

1) The E.S.I ACT, 1948

Applicability: - (1) All factories employing 10 or more persons (w.e.f .01/06/2010) u/s 2 (12),
(2) Shops (or establishment) employing 20 or more persons u/s 1(5)

Eligibility: - Any person employed for wages up to Rs. 15000/- a month (01/05/2010) excluding overtime payment or any payment to which employee is temporarily entitled for & any person who is classified as disabled person drawing salary up to Rs. 25000/- a month provided they are appointed on or after 01/04/2008.

Contribution: - **Employee -1.75% of Gross salary + Employers' 4.75%+ Total 6.5%**

Social Security Benefits-Various benefits that the insured employees and their dependents are entitled to are as follows

- Medical Benefits
- Sickness Benefits
- Maternity Benefits
- Disablement Benefits
- Dependent Benefits
- Other Benefits (like funeral expenses, vocational rehabilitations, free supply of physical aids etc).

2] The Employees' Provident Fund & MISC Provisions Act 1952

The Employees' Provident Fund Scheme 1952 was enacted by Parliament and came into force with effect from 4th March, 1952. Presently, the following three schemes are in operation under the Act:

1. Employees' Provident Fund Scheme 1952.
2. Employee' Deposit Linked Insurance Scheme 1976 and
3. Employees' Pension Scheme 1995

Applicability

- a. Every establishment which is a factory engaged in any industry specified in schedule 1 and in which 20 and more employees are employed. - u/s 1(3) (a) of the Act.
- b. Any other establishment employing 20 or more persons which central government may, By notification, specifying in this behalf. u/s 1 (3) (b).
- c. Any establishment employing even less than 20 persons can be covered voluntarily u/s 1 (4) of the act.

1] THE EMPLOYEES' PROVIDENT FUND AND MISCELLANEOUS PROVISIONS ACT 1952 -Employees covered enjoy a benefit of Social Security in the form of an unattachable Fund. To which employees and employers contribute equally throughout the covered person's employment. This sum is payable normally on retirement or death. This unique Fund normally unwithdrawable (except) in severely restricted circumstances like buying house, marriage/education, etc. Other benefits include Employees Pension Scheme and Employees Deposit Linked Insurance Fund.

ELIGIBILITY

- (I) Any Person who is employed for work of an establishment or employed through contractor in or in connection with the work of an establishment where salary up to Rs.15000/- PM and optionally covered where salary exceeds Rs.15000/-PM
- (II) Any person who is classified as disabled employee under para 82 of the EPF & MP Act,1952 and working in the private sector with the monthly salary up to Rs. 25000/- per month, provided they are appointed on or after 01/04/2008.

BENEFITS TO THE MEMBERS OF THE PROVIDENT FUND

- 1) Advance for Purchase of Dwelling Site.
- 2) Advance for Purchase of Dwelling House/Flat.
- 3) Advance for Construction of a House.
- 4) Advance for Repayment of Housing Loan to State Government Housing Board or any other Government recognised Housing Finance Body.
- 5) Advance for Illness viz. Hospitalisation for more than a month major surgical operations or suffering from T.B., leprosy, paralysis, cancer, heart ailment etc.
- 6) Advance for Marriage of Self/Son/Daughter/Sister/Brother.
- 7) Advance for Post Matriculation Education of Son/Daughter.
- 8) Advance for Damage to the property Due to Natural Calamity (Flood/Earth Quake).
- 9) Advance for Member affected by cut in the supply of electricity.
- 10) Advance for Member who is physically handicapped.

A member employee can also withdraw full amount standing to his credit in fund (para 69)..

- a) On Resignation.
- b) On Retirement from the service on attaining the age of 55 yrs.
- c) On Retirement on account of permanent or total incapacity to work.
- d) Immediately before Migration from India for permanent settlement abroad or for taking
up employment abroad.
- e) On termination due to voluntary Retirement Scheme, Retrenchment, Closure of the factory/establishment.

