

21ST OCTOBER, 2016

EPILPA WORKSHOP ON

AMENDMENTS UNDER LABOUR LAWS 2016

INFORMATION COMPILED BY VPD CONSULTANTS PVT. LTD.
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EMPLOYEES' STATE INSURANCE ACT, 1948



- On [8th April, 2016](#), ESIC issued a memorandum wherein it stated that the interest on omitted wages shall be claimed in the same manner as claiming interest on regular contribution u/s 39(5) of the ESI Act read with the Regulations 31. The bonafide impression of employer, whether remunerations paid to a worker in a covered unit constitute 'wages' u/s 2(22) of the ESI Act or not, does not absolve the employer from the liability of paying the interest on the delayed payment of contribution
 - W.e.f. [12th April, 2016](#), ESIC introduced Aadhar based authentication of the beneficiaries under the Act. Henceforth, in respect of insured persons who have entered their Aadhar numbers in the ESIC database will not have to separately enroll for the Biometric Pehchan Card. In absence of Aadhar number, the TIC (hereinafter e-Pehchan card) will be valid only for a period of 30 days after registration. If the member does not wish to provide Aadhar number then he has to enroll for the Biometric Pehchan Card.
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- W.e.f. 1st March, 2016 the Scheme was made applicable to several revenue villages of the Malappuram & Kottayam districts in Kerala.
 - W.e.f. 1st April, 2016 the Scheme was made applicable to 12 revenue villages in [Himachal Pradesh](#).
 - W.e.f. 1st May, 2016, the Scheme was made applicable to areas falling in Narayanapuram and its surrounding 14 revenue villages in Ungutur Mandal of West Godavari District in [Andhra Pradesh](#).
 - W.e.f. 1st July, 2016, the Scheme was made applicable to 5 [districts](#) in [Telangana](#) and 1 district in [Haryana](#).
 - W.e.f. 1st August, 2016, the Scheme was made applicable to 28 districts in [Rajasthan](#), 20 districts in [Maharashtra](#) and 8 districts in [Jammu & Kashmir](#).
 - W.e.f. 1st September, 2016, the Scheme was made applicable to 9 districts in [Andhra Pradesh](#), 16 districts in [Bihar](#), 4 districts in [Karnataka](#) and 22 districts in [Madhya Pradesh](#).
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➤ W.e.f. 6th October, 2016, [new rule](#) was inserted after the existing rule 51A.

51B - In areas where the Act is implemented for the first time, the rates of employer's and employee's contribution for the initial twenty-four months from such date of implementation, shall be as under:-

(a) Employer's contribution - A sum (rounded to the next higher rupee) equal to three per cent of the wages payable to an employee; and

(b) Employee's contribution – A sum (rounded to next higher rupee) equal to one per cent of the wages payable to an employee:

Provided that on completion of twenty-four months from the date of implementation of the Act, the rate of contribution as provided under rule 51 shall be applicable.”

PROPOSED AMENDMENTS TO THE ACT

- The [draft rules](#) for amendment in rule 50 were proposed on 6th October, 2016 by the Ministry of Labour & Employment. The rules propose to make the below change –
 - “wherein the words “fifteen thousand”, wherever they occur, shall be substituted by the words “twenty-one thousand”.

 - The [draft rules](#) for amendment regarding Maternity benefits under the Act were also proposed on 6th October, 2016. The draft proposes to make changes in rule 2 & rule 56 as under -
 - Under rule 2 a new sub-rule 2B has been introduced which defines the meaning of ‘Insured woman’.
 - Increase maternity benefit from 12 weeks to 26 weeks for 1st two children. [Rule 56(2)]
 - Women having 2 or more surviving children can avail maternity benefit of maximum 12 weeks. [3rd proviso to rule 56(2)]
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PROPOSED AMENDMENTS TO THE ACT

- 12 weeks maternity benefit to a Commissioning Mother and Adopting Mother. [2nd proviso to rule 56(2)]
 - Sub-rule 4 to rule 56 which dealt with maternity benefit in case of sickness arising out of pregnancy, confinement, premature birth or miscarriage or medical termination of pregnancy shall be omitted.
- Both the draft rules will be taken into consideration after expiry of a period of thirty days from the date on which the copies of the Official Gazette in which this notification is published, are made available to the public;
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POINTS TO PONDER

- ❖ The notification published on 6th October regarding contribution rate for new implemented areas, has come into force from the day of publication i.e. 6th October, 2016.
- ❖ The new rule 51B, says that, “the rates of employer’s & employee’s contribution for the initial twenty-four months from such date of implementation shall be as under - Provided that on completion of twenty-four months from the date of implementation of the Act, the rate of contribution as provided under rule 51 shall be applicable.”
- ❖ Considering the above 2 points, the question arises as under –
 - *Should the period of 24 months be calculated from the date the Act was made applicable to the newly implemented areas or should it be calculated from the date the notification came into force?*

POINTS TO PONDER

- ❖ With respect to the state of Maharashtra, the Tarapur Industrial Manufactures Association (TIMA) has filed a writ petition objecting the implementation of the Act to the district of Palghar. The result on the same is awaited.



