

Latest Procedure for Retrenchment, and Closure under the Industrial Relations Code, 2020



By

S. K. Gupta

Advocate, Supreme Court of India

Mobile: 9891170907

Email: skpfdelhi@gmail.com

www.makeinindialawfirm.com

1. Introduction

The **Industrial Relations Code, 2020** (IR Code, 2020) is a landmark labour reform legislation consolidating the following three enactments:

1. The Industrial Disputes Act, 1947
2. The Trade Unions Act, 1926
3. The Industrial Employment (Standing Orders) Act, 1946

Among the most impactful reforms under the Code are the revised procedures relating to retrenchment, lay-off, and closure of industrial establishments, coupled with the introduction of a statutory Re-skilling Fund for retrenched workers. The Code seeks to balance industrial flexibility with social security and worker rehabilitation.

2. Applicability and Threshold for Prior Permission

Under the erstwhile Industrial Disputes Act, 1947, prior permission of the appropriate Government was required for retrenchment and closure in establishments employing 100 or more workmen.

The IR Code, 2020 has substantially revised this threshold.

□ **Section 77 of the IR Code, 2020** provides that the requirement of prior government permission shall apply only to industrial establishments employing at least 300 workers, or such higher number as may be notified by the appropriate Government.

This enhancement is intended to improve the ease of doing business, while continuing statutory safeguards for workers in larger establishments.

3. Meaning of Retrenchment under the Code

As per **Section 2(zh)** of the IR Code, 2020, *retrenchment* means:

Termination by the employer of the service of a worker for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, subject to certain exclusions.

The scope of retrenchment remains substantially aligned with the definition under the Industrial Disputes Act, 1947.

4. Procedure for Retrenchment (< 300 Workers & >300 Workers)

The **Industrial Relations Code, 2020** prescribes **distinct procedures for retrenchment** based on the numerical strength of workers employed in an industrial establishment. The requirement of **prior government permission** is the principal differentiating factor.

A. Retrenchment in Establishments Employing Less than 300 Workers

In industrial establishments employing **less than 300 workers, prior permission of the appropriate Government is not required**. However, the employer must strictly comply with **Section 70 of the Industrial Relations Code, 2020**.

The employer shall ensure the following:

(i) **Notice of Retrenchment**

One month's written notice must be served on the worker, clearly stating the reasons for retrenchment, or wages in lieu of such notice must be paid.

(ii) **Retrenchment Compensation**

Payment of compensation equivalent to 15 days' average pay for every completed year of continuous service, or part thereof in excess of six months.

(iii) **Notice to Appropriate Government**

A notice in the prescribed form must be served on the appropriate Government.

(iv) **Contribution to Re-skilling Fund**

As mandated under Section 83 of the Code, the employer shall contribute an amount equal to 15 days' last drawn wages of the retrenched worker to the Re-skilling Fund, which is in addition to retrenchment compensation.

(v) **Timing of Payment**

All statutory payments must be made before or at the time of retrenchment.

Any retrenchment carried out in violation of the above conditions shall be illegal and void, rendering the employer liable for statutory consequences.

B. Retrenchment in Establishments Employing 300 or More Workers

In industrial establishments employing 300 or more workers, prior permission of the appropriate Government is mandatory in terms of Sections 77 and 78 of the Industrial Relations Code, 2020.

The prescribed procedure is as follows:

- (i) **Application for Prior Permission**
The employer must apply to the appropriate Government at least 60 days prior to the intended date of retrenchment.
- (ii) **Service of Application on Workers / Recognized Union**
A copy of the application must be simultaneously served on the concerned workers or their representatives.
- (iii) **Inquiry and Hearing**
The appropriate Government may conduct an inquiry and afford a reasonable opportunity of hearing to both the employer and the workers.
- (iv) **Grant or Refusal of Permission**
The Government may grant or refuse permission by a reasoned order & speaking order.
- (v) **Deemed Permission**
If no order is communicated within 60 days from the date of application, permission shall be deemed to have been granted.
- (vi) **Payment of Statutory Dues**
Upon grant or deemed grant of permission, the employer must:
 - Pay retrenchment compensation (15 days' average pay per year of service), and 3 months notice or wages in lieu of such notice
 - Deposit 15 days' wages towards the Re-skilling Fund under Section 83.
- (vii) **Effect of Non-Compliance**
Any retrenchment effected without prior permission or in contravention of the statutory procedure shall be deemed **illegal**, and the worker shall be entitled to all benefits of back wages including re-instatement of his/her job.

The procedure for retrenchment varies depending upon the number of workers employed in the industrial establishment.

5. Re-skilling Fund – A Statutory Welfare Measure

A progressive and worker-centric feature of the Industrial Relations Code, 2020 is the introduction of a Re-skilling Fund.

Section 83 of the IR Code, 2020 mandates that every employer who retrenches a worker shall contribute to the Re-skilling Fund an amount equal to: Fifteen (15) days' wages, last drawn by the retrenched worker.

This Re-skilling contribution is:

- Mandatory,
- In addition to retrenchment compensation, and
- Applicable to all retrenchments, irrespective of whether the establishment employs less than or more than 300 workers.

The amount is intended to be credited to the account of the retrenched worker or utilised in the manner prescribed by the appropriate Government for re-skilling, up-skilling, or skill development, thereby facilitating re-employment.

The Re-skilling Fund marks a paradigm shift from mere monetary compensation to sustainable workforce transition and rehabilitation.

