Practical Aspects of PF & ESI

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The recorded version of this webinar will be put up on 1st September on our website www.paybooks.in and YouTube Channel.
THE EMPLOYEE’S PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT
Objects of the Act

- The Act came into force in 1952 to ensure compulsory Provident Fund and comprises of the following schemes:
  - Employee’s Provident Fund, 1952.
  - Employee’s Deposit-Linked Insurance Scheme, 1976.
  - Employee’s Pension Scheme, 1995 (replacing the earlier Family Pension Scheme of 1971).
Applicability

- The Act applies to Factories / Establishments which employ 20 or more persons and are engaged in the manufacturing of items specified in the schedule to the Act.

- The Act would be applicable to other industries and class of establishments notified by the Central Government from time to time in the Gazette.

- IT companies are covered as per the notification.

- The scheme once applicable will continue to apply even if the number of persons have fallen below 20.
Objectives of the Act

To make provisions for the future of the industrial worker after he retires or for his dependents in the case of his early death.

- Compulsory Provident Fund
- Family Pension
- Deposit linked insurance
Scope and Coverage

- Applicable to factories and establishments employing 20 or more persons.
- Applicable to all persons who are employed directly or indirectly through contractors in any kind of work.
Eligibility

• The Act applies to those employees whose pay does not exceed Rs. 6,500/- per month. Those employees whose salary exceeds the said ceiling are treated as excluded employees. However, voluntarily they may be covered.

• Any person who is classified as disabled employee under new Para 82 of Employee’s Provident Fund Scheme, 1952 and working in the private sector, with monthly wages up to Rs. 25,000/- pm provided they are appointed on or after 01/04/2008.

• Any person who is classified as an international worker under new Para 83 of the Employee’s Provident Fund Scheme, 1952.

• The Act would cover all employees including casual, part time, daily wages and other employees except excluded employees.

• The membership of an eligible employee under the Act is compulsory from the first day of his appointment.
The employer is required to contribute 12% of the salary average and the employee is required to contribute the equal amount.

On the coverage of establishment, the employer is required to deposit the following contributions in the account noted against each:

I. P. F. Contribution @12% plus 3.67% in Provident Fund Account No.1

II. Pension fund contribution @ 8.33% in Pension Account No.10.
• Para- 30(1) Employer shall, at first instance, pay member and his own share of contribution.

• Para- 30(2) Principal Employer is liable to pay contributions in respect of employees employed through contractor.
The Employer shall before paying the member his wages, deduct his contribution and shall within 15 days of close of each month deposit it along with his share of contribution.

The administration charges ( Provident Fund) @ 1.1% of the salary in Account No.2.

Employees Deposit Linked Insurance fund contribution (E.D.L.I.) @ 0.5% of the salary to be deposited in Account No.21.

Administration charges @ 0.01% of the salary of the members.

All the remittances are to be remitted in one challan in the State Bank of India by a single cheque favoring SBI Account of Employees Provident Fund. The amount can also be remitted in cash.

The establishment is required to maintain regular record of amount deducted from the salary of the member by providing appropriate columns in the pay sheet which is open to the employee for inspection.
Employee’s Pension Scheme

- The scheme provides for pension to the employees of any establishment to which the act applies.

- Amounts not exceeding 8.33% of Wages / Salary shall be paid out of the provident fund into the employee’s pension scheme (w.e.f. 16-11-1995 the date of contribution of the scheme).

- A minimum 10 years contribution service is required for entitlement of the pension.

- The scheme provides for payment of monthly pension in the following contingencies (sec. 6- A (1) (a) & (b).

  a) Superannuation pension on attaining the age of 58 years.
  b) Retirement pension.
  c) Permanent total disablement pension.
  d) Death during service.
  e) Death after retirement / superannuation/ permanent total disablement.
  f) Children pension.
  g) Orphan pension.