PAYMENT OF BONUS ACT, 1965



- Every employee who is drawing a salary or wage (Basic + DA) upto Rs. 21,000/- per month (earlier Rs. 10,000/- p.m.) and who has worked for minimum period of 30 days in a year is entitled to receive bonus.
 - For the purpose of computation of Bonus under the Act, the wage limit (Basic + DA) is increased from Rs. 3,500/- to Rs. 7,000/- or the minimum wages applicable to respective schedule industry/employment whichever is more.
 - If an employee is earning salary or wage not exceeding Rs. 7,000/- per month or minimum wage whichever is higher, he is entitled to get bonus on actuals.
 - If an employee is getting a salary of wage exceeding Rs. 7,000/- per month or minimum wage whichever is higher, but not exceeding Rs. 21,000/- per month the Bonus shall be calculated on Rs. 7,000/- per month or the minimum wage applicable to the particular grade/industry/state, whichever is higher.
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- Above amendments are applicable from 1st April, 2014 and hence, all Employers to whom the Act is applicable will have to pay difference of Bonus amount for the year 2014-15, if the bonus has been paid @Rs. 3,500/- for the employees below Rs. 10,000/-
 - Bonus for the year 2015-2016 at revised rate is due to be paid on or before 30th November, 2016.
 - In view of the above all eligible employers, Factories/Establishments as the case may be needs to submit Revised Annual Returns in Form D after making payment of difference of Bonus amount for the year 2014-2015.
 - However in line with Kerala High Court, Karnataka High Court, Labour Commissioner Office of Madhya Pradesh & Uttar Pradesh; the Bombay High Court stayed the retrospective application of the Act on the 13th June 2016.
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BONUS CALCULATION METHOD

Bonus Salary ceiling = Rs. 7,000/- or the minimum wages applicable to respective schedule industry/employment whichever is more.


Salary of Employee (Basic + DA)	Industry Minimum Wage (Basic + DA)	Salary to be considered for Bonus Calculation
25,000/-	9,000/-	Not eligible for bonus as ceiling limit is Rs. 21,000/-
10,000/-	9,000/-	9,000/-
6,500/-	9,000/-	6,500/-

MATERNITY BENEFIT ACT, 1961



PROPOSED AMENDMENTS TO THE ACT

- Introduction of the definition for commissioning mother. (section 3)
 - Increase maternity benefit from 12 weeks to 26 weeks for 1st two children. (section 5)
 - Women having 2 or more surviving children can avail maternity benefit of maximum 12 weeks. (section 5)
 - 12 weeks maternity benefit to a Commissioning Mother and Adopting Mother.
 - Employers to facilitate “Work from Home”
 - Mandatory provision of Crèche facilities wherein establishments have 50 or more employees.
 - At the time of appointment, intimate the women employees in writing & electronically regarding the benefits under the Act.
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EMPLOYEES' PROVIDENT FUND & MISCELLANEOUS PROVISIONS ACT, 1952

