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**Returning Indian
outbounds to be treated
as “domestic workers”,
says EPFO**

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Background

- The government of India [GOI] had amended the Provident Fund (PF) regulations in October 2008 introducing the concept of International Worker (IW) to bring foreign nationals working in India within the PF ambit. Further, Indian passport holders travelling to a country with which India has an effective social security agreement [SSA] were to be tagged as IWs as well and covered by the amended regulations.
- In May 2012, the Employees' Provident Fund Organization (EPFO) clarified that only those Indian employees who have contributed to the social security programme of the host country and have gained or are going to gain eligibility for benefits under the host programme through the SSA, will be regarded as IWs.
- Further, through a circular issued in January 2014, authorities clarified that an IW will always retain that status (i.e. once an IW will always be an IW). Accordingly, for outbound employees going to SSA countries, who have not availed a Certificate of Coverage, the EPFO has been adopting a view that such employees are required to be categorised as IWs since they are entitled to benefits under the SSA.
- This posed considerable challenges for employers in identifying IW employees.
- Representations were made by various industrial forums and chambers of commerce to the EPFO, to provide relief.
- The EPFO has recently issued a circular intending to provide this relief.

Highlights of the EPFO Circular

- The circular clarifies that an Indian employee will be treated as an IW only if he/she satisfies the following two conditions:
 - Has worked or is going to work in a foreign country with which India has entered into an SSA; and
 - Being eligible to avail the benefits under a social security programme of that country, by virtue of the eligibility gained or going to gain, under the respective SSA.
- Hence Indian expatriates who do not fulfil the aforesaid two conditions and who come back to India after having worked in a foreign country will fall under the definition of "employee" as given under Section 2(f) and not of International Worker under Para 83 (2)(ja) (a) of the EPF Scheme 1952.

Comments

While, the current EPFO circular does not amend the definition of IW, it intends to dilute the “once an IW, always an IW” position that the authorities have been adopting till date. Though a reading of the circular does not clearly indicate this aspect, we understand from discussions with authorities that the intention is to clarify that once an outbound employee returns to work in India, he/she would be treated as a domestic employee (and not as an IW).

Source

IWU/7/(25)/2017/ Clarification reg. Para 83 - circular dated 8 June 2017

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