- The amount of monthly pension will vary from member to member depending upon his pensionable salary and pensionable service, however minimum pension is Rs. 1000/-.
Employees’ Deposit-linked Insurance Scheme (6-C)

- A Deposit-Linked Insurance Scheme has been framed providing life insurance cover to the employees of any establishment to which this Act applies.
- The employer has to contribute 0.50% of the aggregate Salary.
- Employees are not required to make any contributions.
- An employee will receive Rs. 35,000/- + 25% of amount in excess of Rs. 35,000/- accumulation subject to ceiling of Rs.1,00,000/- in addition to his deposit, if he dies during his services.
Priority of payment of contribution

• Where an employer is adjudicated insolvent being a company, an order for winding up is made, money due from the employer towards contributions, charges and damages if any is to be paid in priority to all other debts in the distribution of the property (sec. 11)
Immunity/protection against attachment

- The amount standing to the credit of any member in the fund cannot be assigned or charged or made liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the member [sec. 10 (1)].

- At the time of the death of the employee the fund is payable to his nominee and shall be free from any debt or other liability.
Appropriate Govt. may exempt all or any of the provisions of the scheme.

- Any establishment to which Act applies, if contribution rates are not less than that in sec- 6 and employees enjoy other benefits which are not less favorable than those in the Act.

- **Para 27-** Commissioner on receipt of application (in Form-1) by employee, exempt all or any of the provisions of the scheme provided he is entitled to benefit viz. Pension, gratuity and which are not less favorable. Exemption not allowed more than once.

- **Para 27- A** Exemption of class of employees.

- **Para 27-A A** – Exemption granted or to be granted are subject to terms and conditions specified in Appendix A.

- **Para 79** Commissioner may, for establishment, for which exemptions is received, relax the provisions of the scheme pending the disposal of the application.

- Exemption to Employers and Employees (Sec 17 & Para 27) – The appropriate Government may exempt any establishment or its employees if they are getting better benefits or pension etc in their establishment.
• Section 5 (1-B) and Para 68-69 of the scheme provides for withdrawals of the fund by the employees on following contingencies.

  o Construction of house, flat or buying land for it.
  o Advance for illness viz hospitalization for more than a month, major surgical operations or suffering T.B, leprosy, paralysis, cancer, heart ailment etc.
  o Advance for marriage of Self/Son/Daughter/Sister/Brother.
  o Advances for post matriculation education of Son/Daughter.
  o Advance for damage to the property due to natural calamity (Flood/Riot/Earthquake)
- Advance for member affected by cut in the supply of electricity in establishment.
- Advance for Member who is physically handicapped.
- On resignation
- On retirement on account for permanent or total incapacity to work.
- Immediately before Migration from India for permanent settlement abroad or for taking employment abroad.
- On termination due to voluntary retirement scheme, retrenchment, closure of the factory/establishment.

However, the quantum of withdrawal may vary from case to case and ranges to the extent of his total contribution.
Penal provisions (sec.14)

• Every employer shall be punishable with imprisonment for a term which may extend to one year or with fine of Five Thousand rupees, or with both for any offence or default.
Questions & Answers

What is a covered establishment?

Covered establishment is an establishment belonging to the class of industries / other establishments, which has been listed in the schedule appended to the Employees' Provident Fund and Miscellaneous Provisions Act 1952 and where 20 or more persons are employed.

Can member change his/her nomination?

- He / She can change his/her nomination whenever he/she decides within the framework of rules for such nomination.
- If he/she has a family, nomination should be in favour of a member(s) of the family.
- If he/she has no family, he/she can nominate anyone he/she wishes.
Whom can I nominate as my nominee?

Married members can nominate the following:

- Male Members: Wife, Children, dependent parents & his deceased son’s widow & children.

- Female Members: Husband, Children, dependent parents, her husband’s dependent parents & her deceased son’s widow & children.

- Unmarried members or members with no family can nominate any person (s) or institution related to him or not. On subsequently acquiring a family, such member should make fresh nomination in favour of one or more persons belonging to his family. Any fresh nomination would supersede over the earlier nomination provided by the member.
I have joined recently, what will happen to my previous PF Accumulation?

