

HR Law Hotline

November 23, 2015

CONSTRUCTION WORKERS IN INDIA ELIGIBLE TO SOCIAL SECURITY BENEFITS

- The Employees' Provident Fund Organization has issued a Circular reiterating that construction workers are entitled to provident fund benefits.
- The Delhi High Court, in its recent judgment in October 2015 has re-affirmed the position.
- The Circular requires the authorities to ensure social security coverage for construction workers.
- The Circular also lays down steps to be taken by principal employers to ensure compliance by contractors.

INTRODUCTION

The Employees' Provident Fund Organization ("EPFO") has issued a circular ("Circular") dated October 15, 2015¹, reiterating that construction workers fall under the ambit of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 ("EPF Act"). As a result, such workers are entitled to provident fund ("PF"), pension and insurance benefits. On the very next day, the Delhi High Court passed an order² stating that all construction workers need to be mandatorily enrolled under the Employees' Provident Fund Scheme ("EPF Scheme"), irrespective of their duration of employment.

BACKGROUND

The EPF Act is considered as India's most important social security benefit legislation for employees. As per this law, the employer is required to contribute 12% of an eligible employee's basic salary, retaining allowance, dearness allowance and cash value of food concessions to the EPFO on a monthly basis. The employee is required to make a matching contribution through the employer. Employees who (i) draw contributory wages up to INR 15,000 per month or (ii) continue to hold an account (membership) with the EPFO based on their previous employment, are eligible to the benefits envisaged under the EPF Act.

While establishments engaged in the business of building and construction works were brought under the purview of the EPF Act in October, 1980³, there has been ambiguity on the eligibility of construction workers to the social security benefit, in view of the nature of their work. Given that various government departments, public sector undertakings, autonomous bodies and construction companies carry out a number of construction activities and deploy sizeable number of workers for such activities, the provisions of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 was sought to be applied in order to collect details of the workers employed in the industry and to understand the extent of evasion of the EPF Act⁴. The casual nature of work and consequent shift of jobs on a frequent basis are reasons indicated by employers for not enrolling construction workers under the schemes of the EPF Act. The EPFO has tried addressing this concern by allotting Universal Account Numbers ("UAN") to all EPF members and providing the facility of portability of provident fund accounts on change of job or location.

CONSTRUCTION WORKERS ENTITLED TO SOCIAL SECURITY

The Circular provides for initiation of the following steps by the Regional Provident Fund Commissioners:

1. Ensure that all workers employed in the construction industry are allotted UAN.
2. Ensure coverage of construction workers including workers deployed through contractors/ sub-contractors.
3. Conduct regular meetings with trade union representatives to identify issues of coverage of construction workers; initiation of prompt action to address such issues in accordance with law.
4. Frequent inspections/visits to construction sites such as roads, railways, bridges, laying of pipelines etc. and in respect of buildings where the area being constructed is at least 10,000 square feet.
5. Frequent meetings with Central Public Sector Undertakings, State PSU's, State departments and employers to ensure coverage of construction workers under the EPF Schemes.

The Circular clarifies that in cases where construction workers are deployed or engaged through contractors or sub-contractors, it shall be the duty of the principal employer to ensure that such workers are enrolled under the EPF Scheme and PF contributions are being made. The mandate also extends to requiring employers to *inter alia* (i) provide code numbers to contractors; (ii) ensuring separate Electronic Challan cum Returns ("ECR") containing PF account numbers of the workers; (iii) maintaining registers of attendance and wages or salaries, as the case may be and (iv) verification of ECR's and PF payments by the contractor/ sub-contractor prior to disbursing bills to avoid

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manipulations/ mis-appropriations of PF dues by the contractors/ sub-contractors. The EPFO also recommends principal employers to include the PF account number as well as UAN on the identity cards issued to the workers engaged through contractors.

The Delhi High Court has observed that the duty of an employer to make EPF contributions is independent of all logistic drawbacks relating to release of funds. Hence, principal employers cannot distance themselves from the obligation owed to casual workers for reasons of portability and lack of enforcement. The court further observed that casual workers are '*employees*' under Section 2(f) of the EPF Act by virtue of the amendment to the EPF Scheme in 1990.

ANALYSIS

The re-affirmation of the EPFO backed by the judgment of the Delhi High Court has brought clarity with respect to eligibility of construction workers to benefits under the EPF Act. The digitalization of processes under the statute and allotment of UAN has also to a large extent resolved the difficulties surrounding PF transfers and withdrawals. Since the clarifications concern 'construction workers' and are not limited to construction companies alone, this requirement shall apply to all establishments engaging construction workers including employers engaging construction workers through contractors. With proper implementation of the aforementioned guidelines, it is hoped that the objective of extending the coverage of social security benefits to one of the largest employment generating sectors of India is achieved.

– **Preetha S, Veena Gopalakrishnan & Vikram Shroff**
You can direct your queries or comments to the authors

¹ Please refer http://www.epfindia.com/site_docs/PDFs/Circulars/Y2015-2016/C3_Coverage_ConstructionWorkers_27618.pdf.

² In the case of **Builders Association of India and Ors v Union of India and Ors** available at: http://www.epfindia.com/site_docs/PDFs/Circulars/Y2015-2016/LC_Judgement_DelhiHC_BAI_27907.pdf

³ http://www.epfindia.com/site_docs/PDFs/Circulars/YOld%20Circulars/BldgConWorker.pdf

⁴ http://www.epfindia.com/site_docs/PDFs/Circulars/Y2010-2011/Coord_ConstructionWorkers.pdf

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