Check-List for Retrenchment Compliance

A. Establishments Employing Less than 300 Workers

- One month's written notice given to the worker stating reasons for retrenchment OR wages paid in lieu of notice
- Retrenchment compensation paid at the rate of 15 days' average pay for every completed year of service (or part exceeding six months)
- Notice to the appropriate Government served in prescribed form under Rule
- Re-skilling Fund contribution deposited (15 days' last drawn wages)
- All payments made before or at the time of retrenchment

B. Establishments Employing 300 or More Workers

- Application for prior permission submitted to the appropriate Government
- Application filed at least 60 days prior to proposed retrenchment
- Copy of application served simultaneously on affected workers including recognized union
- Participation in Government inquiry/hearing (if conducted)
- Written order of permission received OR deemed permission after 60 days (if no response)
- Retrenchment compensation paid (15 days' average pay per year) & 3 months notice or wages paid in lieu of notice
- Re-skilling Fund contribution (15 days' wages) deposited
- Retrenchment effected only after permission/deemed permission
- All payments made before or at the time of retrenchment

6. Closure of Industrial Establishments

Closure refers to the permanent closing down of a place of employment or part thereof.

A. Closure in Establishments Employing Less than 300 Workers

Under Section 74 of the IR Code, 2020, where an industrial establishment employs less than 300 workers, the employer must:

1. Serve a notice of closure at least 60 days in advance to the appropriate Government;
2. Pay closure compensation, equivalent to retrenchment compensation (15 days' average pay for every completed year of service).

No prior government permission is required in such cases.

B. Closure in Establishments Employing 300 or More Workers

In establishments employing 300 or more workers, prior government permission is compulsory.

Procedure:

1. Application for closure must be made at least 90 days prior to the intended date of closure;
2. The Government shall conduct an inquiry and hear the parties;
3. Permission may be granted or refused by a reasoned order;
4. If no order is passed within 60 days, permission shall be deemed to have been granted;
5. Closure without permission is deemed illegal, entitling workers to full wages and continuity of service.

D. Check-list for Closure Compliance

1. Establishments Employing Less than 300 Workers

- 60 days' prior notice of closure served on appropriate Government
- Closure compensation paid (same as retrenchment compensation)
- All statutory dues settled before closure date

2. Establishments Employing 300 or More Workers

- Application for prior permission for closure filed
- Application submitted at least 90 days prior to intended closure
- Copy served on workers' representatives
- Participation in Government inquiry/hearing
- Written permission received OR deemed permission after 60 days
- Closure compensation paid as per Code (same as retrenchment compensation)
- Closure effected only after permission/deemed permission

Comparison between I D Act, 1947 Vs. I R Code, 2020

Key Changes on Retrenchment, Lay-off & Closure

Key Area	ID Act, 1947	IR Code, 2020
Nature of Law	Stand-alone statute	Consolidated Labour Code
Worker Terminology	<i>Workman</i>	Worker (uniform term)
Threshold for Govt. Permission	100+ workmen	300+ workers (Chapter X)
Retrenchment – Prior Permission	Required (100+)	Required only (300+) (Chapter X)
Retrenchment Notice	1 month / wages in lieu	3 month / wages in lieu for more than 300 + worker & less than 300 , then 1 month notice /wages in lieu. (Section 79)
Retrenchment Compensation	15 days' avg. pay / year	15 days' avg. pay / year {Section 79(9) }
Re-skilling Fund	Not available	15 days' wages only (Section 83)
Nature of Re-skilling Fund	—	Additional to compensation
Closure – Prior	Required (100+)	Required only (300+) { Section

Key Area	ID Act, 1947	IR Code, 2020
Permission		80}
Closure Notice (below threshold)	60 days	60 days
Closure Application (above threshold)	90 days prior	90 days prior
Deemed Permission	After 60 days	After 60 days
Effect of Illegal Action	Deemed in service	Deemed in service
Standing Orders	100+ workmen	300+ workers
Worker Welfare Focus	Compensation	Compensation + Re-skilling
Ease of Doing Business	Rigid control	Greater flexibility

7. Penalties for Non-Compliance

Failure to comply with the provisions relating to retrenchment, closure, or contribution to the Re-skilling Fund may result in:

- Monetary penalties on the employer;
- Liability to pay wages, compensation, and statutory dues;
- Industrial disputes and reinstatement orders.

8. Conclusion

The **Industrial Relations Code, 2020** reflects a conscious legislative effort to harmonize industrial growth with worker protection. While the enhancement of the threshold from 100 to 300 workers provides operational flexibility to employers, the Code simultaneously strengthens worker safeguards through enhanced compensation and the mandatory Re-skilling Fund of 15 days' wages. By integrating economic relief with skill development, the Code moves Indian labour law towards a more humane and future-oriented industrial relations framework. Strict statutory compliance, however, remains essential to avoid legal and financial exposure.

Key Takeaways at a glance

The **Industrial Relations Code, 2020** significantly raises the threshold for obtaining prior government permission for lay-off, retrenchment, and closure from 100 to 300 workers, thereby easing compliance for MSMEs and providing greater operational flexibility to employers.

- The introduction of a mandatory Re-skilling Fund, requiring employer contribution of 15 days' last drawn wages for every retrenched worker, marks a transformational shift from mere monetary compensation to employability, skill enhancement, and workforce rehabilitation.
- Notwithstanding enhanced procedural flexibility, any retrenchment or closure effected in violation of statutory requirements continues to attract serious legal consequences, including the worker being deemed in continuous service with

entitlement to reinstatement, and also imposes penalties upon the employer as prescribed under Section 86 of the Industrial Relations Code, 2020.

For any clarification : skpfdelhi@gmail.com