EMPLOYEES' PENSION SCHEME, 1995:

Employees' Pension Scheme is a survivor, old age and disability pension scheme. The earlier Family Pension Scheme, 1971 offered only one type of benefit, namely, survivor's benefit, i.e. payment of pension to Widow/widower on death of the member in service. On the other hand the new scheme caters for three types of contingencies:-

1. Survivor Pension: If death occurs during service period
2. Old Age Pension: Pension on superannuation.
3. Permanent Disability Pension: In the event of member suffering permanent disability while in service

EMPLOYEES' DEPOSIT-LINKED INSURANCE SCHEME 1976:

On the death of the member, the nominees of the deceased shall in addition to PF/EPS accumulation, be paid an amount equal to the average balance in the PF accumulation of the deceased for preceding one year or during the period of his membership, whichever is less and if the average balance exceeds Rs.50, 000/- then the amount payable shall be Rs.50, 000/- plus 40% in excess of Rs. 50,000/- subject to a maximum of Rs.1, 30,000/-

Guidelines to principle employer for making almost "cent-%" compliance under the EPF/ESIC/LWF

A] Contractors, their employees (workers) & individual who works as Temporary, Casual, Probationers, Trainees, Part Timers, consultant & professionals etc.

At the outset we would like to bring to your notice that once the principal employer is covered under ESI &/or EPF Act or any other labour laws, the contractor's employees also become covered under the said statutes irrespective of number of employees of contractors as the said employees are **indirect** employees of the principle employer.

Hence, it is always advisable to engage such a Contractor/Vendor, who is independently covered and making regular compliance under the all laws (PF/ESI/PT/LWF/Contract labour Act etc), for regular works such as Housekeeping, Security, Transportation Canteen etc. It is always better to avoid compliance of contractors' employee under the code number of the principal employer, keeping in view the long term problems such as claim of permanency by the contractual employees.

It may be noted that, it is the statutory and pecuniary responsibility of the principal employer to pay ESI & PF Contribution (employer's + employees') in the first instance in respect of the Contract Labour. The definition of the immediate employer u/s 2(13) of the ESI Act and u/s 2(f)(I) of the EPF Act also includes the 'Contractor's Employees'.

By virtue of the provisions of Sec. 41 of the ESI Act, the principal employer is empowered to recover both the contributions (paid by him in the first instance) from the immediate employer (i.e. contractor) in respect of the contract labour, either by deduction from any amount payable to such contractor. In other words the principal employer can deduct the ESI Contribution & PF Contribution payable in respect of the contract labour from the payment of Bills preferred by such contractor (i.e. immediate employer).

In view of the position explained above & if contractors are not separately registered under the ESI & EPF Act, you can make deduction of the ESI Contribution from the amounts payable every month to the contractor. Such deductions towards ESI @ 6.5% (w.e.f. 01/01/1997) on the cost of labour charges can be made on actual basis, if details/break up (such as cost of material & cost of labour charges) are given by the contractor.

If break-up is not given on the Bill, and the Bill amount involves cost of material as well as cost of labour, in such cases, the cost labour can be assumed

between the range of 25% to 35% of the total Bill amount (% may vary depends upon the nature of work) and on such assumed labour charges ESI Contribution may be deducted @ 6.5% (w.e.f. 01/01/1997).

If the Bill is raised by the party purely for the labour charges, in such case 60% to 70% of the Bill amount may be considered as actual cost of labour and ESI @ 6.5% may be deducted on such assumed amount. ESI contribution so deducted must be paid into SBI (ESI A/c) by separate ESI Challan.

If the contractors are already having their own ESI & PF Code number and making separate compliance under their Code Number, in such cases the above mentioned procedure of deductions from the Bills of the Contractors is not required to be followed. However, you must obtain photocopy of the Code Draft Letter both issued by the ESI & PF Authorities from the Contractor. This photocopy must be attested by the Contractor. Failure to do so may result in transfer of contractors' liability on the head of principal employer. Such liability shall also attract penal interest and damages u/s 85-B of the ESI Act. It is also necessary to ask contractor to submit the photocopies of their Salary/Wages Register, Muster Roll, ESI & PF records such as ESI Challan a/w copy of contribution history [PDF] & PF Challans a/w copy of ECR duly attested by the contractor etc. every month to your HR/accounts dept. as such the same are required for periodical inspection by the ESI/PF Authorities.

The definition of the employee under ESI & PF Act, includes not only regular employees on the Roll of the Company but also include Temporary, Casual, Probationers, Trainees, Part Timers, Employees being paid on Vouchers and hence all such employees must be covered under both these enactment. Remunerated Directors, i.e. Directors drawing remuneration are covered under both these Acts

Further, we would like to clarify that some companies appoint certain persons for regular job under the supervision of the principal employer but call them as PROFESSIONAL. In such cases, even though, these persons are called as a professional or consultants and if they are exclusively working for you under the norms and guidelines of the principal employer, such employees are coverable under both ESI and PF Act, since there exists Master and Servant Relationship.

