

SRRF – WORKSHOP

17-12-2015

# PF & ESI Acts and their applicability to NGOs

# Introduction

- Employees PF and MP Act 1952 is the basic act which is meant for saving by employees in Govt /Public / Private sector.
- It provides mainly 3 benefits – Contributory PF, Pension benefits to employees & their families & insurance covers to members.
- Originally it only provided for PF and came into effect on 1-11-1952.
- Effective 1-3-1971 scheme also provided for Family Pension Scheme to provide for distraught family after demise of the employee (often only bread-earner). Amended in 1995 to cover even employees retiring in the age group of 50 +.
- Effective 1-8-1976, the Act was amended to provide for Insurance

# Applicability

- Act is applicable to entire India, except J&K, which has a separate PF scheme.
- Applicable on all establishments with 20 or more employees, irrespective of format, i.e. company, partnership, sole-proprietorship, etc. **Societies are not exempt per se.**
- Once registered Act will continue to apply even if employees < 20.
- Voluntary registration is also allowed but once registered must continue.
- S. 16 exempts following type of organisations, mainly cooperative societies, organisations under the control of central / state govt., where other contributory schemes are applicable.
- Specific organisations based on notifications.
- Type of employees covered – all employees whose Basic + DA is upto Rs 15000 pm. However once an employee included, needs to continue even after salary goes above Rs 15000.

# Financial Impact

- PF contribution

Employee Cont. 12%	entire amount to PF scheme
Employer Cont. 12%	-8.33% to pension scheme (max 541/-) - Bal to PF scheme
PF Adm Charges 1.1%	Payable by employer
Employee Deposit Linked Insurance 0.5%	Payable by employer
EDLI Insp. Charges 0.01%	Payable by employer

# Important definition

- Employee : Any person who receives wages from an employer directly or indirectly for any kind of work for the establishment and includes (1) persons employed through a contractor or (2) or even engaged as an apprentice (except apprentice defined under Apprentices Act 1961).
- SC has generally taken a broader view in favour of employees when deciding cases of PF (Andhra Univ vs RPFC 1985).

# Legal Precedents

- All Saints Home vs Smt Chaya P Pardeshi & Anr. (Bombay HC – 7<sup>th</sup> June 2001) conclusions even NGOs would be classified as Industry under Industrial Dispute Act 1947. All labour legislations, incl PF Act is applicable to NGOs. [Labour Laws\6-PF materials-work shop\1-EPF and Mp act-reading materials.doc](#)
- An employer cannot reduce salary for its PF contribution  
PF Com. Bangalore vs Harihar Ployfibre 1991
- Employees PF amounts cannot be attached under any decree in respect of debt Karnataka PF Commissioner vs Puttamma 1991
- A notification issued in 2010 exempted certain NGOs from PF, but the same has also expired. <http://blog.srr-foundation.org/?p=2606#comments>

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# Employee State Insurance Act 1948

# Introduction

- Welfare legislation for providing health benefit to employees in case of sickness, maternity and employment injury. This is to comply with various provisions under Constitution. (Art. 41, 42, 43)
- Legislation was enacted by Central Govt initially covering only non-seasonal power using factories employing 10 or more employees. It also empowered states to extend the scheme to any other class of establishments.



# Applicability

- Today most state govts have extended the scheme to all shops, hotels, restaurants, cinemas, motor transport undertakings and newspaper establishments employing 20 or more persons. 14 state Govts have reduced this to 10.
- Scheme does not cover mines covered by Mines Act 1952, railway sheds,
- In several states educational institutions have also been covered.
- Even if this limit is covered even by single day in a whole year, the Act becomes applicable.
- Eligible employees who will be covered are persons who are drawing Rs 15,000 or less of total wages, including various allowances.

# Applicability .....cont'd

- For count of 10/20 all employees considered irrespective of this salary limit.
- Even full-time directors in a company are considered for the count. But sole-proprietor / partners in a business not considered.
- Contractor / apprentices not considered.

# Financial Impact

- Financial contribution by an employee 1.75% of the salary (nil contribution by person earning less than Rs 70/- per day). Employer contributes 4.75%. Govt also makes some contribution per person covered.
- Schemes bars employees to make claim from employer for any employment injury under any law.

# Benefits available - Employee

- Full medical coverage including surgical & obstetric. It covers OPD & hospitalisation.
- It also covers medicines, pathological and radiological investigations, ambulance services, etc.
- Cash benefit to compensation for loss of wages during illness, disablement, maternity.
- Artificial limbs, hearing aids, spectacles, wheel chairs, etc.
- Vocational training to find alternative employment.

# Benefits available - Employer

- Employee & family members get full medical coverage, employer need not provide for any.
- Relieved from payment of compensations [Workmen's Compensation Act (though still payable if negligence proved), State Maternity Benefit Act].
- Contribution tax exempt.
- Indirect benefits of having healthy employees

# Conclusions

- PF is applicable to all NGOs and hence while making CSR payments these aspects need to be borne in mind.
- ESI is not applicable to NGOs, except for educational institutes. However considering beneficial nature of ESI at a reasonable cost, NGOs may consider registering for the same.

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- Thank You.