PF accumulations with previous employer can be transferred by filling up Form 13. The present employer will endorse and send the forms to previous employer. The employee is expected to take up with previous employer for early transfer of his accumulations to his present provident fund account.

Upon my separation from my existing employer how do I get my PF accumulations transferred to my new employer?

PF accumulations can be transferred to the new employer PF account by filling up Form 13 with the new employer.
How will I know the receipt of my PF transfer?

Once an employee applies for the PF transfer with his new employer, his PF transfer application will be processed and sent to his previous employer, who would further process and send the PF transfer proceeds directly to the governing body i.e. PF Trust / PF Commissioner with whom the current PF account is maintained. Employees will get to know the PF transfer in status when they receive the PF Statements from the PF departments on annual basis or employees can download their pass book.
Can I contribute over and above the mandatory 12%, as voluntary provident fund?

Yes, but subject to a total contribution of not more than 100% of basic salary. However, the employer will not contribute towards such voluntary contribution done by the employee. Further, the said voluntary contribution will be treated as normal contribution and cannot be withdrawn as and when the employee wishes to. The voluntary contribution will be at a fixed percentage of basic and will remain same throughout the year (Mar-Feb). You can give the mandate for deduction of voluntary PF at the start of financial year & can cancel it any time during the year.
What are the benefits under the Employee Provident Fund Scheme, 1952?

The benefits under the EPF Scheme, 1952 to the employee are as follows:

• Compulsory savings with equal additional amount from the Employer.

• Allowed for deduction from Income Tax (Pl check the Direct Tax Code applicable from 2012).

• Interest earned is not liable for Income Tax (Pl check the Direct Tax Code applicable from 2012).
Is it compulsory to join Employees Pension Scheme, 1995?

All employees covered under Employees Provident Fund and Misc. Provisions Act, 1952, who have not completed the age of 58 years become members of The Employees Pension Scheme, 1995.

What is the eligibility to receive Pension under Pension Scheme?

A minimum period of ten years of contributory service is required to be eligible to receive monthly Pension. Full pension is payable on completion of 20 years of contributory service.
What is contributory service?

Contributory service means the period of actual service rendered by a member for which contributions to the fund have been received or are receivable.

How much pension will I get?

Actual Pension shall become payable after completion of 58 years of age and will depend on contributory service and pensionable salary, which shall be average monthly pay drawn during the contributory period of service in the span of 12 months preceding the date of exit, the minimum pension amount is Rs. 1000/-. 
What are the types of Pension?

• Monthly Widow’s Pension : Life long Pension to Spouse

• Monthly Children’s Pension : Pension to Children till they reach the age of 25 years.

• Monthly Nominees’ Pension : Pension to dependent father or dependent mother.

Can I voluntarily contribute to Pension Scheme?

No, the contribution is calculated on the salary ceiling as per the provisions of the EPF Act, 1952. The salary ceiling gets upwardly revised over a period of time.
I am resigning from the services of the Company, can I settle my Pension Fund Contribution and if yes, how I will be able to do the same?

If you are resigning before completing 6 months of contributory service, you will not be entitled to withdrawal benefits under Pension Scheme. However, the benefits can be transferred, if you are opting for a transfer to your new PF and Pension account at your present employer. The Pension Scheme ignores contributory service of less than 6 months and contributory service above 6 months is rounded off to a year.

If an employee does not have a family and dies before receiving benefit. Does his pension remain unpaid?

No, if he does not have a family, benefits will be paid to his nominee, who will receive the benefits in his absence.
What are the benefits available under Employees Deposit Linked Insurance Scheme, 1976?

All members contributing to Provident Fund are automatically insured for their life during the Service. The Employees Provident Fund Organization pays additional sum as the EDLI benefit to the nominee of the deceased employee if death occurs while in employment. The amount of the benefits is based on the average balance in PF account for 12 months preceding the date of death of an employee. The maximum lump sum amount payable to the nominee under this Scheme is Rs. 100,000/-. 
In case of returning of cheque what is the procedure to be followed?