Very important point from the ESI perspective:-

ESI is also applicable to the labourers engaged by various contractors in the premises of the establishment for carrying out any petty work or major work like repairing work, maintenance work, electrical fitting work, carpentry work, painting & white washing work, cleaning & sweeping work, loading & unloading work, binding work, polishing work, watch & warding work etc. In addition, all kinds of renovation & construction cost of new office premises. The rate of

contribution @ which the ESI is to be deducted is 6.5% (1.75% + 4.75%) from the bills of such contractors. If any individual labour is engaged for carrying out this work without the aid of contractor, in such case ESI should be deducted @ 1.75%. The said compliance must be observed strictly so as to avoid any unforeseen liability at the time of ESI Inspection.

B] Direct /regular/ on roll employees

1. Salary slab for ESI Coverage is Rs. 15,000/- per month (w.e.f. 01/05/2010) and salary/wages under ESI means Basic + All Monthly Allowances and salary slab for PF Coverage is Rs. 15000/- per month (w.e.f. 01/09/2014) and salary/wages under EPF Act means Basic + DA + Retaining All. + Spl. All. + Personal Pay/Allowance ESI is also applicable on all monthly incentives, commission (paid to salaried employees), overtimes wages, any sort of extra wages, voluntary wages/payments, voucher payments to the employees. Incentives, OT Wages and all other non-constant payments made to the employees should not be considered for the purpose of applicability of ESI i.e. for the purpose of coverage under the Act.
2. ESI/PF should also be deducted in respect of the coverable employees who are being paid salary/wages on voucher/s.
3. For Salary/Wages above Rs. 10,000/- per month in the month of February, the PT deduction shall be Rs. 300/-.
4. PT is not applicable to the Senior Citizens i.e. employees whose age is 65 yrs. or above are exempted from PT deduction. Female employees are exempted from PT deduction up to Rs.10000/-P.M. Salary. For male the limit is Rs.7500/-P.M.
5. New Declaration cum Form 11 to be filled in by each employee (excluded also) a/w copy of PAN card, Aadhar card & copy of cheque leaf and copy of salary slip of previous employer (Excluded employer should give only copy of salary slip) these forms to be retain by employer Nomination form (Form 2) should also filled in by all covered employees, these forms must be submitted to the Office of the RPFC.
6. Also, the Employer must deduct LWF Contribution from the salary of the employees below Asst. Managerial level at the prescribed rates in the month of the Jun and Dec every year and the said contribution must be remitted to The Welfare Commissioner on or before 15th Jul and 15th Jan respectively. The Unclaimed legal dues of the employees must also be transferred to MLWF Board after 3 years from its due date of payment to the employee/nominee.

The due date for payment of **ESI Contribution** is **21st of every month** and due date for **PF Contribution** is **15th of every month**. Non-compliance with any of the provisions of the ESI & PF Act shall attract penal action from the concerned dept.

The Central Government in exercise of the powers conferred by section 5 read with subsection (1) of section 7 of the EPF&MP Act 1952 has notified amendments in Paras 38(1) and 48 of EPF Scheme, 1952 making it mandatory for employers to pay the statutory contributions through Internet Banking..

Rate of Damages on Delayed Payment of Contribution: - [ESIC]

- 1) Up to 2 months - @5% P.A.
- 2) Above 2 months & up to 4 months- @10% P.A.
- 3) Above 4 months & up to 6 months- @15% P.A.
- 4) Above 6 months - @25% P.A.

In Addition ESIC Authority will charge simple interest @12% P.A.

Rate of Damages on Delayed Payment of Contribution: - [EPF]

- Up to 2 months - @5% P.A.
Above 2 months & up to 4 months- @10% P.A.
Above 4 months & up to 6 months- @15% P.A.
Above 6 months - @25% P.A.

In Addition EPF Authority will charge simple interest @12% P.A.

Further, we like to state that at the time of periodical inspection of the Books of Accounts of the employer by the ESI/PF Authorities, the following heads of accounts of the Ledgers are generally scrutinized to find out omitted/hidden wages/labour charges to examine or fix the levy of contribution on adhoc, if not considered by the employer in normal course.