- Vide notification [10th February, 2016](#), the Ministry introduced Incentive Refund Schemes for those employers who provide UAN with 100% seeded KYC to all its employees in the EPF Scheme, 1952. The features of the Scheme are -
- The Incentive Refund Scheme shall be in operation for one year beginning from 1st January, 2016 to 31st December, 2016 (i.e. for the quarters beginning January, 2016, April, 2016, July, 2016 & October, 2016).
 - Only such establishments shall be considered eligible for the scheme of refund which have in each month of the quarter achieved the criteria for qualification as specified either in Incentive Refund Scheme 'A' or Scheme 'B'.
 - The eligible employers can claim 10% or 5% (as applicable) refund of administrative charges paid during the quarters.
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- On [30th March, 2016](#), EPFO issued a clarification on Coverage of Banks under the Act. As per notification issued on 10th February, 2016 by the Ministry, under Sec. 1(3)(b), Banks have been notified as a class of establishment. Thus making the Act applicable to all banks employing 20 or more employees.
 - Vide notification dated [1st April, 2016](#), the Monthly Orphan Pension shall be payable to an orphan beyond the age of 25 years, if such orphan is suffering from disorder or disability of mind or is physically crippled or disabled. To avoid any ambiguity this provision has been inserted under para 16(4).
 - W.e.f. [25th April, 2016](#) a new sub-para (7B) was introduced in para 12 of the Employees' Pension Scheme. According to the new provision, if the member so desires, he can defer withdrawing his pension beyond 58 years but not more than 60 years. In this case, the pension amount will be increased by 4% for every completed year after 58 years. Further, the member can continue to contribute towards EPS upto the age of 60 years only.
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- Vide notification [19th May, 2016](#), the Ministry substituted the proviso of sub-para (8) of para 12 of the Employees' Pension Scheme. As per the new proviso –
- if the member does not take up an employment coverable under the Scheme and has rendered less than 10 years eligible service on the date of exit, but dies before attaining the age of 58 years & before a continuous period of 36 months has elapsed during which contributions have not been received to the Pension Fund in respect of the concerned member, then the amount of contributions received in his case will be converted into a monthly widow pension or children pension. The widow pension will be calculated as per Table C and the children pension at 25% thereof for each child (upto 2). The orphan pension will be calculated at 75% of the amount as per provisions of para 16.
 - If the member does not take up an employment coverable under the Scheme and has rendered less than 10 years eligible service on the date of exit, but dies before attaining the age of 58 years after a continuous period of 36 months has elapsed during which contributions have not been received to the Pension Fund in respect of the concerned member, then the family shall be entitled to benefits under para 14.
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- This notification is applicable to only those employees who will complete 58 years of age after 1st May, 2016.

➤ W.e.f. [24th May, 2016](#), Employees' Deposit Linked Insurance Scheme, 1976

Para 22(3)(i) the average monthly wages drawn (subject to a maximum of fifteen thousand rupees), during the twelve months preceding the month in which he died, multiplied by thirty times plus fifty per cent of the average balance in the account of the deceased in the Fund or of a provident fund exempted under section 17 of the Act or under paragraph 27 or 27 A of the Employees' Provident Funds Scheme, 1952, as the case may be, during preceding twelve months or during the period of his membership, whichever is less, subject to a ceiling of one lakh and fifty thousand rupees, subject to a total ceiling of six lakh rupees;"