I. Generally the bankers return the cheques when the a/c number is furnished incorrect or a/c has been closed.

II. On receipt of the cheque from the bankers the Provident Fund office will write to the member & employer about the fact & request them to intimate the bank, a/c number & detailed address.

III. In case, the member comes to know about returning of the cheque before this, he can write to the Provident Fund office through his former employer regarding his present address & bank a/c number.
What is the time taken for disposal of the application in the Provident Fund office?

The claims received complete in all respects are disposed off within a maximum period of 30 days from the date of receipt of claims in the office.

In case the member is not hearing anything about his application within 30 days, he can approach the Public Relation Officer.
Application for final settlement:

- Application (Form – 19) for final settlement can be sent by a member on completion of 2 months from the date of leaving service, if the reason for leaving service is other than superannuation, medical ground, retrenchment and V.R.S./ Female members getting married etc.

- The amount will send by direct deposit in payees' bank a/c. To facilitate this, Bank a/c no., name and address of the bank should be furnished.

- Application may be supported by the return Form-10, showing the details of leaving service and details of contribution for the year in Form-3A, if not sent earlier by the employer.
Death cases:

- Nominee/legal heir should apply in Form-20 /Form-10-D /Form-5IF.

- If the member has not executed any nomination, application should be supported by certificate of family members issued by employer/revenue official/sworn in an affidavit by the family/member/legal certificate from a court of law.

- Death certificate of the member.

- Certificate of the employer stating whether the death was while in service of the member or not.
Pension cases:

- Joint photograph of member/spouse or the claimant should accompany the application.

- Option for return of capital/commutation should be specified clearly.

- Details of non-contributory period during the service, wages/salary for last 12 months should also accompany, if not already sent.

- Details of the branch of the specified bank may be given legibly.

- Date of birth certificates of children.

- In case of death away from service, an undertaking by the claimant to the effect that the member was not working / had not worked in any other covered establishment after exit from the establishment on the basis of which pension is being claimed.
EMPLOYEE’S STATE INSURANCE ACT, 1948
Objects Of the Act

• The Employees’ State Insurance Act is a measure of social security through a system of insurance against sickness, disablement and death, arising out of and in the course of employment, and also a benefit for maternity.

• The scheme is compulsory, the employer has no option in regards to making contributions to it. The employer should get his establishment registered from the day of commencement of business.
Applicability

• The Act applies in the first instance to all factories other than seasonal factories.

• A company contracting away jobs to other units is not liable for making contributions under the Act, if it can show that it does not control the employees of those units.

• The Act will apply to all branches of an establishment as well when the total number of employees in the establishment exceeds ten.

• A hotel engaging more than 10 workers and using LPG cylinder will be covered under the Act.

• Employees who are drawing less than or equal 15000/- p.m. are to be cover under this Act.
From Employees – 1.75%,
From Employer – 4.75%

**Contribution and Benefits Period:**

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Benefits

• Sickness Benefit.
• Accident Benefit.
• Disablement Benefit.
• Dependents Benefit.
• Maternity Benefit.
A condition which requires medical treatment and attendance and necessitates abstention from work on medical grounds.
A personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India.
I. **Permanent partial disablement:**

Such disablement of a permanent nature, as reduces the earning capacity of an employee in every employment which he was capable of undertaking at the time of the accident resulting in the disablement.

II. **Permanent total disablement:**

Such disablement of a permanent nature as incapacitates an employee for all work which he was capable of performing at the time of the accident resulting in such disablement.

III. **Temporary Disablement:**

A condition resulting from an employment injury which requires medical treatment and an employee, as a result of such injury, temporarily incapable of doing the work which he was doing prior to or at the time of injury.
Dependents means any of the following relatives of a deceased insured person.

i. A widow, a legitimate or adopted son, who has not attained the age of twenty five years, an unmarried legitimate or adopted daughter.