- 1) Salary/Wages A/c; 2) R & M to Plant & Machinery; 3) R & M to Bldg.; 4) R & M to AC or AC Plant; 5) R & M to F & F; 6) Staff Welfare A/c; 7) Misc. Exp. A/c; 8) R & M to Others; 9)R & M to Electrical Fittings; 10) Even the Assets A/c are also scrutinized for ascertaining the additions to various Capital A/c every year; 11) All other account heads where there is possibility of booking labour charges.

Guidelines for EPF deduction and Membership of New employees

Please pay your attention on following points while preparing & calculating the salary

1. All employees earning Basic + DA + Special Allowance up to Rs.15000/- pm will be compulsorily covered under PF.

2. Existing employees who are currently not covered, now will be covered, if their basic salary is below Rs.15000/- pm.[For Sep-14]

3. New employees coming with salary of more than Rs.15000/- pm & is not a previous member of PF will be "Excluded".

[If the employee was earlier member and did not withdraw his/her PF accumulation from earlier account then irrespective of his/her Salary the person should be covered under EPF]

4. The above category of employees can voluntarily opt & become the member of PF.

5. The above employees will not be entitled for Pension scheme & both the Contribution (Employee's + Employer's) will be paid under the PF only.

6. New employees coming with salary of more than Rs.15000/- pm can opt & voluntarily contribute in PF on their entire salary & employer can also contribute either equal share or employer can restrict the contribution amounting to Rs.1800/- (12% up to Rs.15000/-).

7. New employees coming with salary of more than Rs.15000/- pm can also restrict their contribution amounting to Rs.1800/- (12% on Rs.15000/-). Employers contribution will also be Rs.1800/- .

8. As per the policy decision of PF Organization, the minimum basic salary of the employees should be more than 55% of their gross monthly salary. *Copy of circular is enclosed herewith for your ready reference.*

9. If it is 50% or less than 50%, the PF department can assess the dues & in that case employer will have to pay the both share with penalty & interest.

10. Kindly verify your salary statements & identify the employees, whose basic is less than Rs.15000/- pm.

11. Please make sure that it should be at least 55% to 60% of the gross monthly salary.
12. Under the PF Act, following components of salary do not attract PF deduction;
- i) House Rent Allowance
 - ii) Overtime Allowance
 - iii) Bonus
 - iv) Commission or any other similar allowance
13. **As per judgments delivered by Gujarat, Madhya Pradesh & Madras High Courts, it has been held that all allowances (i.e. Conveyance, Medical, Education, Attire, Special & other allowances etc. etc.), which are paid universally, necessarily & ordinarily to all employees, they will be treated as part & parcel of basic wages & that will attract the PF contribution.** However, the appeals have been filed in the Supreme Court by M/s. Surya Roshini Ltd. & others, which are likely to be heard & decided in near future.
14. If the above allowances are paid to all employees of your company, then the Enforcement Officer can claim the PF contribution & assess the dues, this is for your kind information. It is pertinent to note that the maximum contribution payable by the employer is restricted up to the salary of Rs.15000/- pm under the PF scheme. Therefore, it will not apply to the employees, who are already paying PF contribution on over & above Rs.15000/- pm salary. It can effect to those employees who are contributing on salary below Rs.15000/- pm.
15. In case of new employees coming with salary of more than Rs.15000/- per month, kindly obtain Declaration cum Form No.11 for collecting the details of their previous PF membership.
16. If it is declared by them in Declaration cum Form No.11, that they were a member of PF scheme in the previous organization, the PF membership is mandatory for them up to the salary of Rs.15000/- pm in your company.

17. You can exclude them, provided they have never been a member of the PF scheme previously in any other organization & drawing basic salary more than Rs.15000/- pm.
18. Please note that Declaration cum Form No.11 is very important document under the PF scheme. Kindly obtain the same from all new employees, getting salary above Rs.15000/- pm & who do not wish to become member of PF.
19. In case of new employees, coming with salary of more than Rs.15000/- pm, kindly confirm from them whether they are member of " Pension Scheme " in the previous company & whether they have withdrawn it or not. Also confirm, whether they are holding "Scheme Certificate " under the Employees' Pension Scheme. If such category of employees have not withdrawn the pension contribution & wants to transfer the same or holding a " Scheme Certificate " , their pension membership will be continued. If they have withdrawn the pension fund from previous company, or not holding a "Scheme Certificate " , they will not be entitled for pension fund membership & their both the contribution (Employee's + Employer's) will be paid under the PF account.