

DRAFT NATIONAL RURAL EMPLOYMENT GUARANTEE ACT

Text and Comments

October 2004

Draft National Rural Employment Guarantee Act, 2004

Key Features*

Summary: The proposed Employment Guarantee Act is a law whereby anyone who is willing to do casual manual work at the statutory minimum wage is entitled to work within 15 days. If work is not provided within 15 days, he/she is entitled to an unemployment allowance.

The key features of the draft Act (dated 1 September 2004) are as follows:

DETAILS OF THE GUARANTEE

1. **Eligibility:** Any person above the age of 18 residing in rural areas is entitled to apply for work under the Act.
2. **Entitlement:** Any applicant is entitled to work within 15 days, for as many days as he/she has applied.
3. **Distance:** Work is to be provided within a radius of 5 kilometres of the applicant's residence if possible, and in any case within the Block. If work is provided beyond 5 kilometres, travel allowances have to be paid.
4. **Wages:** Workers are entitled to the statutory minimum wage applicable to agricultural labourers in the state. Men and women will be paid the same wages.
5. **Timely payment:** Workers are to be paid within seven days of the week when work has been done. Payment of wages is to be made in front of the community.
6. **Unemployment allowance:** If work is not provided within 15 days, applicants are entitled to unemployment allowance. In the draft Act, the unemployment allowance has been tentatively fixed at one third of the statutory minimum wage.
7. **Worksite facilities:** Labourers employed under the Act will be entitled to various facilities such as clean drinking water, emergency health care, child-minding, and compensation in the event of accident or death.
8. **Social security:** The draft Act allows the deduction of up to 5% of the wages for the purpose of financing social security schemes such as old age pensions, health insurance and maternity benefits, provided that these schemes are managed in an effective and transparent manner for the benefit of the workers.

EMPLOYMENT GUARANTEE PROGRAMME

1. **Employment Guarantee Programme:** An Employment Guarantee Programme is to be created under the Act, through which work will be provided to all applicants.

* For the full text of the draft Act, see www.righttofoodindia.org (section on right to work).

2. **Productive works:** Only “productive works” are to be taken up under the Programme. Productive works are defined as works that contribute directly or indirectly to “the increase of production, the creation of durable assets, the preservation of the environment, or the improvement of the quality of life”.
3. **Block Officer:** The implementation of the programme at the local level is the responsibility of the Block Officer (an officer of rank similar to the Block Development Officer). However, the draft Act allows some of these responsibilities to be delegated to the Gram Panchayats.
4. **Contractors:** Contractors are not to be used by Gram Panchayats. Use of contractors by Block Officers is restricted to specific types of work and subject to case-by-case permission.
5. **Decentralised planning:** Village-level works are to be planned and executed by Gram Panchayats, based on the recommendations of the Gram Sabha. Panchayats are expected to maintain a shelf of works and to ensure timely social audits of all the works.
6. **Transparency and accountability:** The draft Act includes detailed provisions for transparency and accountability at all levels, including convenient availability of all records to the public, regular social audits by the Gram Sabhas, payment of wages in front of the community, public display of muster rolls, regular maintenance of job cards, and so on.

OTHER PROVISIONS

1. **Monitoring:** The Employment Guarantee Programme is to be monitored by a Central Employment Guarantee Council at the national level, and by State Employment Guarantee Councils at the state level.
2. **Redressal:** The Act explicitly provides for penalties against responsible officers if they do not perform their duty.
3. **Cost sharing:** The draft Act states that labour costs will be paid entirely by the central government, and material costs will be shared equally by state and central governments.
4. **Financing:** The Act provides for the creation of a dedicated, non-lapsable National Employment Guarantee Fund. The fund is to be sustained with the proceeds of specific taxes, and matching grants from the central government. Similar arrangements are to be made at the state level. The details of the financing arrangements are yet to be formulated.
5. **Scope:** As of now, the draft Act covers rural areas only (including Class B and C cities). Extension of employment guarantee to urban areas would require a separate Act, or modification of this draft Act.
6. **Time frame:** The Act is to be extended to the whole of India within two years.

