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Ministry of Labour & Employment proposes changes to the Provident Fund Act

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Background

The Ministry of Labour & Employment (Labour Ministry) has proposed amendments to the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (The EPF Act). The Act was last amended in the year 1998 and these proposals are based on representations received from various employer and employee organizations.

Proposed amendments

The Labour Ministry has issued an Office Memorandum in December 2014 seeking internal feedback on the proposed changes. The table below provides a summary of key changes proposed as compared to the law that exists today:

Particulars	Details of proposed amendment
Coverage	The proposal is to widen the coverage by extending the provisions of the EPF Act to all establishments employing 10 or more persons. The current threshold is 20 or more employees.
Definition of Wages	<p>The definition of wages is relevant for computation of PF.</p> <p>Under the EPF Act, PF is required to be computed on basic wages, dearness allowance, retaining allowance and cash value of food concession, if any. For this purpose, basic wages includes all emoluments except for the specific exclusions which are</p> <ul style="list-style-type: none">• House rent allowance• Overtime allowance• Bonus,• Commission or• any other similar allowance. <p>As per the proposal, the definition of wages is expanded to include all remuneration paid or payable to an employee provided that the terms of contract of employment (express or implied) are fulfilled.</p> <p>Wages would also include any payment towards authorized leave/</p>

	<p>lock –out/ legal strike and additional remuneration paid at intervals not exceeding 2 months.</p> <p>Specific exclusions are now restricted to</p> <ul style="list-style-type: none"> • Employer contribution under the EPF or ESI Act. • Travelling Allowance/ Value of travelling concession. • Any sum paid to person employed to defray special expenses entailed on him by the nature of his employment. • Gratuity payable on discharge.
Employee	<p>As per the existing EPF Act, employee means any person</p> <ul style="list-style-type: none"> • who is employed for wages, • in or in connection with the work of an establishment and • get his wages directly/ indirectly from the employer <p>Employee also includes those who are employed by or through a contractor in connection with the work of the establishment.</p> <p>As per the draft proposal for amendment, the term employee means any person employed under the employment contract which can be written, oral, express or implied.</p> <p>Employee would also include those employed through any other establishment in addition to those employed through a contractor. The proposed definition is therefore much wider.</p>
Wage Ceiling and Voluntary contribution	<p>The existing Act has not defined the terms “Wage ceiling” and “Voluntary contribution”.</p> <p>The proposal has defined “Wage Ceiling” to mean the maximum amount of wages as specified in the relevant scheme (EPF Scheme, EDLI Scheme and Employee Pension Scheme) on which the contribution is payable.</p> <p>Contribution paid by the employee and / or the employer over and above the contribution payable up to the wage ceiling shall be considered as voluntary contribution.</p>
Contractor	<p>The term “Contractor” is not defined in the existing Act.</p> <p>The proposal seeks to define, “Contractor” as a person</p> <ul style="list-style-type: none"> • who undertakes to produce a given result for the establishment through contract labour, other than supply of goods or articles, or

	<ul style="list-style-type: none"> Who supplies contract labour for any work of the establishment and includes a sub- contractor as well.
Establishment	The existing PF Act has not defined the term “Establishment”. In the proposal, this has been defined to include all forms of entities employing one or more person including those under the control of State/ Central Government.
Time-limit for inquiry by PF officers	The PF authorities may conduct an inquiry and pass an order under Section 7A of the Act determining the amount due from any employer after giving an opportunity of being heard. The proposal now suggests that such orders may not be passed in respect of period beyond 5 years from the date on which contribution shall be payable, thereby limiting the time line for inquiry by officers.
Appellate Officer	Under the existing law, establishments have to seek recourse to the Tribunal for any appeal against the order of the PF authority. An additional level of redress is proposed prior to the Appellate Tribunal through the introduction of appeal process to the Appellate officer.
Penal provision	<p>Quantum of penalties is proposed to be increased significantly.</p> <ul style="list-style-type: none"> Default in remitting contributions deducted from employees will attract penalty of Rs. 70,000 (currently Rs. 10,000). Default in remitting employer contributions will attract penalty of Rs. 35,000 (currently Rs. 5,000) <p>Further, compounding of offence in cases of imprisonment is being introduced. Relief of compounding is not proposed in case of repeated offence by the employer. Such defaults are proposed to be subject to an imprisonment of at least 2 years (extending to 5 years) and would be liable to a fine of Rs 2 lakhs.</p>

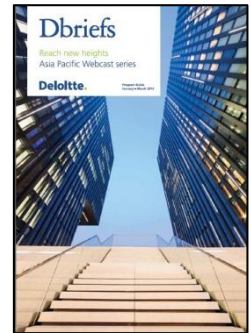
Comments

Considering that the majority of the workforce in India belongs to the unorganized sector without having any social security net, the Government has been evaluating the option of expanding the coverage of PF to more number of establishments. The Ministry, therefore, has proposed to increase the coverage of establishments by lowering the threshold of employees from 20 to 10. The proposal attempts to provide clarity on the definition of the term “wages” to ensure minimum contribution towards PF but at the same time referring to wage ceiling as reflected in the relevant schemes. The Ministry is also proposing higher penalty for non-compliance. But there does not seem to be any specific change suggested with regards to PF contribution by International workers.

Source: Office Memorandum issued by Ministry of Labour & Employment on 17 December 2014

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