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Social security newsletter

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Executive summary

Regulatory updates

- Employee Provident Fund Organisation (EPFO) releases guidance to regulate pension entitlement for employees with multiple accounts
- Standard Operating Procedure (SOP) for handling transaction-less and inoperative accounts notified.
- Digital joint request under Para 26(6) of the EPF Scheme, 1952 mandated for new members.
- Ministry of Women and Child Development notifies National Minimum Standards and Protocol for Crèches (Operation and Management) – aims to standardise setting up and running of creches.
- Partial withdrawal from National Pension Scheme (NPS) allowed subject to conditions.
- Amendments proposed to the sexual harassment of women at workplace (prevention, prohibition, and redressal) act, 2013 for removal of conciliation and extension of timelines for filing complaint.
- SSA between India and Brazil comes into effect, - 19th agreement for India with another country.
- Welfare schemes for platform-based gig-workers proposed.
- Recommendation of 8.25% as rate of interest to EPF subscribers for FY 2023-24.

Rulings

- Claim of undue influence by an employee who has voluntarily retired and accepted benefits, not acceptable.
- Recovery of excess payment of allowance due to adoption of wrong principle and erroneous calculation of salary not permissible.
- No differentiation permissible between regular and contractual employees on woman's right to maternity leave and benefit under the Maternity Benefit Act, 1961.

Regulatory updates

Pension entitlement for members with multiple accounts*

The Employees Provident Fund Organization released a circular* that provides guidance for employees having multiple account numbers for concurrent employment i.e., in two or more establishments. As per the circular the following would need to be borne in mind:

- Pension from each establishment is to be worked at the date of exit on actual basis.
- Pension from all establishments will be aggregated, provided that pensionable salaries at any point of time shall not exceed wage ceiling. As and when it exceeds wage ceiling, the contribution received on such excess salary shall be diverted to the PF account. Further, the minimum pension criteria will be applied to aggregated pension i.e., on the total pension amount.

Impact of the SOP:

The present guidelines provide clarity on the pension calculation methodology for members with multiple accounts and the responsible authority who needs to ensure compliance. For these members, the Regional Officers ('ROs') would need to ensure that the total contribution in the scheme should not exceed contributions payable on the wage ceiling of Rs.15,000 per month. Effective September 1, 2014, if the wages (either in a single establishment or in aggregate) exceed the prescribed wage ceiling, then the entire PF contribution would need to be retained in the PF account without any diversion to pension fund.

Standard Operating Procedures for handling transaction Transaction-less and Inoperative Accounts in EPFO

EPFO has notified the Standard Operating Procedure ('SOP')* for handling the abovementioned types of accounts superseding all previous directives in this regard. Anything not contained in the SOP shall be governed by the existing Manual of Accounting Procedure ('MAP').

Some of the key aspects of the SOP are as under:

Transaction-less accounts:

The SOP states that since most of these transaction-less accounts would not have UAN, it would be important to generate the same for such accounts. However, the routine process of UAN generation cannot be followed due to long periods of inactivity. Hence, the claimant would be a need to establish their genuineness using the defined process before generation of UAN. If an existing UAN is found or the member is working in other establishments with an active account and existing UAN during this process, the transaction-less accounts would be linked to the existing UAN. Members can make an online request for linking their member ID with the existing UAN post which an email would be triggered to the employer. The employer has to approve/reject the request within 7 days and once done the request would be forwarded to the concerned authority as mentioned in the SOP.

*Circular dated January 29, 2024.

*SOP dated February 7, 2024.

KYC seeding:

The SOP also provides steps for KYC seeding. Once the UAN is live, the member may approach the concerned employer or field offices for KYC seeding, basis the applicable situation. Further, once the UAN generation and KYC seeding are done, the member would be able to proceed towards unblocking the account either by visiting the concerned office in person or through member portal. Once done, the verification processes would be initiated.

Apart from this, the SOP also provides processes for crowdsourcing of information for additional verification checks to be done by the authority.

Inoperative accounts:

All the inoperative accounts that do not fall in the category of transaction-less accounts would be governed depending on whether they have an UAN or not.

Basis what category the account falls under, the processes mentioned in the SOP would need to be followed.

Impact of the SOP:

The SOP now streamlines the process for preempting verification processes while withdrawing funds from transaction-less accounts. The detailed procedural intricacies on governing the transaction less accounts would help to counter forgery, impersonation and potential fraud, while not denying rights to a rightful claimant for accessing funds in these accounts.

Rate of interest on EPF fund increased to 8.25%*

The EPFO has fixed the interest rate for funds as 8.25% for 2023-24, up from 8.15% for 2022-23. The rate will be notified once approved by the finance ministry.