   (i–a) a widow mother.

ii. If wholly dependent on the earnings of the insured person at the time of his death, a legitimate or adopted son or daughter who was attained the age of twenty five years and is infirm.
iii. If wholly or in part dependent on the earnings of the insured person at the time of his death-

a) A parent other than a widowed mother.
b) A minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and a minor or if widowed and a minor.
c) A minor brother or an unmarried sister or a widowed sister if a minor.
d) A widowed daughter – in – law.
e) A minor child of a predeceased son.
f) A minor child of a predeceased daughter where no parent of the child is alive.
g) A paternal Grand – parent if no parent of the insured person is alive.
It is a payment to a woman worker at the rate of the average daily wage for the period of Twelve weeks (Three months).
How to count the ten or more or 20 or more number of employees?

Prior to the amendment of the Act, only the employees who are drawing wages up to Rs.15000/- p.m. were included in counting ten or more employees to determine coverage and others whose wages exceed Rs. 15000/- pm were excluded. However, after amendment in 2010, all employees irrespective of the wage limit are to be included counted to decide whether the factory or establishment is employing ten or more persons. It means that the employees who are not covered are also to be included now for counting the minimum number of employees. Thus the criterion for coverage has been broad based.
Whether contractor’s workers shall also be counted?

Sec.2(9) of the ESI Act defines ‘employee’ as including not only employees directly recruited by the employer but also employees of the contractor (immediate employer) employed to do the work of the factory or establishment or to do any work connected with that of the establishment or factory. Therefore a contractor worker too shall also be included in counting the ten or twenty employees.

Whether the Act provides for voluntary coverage by employees and employer?

No, the ESI Act does not provide for voluntary coverage at the request of employees and employer.
Whether supervision and control are necessary over the work of the contractor workers in order to make them employees for the purpose of coverage under the Act?

Sec.2(9) which defines ‘employee’ includes a person who is employed through a contractor, if such contractor worker is employed on the premises of the principal employer and Sec.2(9) does not make it necessary that such worker shall work under the supervision and control of the principal employer. It is enough if the contractor worker undertakes the work of the establishment or any work connected there with on the premises of the principal employer.
In such case, whether a contractor’s worker doing a work connected with that of the establishment outside the premises of the principal employer is not to be covered?

Such contractor worker too will be an employee within the meaning of Sec.2 (9) of the Act and will be covered even though he is working outside the premises of the principal employer subject to the following conditions —

He should do the work of or any work incidental or part of the work of the establishment.

He should work under the supervision and control of the principal employer or his agent.
Whether casual labour too are covered?

The definition of employee under Sec.2(9) is too wide to include casual workers who are employed to do the work of or any work connected with that of the establishment. However, it will be difficult to stick liability to principal employer in case of every kind of casual work. For example, a casual loader who merely enters the premises of the principal employer and unloads some material like a gas cylinder and leaves the premises thereafter and it is not known when his next turn comes or whether he ever turns up again for the same job, may not be covered. A mere casual presence on the premises of employer to do some sporadic work cannot make a person as an employee under the Act.
Whether apprentices are covered?

Sec.2(9) which defines ‘employee’ has been amended in 2010. The pre-amended section excluded apprentices employed both under Apprentices Act 1961 and under Standing Orders from coverage of Act. However the section 2(9) after the amendment includes the apprentices appointed under Standing Orders under the definition of ‘employee’ and therefore covers them under the Act.

Whether a contractor who provides labour to the establishment shall also be covered?

No. A contractor cannot be covered since he is not doing any work of or connected with establishment and hence not an employee within the meaning of Sec. 2(9) of the Act.
Whether an employee ceases to be an employee for the purpose of coverage under the Act if his wages exceed Rs.15000/-p.m. on account of wage revision?

