- **Excluded Components (Total – B):** ₹26,100
- Since the excluded components are **below** 50% of the total salary, no adjustment is required.

Exp. 02:

- **Total Salary (A + B):** ₹67,100
- **50% of Total Salary:** ₹67,100 / 2 = ₹33,550
- **Excluded Components (Total – B):** ₹36,100
- Here, the excluded components exceed the 50% threshold by ₹36,100 - ₹33,550 = ₹2,550. This excess amount would be added back to the "wages" under the first proviso.

Conclusion:

- **Exp. 01** complies with the *Code on Wages, 2019* without needing any adjustments.
- **Exp. 02** exceeds the 50% threshold, so ₹2,550 would be added to the "wages" calculation, raising the total "wages" to ₹31,000 + ₹2,550 = ₹33,550.

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