- W.e.f. [1st June, 2016](#), the threshold limit of PF withdrawal was raised from Rs. 30,000/- to Rs. 50,000/- for Tax Deducted at Source (TDS). (Section 192A of the Income Tax Act)
- W.e.f. [7th June, 2016](#), a new payment platform viz. PayGov was inserted as an approved method for online payment of PF contributions. (Para 38 & 48)
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- W.e.f. [23rd June, 2016](#), a new Form 10D UAN was introduced wherein, employees whose Aadhar No. and Bank A/c. no. are seeded and digitally approved by the Employer can directly submit the said Form to the concerned EPF Office along-with a cancelled cheque. Employer attestation on such Form is not required.
 - Vide notification dated [16th June, 2016](#), the Ministry omitted the wordings 'for financial year 2014-15', thereby continuing the minimum pension amount of Rs. 1,000/- beyond 31st March, 2015.
 - Vide notification dated [1st July, 2016](#), the Ministry amended para 11(4) of the Employees' Pension Scheme, wherein the wordings "and the pensionable salary for the existing members who prefer such fresh option shall be based on the higher salary" shall be inserted after the words "on salary exceeding fifteen thousand rupees per month".
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- W.e.f. [9th August 2016](#), Government of India launched Pradhan Mantri Rojgar Protsahan Yojana (PMRPY) in order to incentivise employers for generation of new employment. The salient features & benefits available under the Scheme are –
- All establishments registered with EPFO can apply for availing the benefit.
 - Such establishments should also have LIN allotted to them under Shram Suvidha Portal as it will be the primary reference number for communication purpose.
 - Registration on [PMRPY Portal](#) is mandatory to avail benefit. [EPFO site → Pradhan Mantri Rojgar Protsahan Yojana (PMRPY)]
 - Government will be paying 8.33% of EPS contribution of the employer for new employees upto 3 years, provided they continue in employment by the same employer.
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- The 8.33% contribution will be paid by GOI after the employer has remitted the 3.67% EPF contribution.
 - The PMRPY online form is to be submitted by 10th of the following month.
 - Textile sector establishments with NIC codes 1410 & 1430 are eligible to get 3.67% of EPF contribution also along-with EPS contribution.
 - This payment will be made by GOI after the employer has credited the 12% EPF contribution of the employees with EPFO.
 - New employee under the Scheme is an employee earning less than Rs. 15,000/- p.m., who was not working in any EPFO registered establishment in the past and did not have a UAN prior to 1st April, 2016.
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- The number of new employees will be ascertained from the monthly ECR for March 2016. The ECR submitted in March 2016 will be the PMRPY Reference Base for the year 2016-17. Similarly, ECR of March 2017 will be the base for 2017-18 and so on in subsequent years.
 - In case establishments are registered with the EPFO after 1st April, 2016, the reference base would be taken as nil and all the eligible new employees will be covered under the Scheme.
 - The establishments will not be eligible for the benefits of the Scheme in the months where employment has dropped below the reference base.
 - The new eligible employees should have a valid Aadhar linked UAN.
- W.e.f. [26th August, 2016](#), EPFO introduced a new declaration form which is to be submitted along-with Form 31 & Form 31(UAN). In case of Form 31(UAN), employer attestation on the form is not required.
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- Vide circular [21st September, 2016](#), EPFO provided for merging of multiple UAN as under-
- The members should be advised to apply for PF transfer from previous EPF account to the present EPF account.
 - The system would identify such cases on periodic basis where the PF transfer has been effected from one EPF A/c. to another, both having different UANs attached to these EPF A/cs.
 - All such identified UANs, from which PF transfer has been effected to PF A/c. having different UAN, would be deactivated (the mobile number would be released by the system for use by the member) and UAN would be blocked for further use. This would be done in respect of all identified UANs even when no request has been received from the member.
 - The previous member ID would henceforth be linked to the new UAN.
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- The member would be informed of the deactivated status of his previous UAN in case of activated UANs by SMS to the registered mobile number. He would be requested to activate the new UAN to get the updated status of his EPF account.
 - In case of arrear payment by the previous employer for the member, the system would auto populate the new UAN in the ECR on punching of previous UAN or member ID and the statutory contribution by the employer against the arrears can be remitted against new UAN only.
- W.e.f. [23rd September, 2016](#), EPFO introduced a new Declaration Form (New Form 11). This new form is to replace Form 13 (Transfer application) in those cases only where the KYC of the concerned employee (i.e. PAN, Aadhar No. & Bank A/c. details) have been verified & digitally approved by the Employer. Also, this form can be filled online through the UAN Member Portal.
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- SSA signed with Japan which has come into force from 1st October, 2016. So now there are total 17 countries where India has entered into SSA viz. Belgium, Germany, Switzerland, Luxembourg, France, Denmark, Republic of Korea, Netherlands, Hungary, Finland, Sweden, Czech Republic, Norway, Austria, Canada, Australia & Japan.
- In the 7th October, 2016 circular, EPFO provided analysis for the 2 sample months of April & May 2016 in respect of employees contributing to the Pension Fund exceeding salary of Rs. 15,000/- p.m. As per para 11(4) of the Employees' Pension Scheme, members who have opted to contribute on salary exceeding Rs. 15,000/- p.m. have to additionally contribute @ rate of 1.16% on the salary exceeding Rs. 15,000/- from & out of the contributions payable by the employees for each month. Accordingly, they have been advised to examine the compliance under para 11(4) regarding additional contribution of 1.16% & also regarding submission of fresh option for contribution on salary exceeding Rs. 15,000/- p.m. as per para 11(4)

POINTS TO PONDER

- ❖ 25th April, 2016 Pension Notification by Ministry as against EPFO guidelines for implementation of the notification in the Field Office Administration Software.
- ❖ 19th May, 2016 Pension Notification by Ministry, wherein the words “attaining 58 years of age” is mentioned. In the earlier notification of 25th April, 2016, the employee has provision to defer the age for pension drawal upto 60 years.

In such case, should 60 years (or 59 years, as the case may be) be considered for the purpose of para 12(8)?

POINTS TO PONDER

- ❖ Under the PMRPY, new employee is that employee who is earning less than Rs. 15,000/- p.m., was not working in any EPFO registered establishment in the past and did not have a UAN prior to 1st April, 2016.

Considering the words “earning less than Rs. 15,000/- p.m.” will the employee whose salary is Rs. 15,000/- be considered eligible for the Scheme?

- ❖ Under the PMRPY, Government will be paying 8.33% of EPS contribution of the employer for new employees upto 3 years, provided they continue in employment by the same employer.

If the employee leaves before completing the period of 3 years then how the employer will avail the benefit under the Scheme? Further, will the employer be exempt from making monthly employer contributions or he has to pay the contributions upfront and then make a claim for refund of the same?

