

HR Law Hotline

July 10, 2008

EMPLOYMENT LAW: PRUDENT MOVE BY THE PROVIDENT FUND AUTHORITIES

On June 5, 2008, the Central Board of Trustees of the Employees' Provident Fund Organisation ("EPFO") in its board meeting, approved the lowering of the threshold limit for applicability of establishments covered under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (the "EPF Act"). Once the notification is issued for such amendment, establishments (to which the EPF Act applies) having a minimum of 10 employees will be required to contribute towards the provident fund accounts for its eligible employees, as against the existing limit of at least 20 employees.

This threshold limit for coverage of establishments under the EPF Act has been changed for the first time since 1960. Further, in the recent times, the most significant amendment to the EPF Act with respect to its applicability was in the year 2001, when the monthly salary limit of the employees for coverage under the Employees' Provident Fund Scheme, 1952, was raised from INR 5,000 to INR 6,500. Unlike recent amendments to other labour laws, the salary threshold under the EPF Act continues to remain unchanged.

BACKGROUND

The EPF Act is probably the most important social security legislation in the country which was enacted by the Government soon after the country's independence. The EPF Act provides for the institution of provident fund, pension fund and deposit linked insurance fund, under its three schemes, being the Employees' Provident Fund Scheme, 1952, Employees' Deposit Linked Insurance Scheme, 1976 and the Employees' Pension Scheme, 1995. The applicability of the EPF Act was recently (2006) extended to the Information Technology.

The EPF Act is applicable to factories and other establishments specified in the schedule to the EPF Act and as may be notified by the government. Prior to the amendment, establishments with less than 20 employees were not under an obligation to make contributions for their employees under the EPF Act, although they could do so, on a voluntary basis.

IMPLICATIONS

It appears that the intention behind extending the coverage of the EPF Act to smaller establishments is to reduce the gap between the number of employees currently covered under the EPF Act and the total workforce in the country. Currently, approximately 471,678 establishments and around 44.4 million employees are covered under the EPF Act¹, which is in addition to employees covered under private trusts set up by their employers. With this revised applicability, a greater number of organisations will be covered.

The justification for excluding smaller establishments from the purview of the EPF Act was that such establishments would be required to manage compliances under the EPF Act, which may have been cumbersome in view of the size of their operations. One of the contentions for the decision could be that it is possible to maintain some of the records virtually and hence this should no longer be a ground to exempt smaller establishments from the purview of the EPF Act. The modernization program by the EPFO, 'reinventing EPF India', which was initiated in the year 2000 completed a milestone in the year 2006 with the project being fully implemented in the first instance in six pilot offices of the EPFO².

Employees of smaller establishments would definitely welcome the notification of the amendment in view of the high interest rate. However, from the smaller establishments' perspective, the change in law may turn out to be expensive as such establishments would need to revise their compensation structure to include provident fund contributions for eligible employees.

The amendment to the EPF Act brings it in line with two other beneficial legislations in India, being the Employees' State Insurance Act, 1948 ("ESI Act"), which is applicable *inter alia* to factories with a minimum of 10 employees, and the Payment of Gratuity Act, 1972 ("POGA"), which is applicable to all establishments having a minimum of 10 employees. This would help to a certain extent in unifying the social security efforts of the Government of India.

- Radhika Iyer & Vikram Shroff

¹http://www.epfindia.nic.in/operational_stat.htm

²http://pib.nic.in/release/rel_print_page1.asp?reid=23834

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