No. Not on all occasions, he becomes excluded from being an employee on account of his wages exceeding Rs.15000/-p.m. It depends up on the time at which the increase in wages took place. For example, if his wages have been revised upwards from Rs.15000/-p.m. to Rs.18000/-p.m. in the midst of the contribution period say in the month of May in the contribution period of April to September he continues to be employee till the end of the contribution period i.e. September and thereafter be ceases to be an employee for the purpose of coverage.
If the maximum limit is Rs.15000/- and is there any minimum wage limit under the Act?

No. The Act does not prescribe any minimum wage limit for coverage of employees.

Whether over-time wages are to be included for computation of Wages for the purpose of coverage of an employee?

Sec. 2(9) itself provides answer to this question. It excludes over-time wages while computing the wage limit of Rs.15000/-p.m.
Whether over-time wages too are to be excluded for the purpose of contribution?

The definition of wages under Sec. 2(22) includes all remuneration paid or payable to an employee if the terms of contract of employment express or implied is fulfilled. Thus doing work of the establishment beyond the stipulated working hour’s forms part of the contract of employment and therefore remuneration paid for over-time work is wages within the meaning of first part of the definition. This part over-time wages are not specifically excluded from the definition of wages. Therefore contribution is payable on over-time wages.
Is contribution payable on conveyance allowance?

Sec. 2(22) which defines wages excludes travelling allowance or the value of any travelling concession and thus obviates the need to pay contribution on it. However some companies are paying conveyance allowance to their employees. Thus questions arose whether such conveyance allowance is synonymous with travelling allowance and whether contribution is payable on such conveyance allowance. There are conflicting views by the courts on this issue till date. However the ESIC in 2001 has issued the following guidelines.

If the conveyance allowance is paid as per the terms of any settlement or as per the terms and conditions of employment, it shall be treated as wage. If the same is paid by way of reimbursement against production of evidence or bills of having incurred the said expense or paid at intervals exceeding two months, it shall not form part of the wage.
Is contribution payable on subsistence allowance during suspension of an employee?

Yes. Contribution is payable on the subsistence allowance paid to an employee during his suspension since it was held as part of wages.

Is contribution payable on amounts or incentives paid at employer’s discretion?

Sometimes employers pay certain amounts in their discretion out of good will or as a generous gesture to employees either in appreciation of their work or on account of some special occasion. Such amounts cannot form part of the wages since they are neither paid under a settlement or as part of contract of employment or at regular intervals of two months and hence no contribution is payable on them.
Is contribution payable on encashment of un-availed leave?

Yes. It is payable since such payment is construed as part of wages under Sec. 2(22) of the Act.

Is the employee responsible to pay his share of contribution?

Sec.40 lays down that it is the principal employer’s responsibility to pay employee’s contribution whether such employee is directly employed by him or through an immediate employer (contractor) and then recover employee’s contribution from the wages payable to him.

Is contribution payable on wages paid to an employee in lieu of notice of termination?

No. Notice pay is not a wage within the meaning of Sec. 2(22) of the Act since he is not deemed to have earned those wages for having done any work of the establishment.
Whether an accident met with by an employee while coming to this place of work can be treated as an accident arising out of employment to enable the employee to claim appropriate benefit under the Act?

The ESI act was amended in 2010. The amendment has introduced a new section 51-E which states that an accident occurring to an employee while commuting from his residence to the place of employment for duty or from the place of employment to his residence after performing duty, shall be deemed to have arisen in the course of employment, if nexus between the circumstances, time and place in which the accident occurred and employment is established such as that he has taken the regular route for the office at the same time and did not deviate from it.
How conviction of an employee affects his benefits?

Answer: In terms of the provisions of the Act and the Rules there under, an employee who is convicted of making a false statement under Sec.84 of the Act to get a payment or benefit to which he is not entitled or to get an increase in such a payment or benefit or to avoid any payment which he is required to make under the ESI Act, is not entitled to any cash benefit admissible under the Act for a period of three months for the first conviction and six months for each subsequent conviction.

How strike affects an employee’s benefits?

In terms of the provisions of the Act, an employee who remains on strike is not entitled to sickness benefits or disablement benefit on any day on which he remains on strike.
THANK YOU

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