EPFO mandates digital joint request under Para 26(6) of the EPF scheme, 1952*

New employees (who have not been a member of the EPF scheme) with actual PF wages exceeding the current wage ceiling of INR 15,000 pm are considered as "excluded employees" and are not required to mandatorily contribute towards EPF. Such employees, however, may voluntarily opt to be members of the EPF Scheme and contribute in accordance with Paragraph 26(6) of the EPF Scheme. For this purpose, a joint request by such employee and the employer has to be made.

Basis the recent circular*, new employees (barring international workers), would need to submit the request electronically to avail of the higher contribution option. However, the mandate has not yet been extended for those in employment and contributing to PF on wages in excess of the limit.

Existing employees contributing to PF up to the statutory wage limit of INR 15,000 p.m. and wishing to contribute on actual higher wages will have to follow the digital joint request process.

*News report dated February 10, 2024.

*Circular dated January 30, 2024

Impact:

The circular operationalises the statutory requirement for specific categories of employees and will ensure compliance with statutory requirement which was hitherto missing.

Circular on National Minimum Standards and Protocol for Crèches (Operation and Management)*

The Ministry of Women and Child Development released a circular on the National Minimum Standards and Protocol for Crèches (Operation and Management) ('Standards and Protocol'). The Standards and Protocol primarily sets out objectives, key points to be considered prior to setting up of a crèche, constitution of the Crèche Administration Committee, staff requirements and their roles and responsibilities, services to be provided by crèche, maintenance of records and safety inspections. It also provides an indicative list of items for setting up a crèche.

The key parameters for opening a crèche inter alia include the age criteria, location, timings, infrastructure, provision of basic facilities such as first aid kits, fire extinguishers, as well as installation of CCTV cameras.

While the Standards and Protocol are suggestive in nature and aim to act as a guiding force for setting up and management of crèches by individuals and establishments, the Ministry has encouraged states and union territories to adopt the same.

Impact of the circular:

This circular is relevant considering the amendment made under the Maternity Benefit Act, 1961 ('MB Act'), wherein all establishments are required to provide creche facility if they meet the threshold of 50 or more employees. However, it led to infrastructural challenges. Accordingly, there were demands for standardizing and institutionalizing a framework for setting up a creche facility, especially for those employers with offices located in multiple states.

In this light, the adoption of the Standards and Protocol by state governments is essential to ensure uniform standards for crèches, facilitate women's workforce participation, and safeguard the well-being of children in their care. A noteworthy point is that the Standards and Protocol allow the crèches to be set up either in a location near the home or near the workplace of the parent/guardian of the child.

Till date, only a few states like Karnataka, Maharashtra, and Tamil Nadu have issued rules / guidelines relating to provision of creche facility, distance of creche from the establishment, etc.

Change in rules for partial withdrawal of funds in the National Pension Scheme ('NPS')*

The Pension Fund Regulatory and Development Authority ('PFRDA') through the master circular effective from February 1, 2024, has permitted subscribers to make partial withdrawals from their NPS account for specific purposes such as higher education, marriage, residential house purchase, and medical expenses.

The circular also lists down certain conditions for withdrawal such as:

- The subscriber must have been a member of the NPS for at least 3 years from the date of joining.
- The amount must not exceed 25 percent of the subscriber's total contributions in their individual pension account.
- Number of partial withdrawals during a subscriber's tenure with NPS restricted to 3. Subsequent withdrawals are permitted under stated conditions within the master circular.

Eligible subscribers would need to submit the withdrawal request along with a self-declaration stating the purpose for the withdrawal to the concerned authorities.

Introduction of the sexual harassment of women at workplace (Prevention, Prohibition, and Redressal) Amendment Bill, 2024 ('POSH amendment')

The POSH amendment was introduced in the Rajya Sabha and proposes to extend timelines and remove conciliation option for sexual harassment complaints. The key highlights of the POSH amendment are:

- Extended time limit for complaint of Sexual harassment: The existing time limit for filing complaints related to sexual harassment prescribed under Section 9 of the Act is proposed to be increased from the existing three months from the date of incident(s) to a more accommodating one-year period.
- Omission of conciliation provision: Another significant facet is the complete omission of Section 10 of the Act. Section 10 of the Act allows for the possibility of resolving complaints of sexual harassment through conciliation. The bill proposes for removal of this provision in its entirety, emphasising the importance of preserving the integrity of the complaint resolution process.

Impact of the POSH amendment:

Establishments may need to update their policies against sexual harassment to factor the above changes once these come into effect.

Notification of India- Brazil social security agreement ('SSA' / 'agreement')

This SSA, signed on 25 January 2020, is effective from 1 January 2024. With this agreement, India now has effective SSAs with 19 countries and Quebec. The agreement provides for detachment for a period of 36 months (extendable by a further 24 months subject to competent authority approval).