Note: All these provisions also apply to the draft National Rural Employment Guarantee Act prepared by the National Advisory Council (NAC). However, in the NAC draft the employment guarantee is initially limited to 100 days per household per year (in line with the Common Minimum Programme). Also, the time frame for extension to the whole of India is 5 years instead of 2 years. For further details, see

7. **Avoiding contractors:** The draft Act rules out private contractors, except in specific circumstances and with case-by-case permission. Some commentators favour a total ban. Others suggest that contractors should be allowed (to avoid limiting the range of works), provided that wages are paid directly by the government and that the Employment Guarantee Fund is not used to pay contractors.

8. **Level of the unemployment allowance:** There is no obvious benchmark for the "unemployment allowance". The draft Act states that the allowance should be no less than one third of the statutory minimum wage for agricultural labourers. Other benchmarks have been suggested, all the way up to the full minimum wage. Another suggestion is there could be a "graded" allowance, rising with the number of days of unemployment.

9. **Timely wage payments:** The draft Act states that wages must be paid weekly, in consonance with the provisions of the Payment of Wages Act. Provisions could be added for "advance" wages, and/or for daily payments whenever possible. Another suggestion is that poor families should be given food first, unconditionally, on the understanding that they will work if and when employment is made available.

10. **Wage deductions for social security:** The draft Act provides for up to 5 per cent of the wages to be set aside for social security entitlements, e.g. health insurance or old-age pensions. Some commentators are opposed to these deductions as they might be misused.

11. **Disqualification:** There are diverse views on the appropriate "penalty" that should be imposed, if any, when an applicant fails to turn up for work within the requisite number of days (as of now, 15 days), without applying for exemption, after being called for work. The draft Act states that such applicants are disqualified from applying for work, or from receiving the unemployment allowance, for a period of 15 days.

13. **Skilled labour:** The draft Act gives guaranteed access to "casual manual labour" (as opposed to "unskilled manual labour", as in the initial draft). This opens the possibility of bringing certain categories of skilled labour within the scope of the "employment guarantee programme". Some commentators feel that "casual manual labour" is too restrictive and other terms have been proposed, e.g. "casual labour", "manual labour", etc.

14. **Disabled persons:** It has been suggested that the clause regarding special provisions for the employment of disabled persons, or other persons who are unable to do ordinary unskilled manual work on account of illness etc., should be strengthened. For instance, work could be made available as a matter of right to households where no-one is able to perform ordinary manual work due to disability or related reasons.

15. **Cash and kind:** The draft Act allows for wage payments in both cash and kind. Some commentators suggest that part payment in kind should be made mandatory. Another suggestion is that at least 25% of the wages should be paid in cash. Some have suggested a provision whereby the labourers have the choice to decide how they would like to be paid. Others argue for cash payments on the grounds that kind payments facilitate cheating (because the money value of kind payments may not be clear to the workers).

16. **Nature of works:** Many suggestions have been made regarding the nature of works to be taken up under the Employment Guarantee Programme. These include minor irrigation works, development of wastelands, walking children to school, etc. It has also been suggested that the nature of works should not be such that it ruins people's health or makes it

difficult for some people (especially women) to participate. Another concern is the process through which works are selected.

17. Penalties: Another concern relates to the government finding loopholes or escape routes to fulfil its obligations under this Act, especially in the payment of the unemployment allowances, or letting funds remain unused, diverting funds for other uses, etc. Penalties in such cases should also be spelt out more clearly.

18. Finance: The sections on funding are provisional, and need further attention. Some commentators favour 100% funding by the central government. Others advocate some contribution from state governments, e.g. 25% of the cost of materials.

19. Priority groups: It has been suggested that in the allocation of labourers between different works (e.g. local works vs distant works), preference should be given to disadvantaged households, e.g. female-headed households.

22. District-level officer: The responsibilities of the CEO (at the district level) need to be listed. While penalties have been prescribed for the Programme Officer, there seem to be none for the CEO.

23. Quota for women: Many commentators feel that in the event where the employment guarantee is restricted to 100 days per household (as proposed in the Common Minimum Programme), there should be a quota for women, e.g. 40 per cent of all labourers employed in every village or Block.

24. Transparency in piece rates: It has pointed out that lack of clarity about piece-rate norms is often used to cheat labourers. There should be full transparency in the schedule of rates prescribed by the state government.