Where the detachment period (including the extended period) is completed, no new COC can be applied unless a period of one year is elapsed since the end of the preceding detachment. This is akin to the six months of cooling period since the end of the last detachment as per India Germany SSA.

Impact:

Employers with mobile population to/from Brazil would be well advised to review their deputation arrangement to leverage on the above development. It may be noted that withdrawal provisions with respect to International Workers (IW) coming from SSA countries would now apply to individuals from Brazil. The online CoC application is yet to be enabled.

Welfare schemes to platform-based gig-workers in India*

Karnataka: The Karnataka government in its 2024 budget has stated that a new bill will be introduced for platform-based gig workers. The intent is to introduce a cess, which will be levied on eligible online transactions. More details on what constitutes eligible online transactions can be expected once the bill comes out. The money collected would be utilized to formulate welfare programmes for gig workers.

Rajasthan, The Rajasthan government had passed the Rajasthan Platform-Based Gig Workers (Registration and Welfare) Act, 2023 dated July 24, 2023. Among other things, a Welfare Board would be set up which would:

- register platform-based gig workers, primary employers (organisations/individuals engaging platform-based gig workers) and aggregators (digital intermediaries).
- ensure that welfare cess deduction mechanism is integrated into the application of the aggregator or primary employer.
- notify schemes for social security of registered platform-based gig workers and ensure that workers have access to the benefits as per the schemes introduced.

Every platform-based gig worker onboarded or registered with any platform would be automatically registered with the Board and would be provided with a unique ID, which would be deemed valid in perpetuity. A welfare fund would also be constituted into which amounts will be credited from prescribed sources.

The Bill provides for levy of fine of up to INR 500,000 to INR 5,000,000 (for first and subsequent contraventions) for aggregators in case of violation of the provisions. The Bill is yet to receive the assent of the Governor.

Tamil Nadu: On December 26, 2023, the Tamil Nadu government has notified the formation of a Welfare Board for Platform based gig workers by virtue of Section 6(1) of the Tamil Nadu Manual Workers (Regulation of Employment and Conditions of Work) Act, 1982. It prohibits employment of children and permits applicability of minimum wage law, maternity benefit law, payment of wages law and compensation law.

A Board would be set up for the manual workers engaged in platform-based gig works in Tamil Nadu. The list of employments covered would be those mentioned under the Schedule of the Tamil Nadu Manual Workers Act.

Impact:

The proposals relating to welfare schemes for platform-based gig workers would have an impact on platform-based businesses. However, one needs to wait for these to come into effect to assess the impact.

II. Case updates

- Employee who has voluntarily retired, accepted benefits, cannot claim that he acted due to undue influence exerted over him/her

The Karnataka High Court ('HC') in a case * held that a worker who has chosen voluntary retirement and accepted all benefits under the Voluntary Retirement Scheme ('VRS') is no longer able to argue or refute that their voluntary retirement was achieved through coercion or undue influence.

The question to be adjudicated by the HC was whether the employee could be considered as workman in the event the employee had voluntarily retired from service and accepted the benefits of VRS. The HC held that the employee's receipt of retirement benefits had marked the end of the employer-employee relationship. Accordingly, referring any disagreement between the retired employees and the company to the Industrial Tribunal could not be considered as an 'industrial dispute'. After an employee applies and the employer approves it, a contract is formed. Hence both parties would be subject to the terms and conditions of the VRS. Accordingly, the claim of accepting the VRS under undue influence was dismissed.

- Employee cannot be deprived of leave encashment benefits for recovery of excess payment of allowance.

The Orissa HC in a case* has held that the government cannot recover excess payment of allowances, if the payment was done using a wrong principle for calculating the pay. The HC held that the authorities erred in deducting the excess payment made to the opposite party from the leave encashment benefits and thus such action was invalid.

- Differentiation not permissible between regular, contractual employees for maternity benefit

The Calcutta HC in a case* has held that no differentiation is permissible between regular and contractual employees regarding a woman's right to maternity leave and benefit under the Maternity Benefit Act, 1961 ('MB Act'). In the case, the employer denied the maternity benefit to a female executive intern engaged on contractual basis for a period of 3 years. The Calcutta HC directed the employer to give compensation to her in the form of leave with pay for the period for which it was denied. In its judgment, the HC went on to state that denying such benefits to the concerned individual would be considered as a discriminatory act and an offence under the MB Act.

*Triveni Turbine Limited v. Government of Karnataka & Ors, WP 18857/2022 (L-RES)

*Union of India & Ors v Md. Ahmed Baig, WP. (C) No. 9987 of 2021

* Neeta Kumari v. Union of India, WPA 29978 of 2013 with CAN 4 of 2020 (Old CAN 982 of 2020), order dated 26-02-2024

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