

HR Law Hotline

December 04, 2008

ADDITIONAL COMPLIANCES UNDER EPF ACT FOR EMPLOYING INTERNATIONAL WORKERS

The Government has asked Indian companies registered with the Employees' Provident Fund Organization ("EPFO") to provide the details of the International Workers (as defined in the Employees' Provident Funds (Third Amendment) Scheme, 2008) employed by them. Such details have to be provided in the prescribed form and returns need to be filed even if there are no International Workers employed by such domestic companies.

BACKGROUND

We refer to our previous HR Law hotline dated September 23, 2008 titled '[Expatriates to be more socially secure in India](#)' wherein it was indicated that the Government was proposing to introduce a notification whereby expatriate employees in certain cases would have to set aside 24% of their salaries towards provident fund contributions in India.

This notification has been issued by the Government of India with effect from October 1, 2008 where Employees' Provident Funds (Third Amendment) Scheme, 2008 and the Employees' Pension (Third Amendment) Scheme, 2008 have been introduced ("**Notification**").

As was contemplated, the Notification defines an "International Worker" as:

- (a) an Indian employee having worked or going to work in a foreign country with which India has entered into a social security agreement ("**SSA**") and being eligible to avail the benefits under a social security programme of that country; or
- (b) an employee who is not an Indian passport holder, working in an establishment to which the Employees Provident Fund and Miscellaneous Provisions Act, 1952 ("**EPF Act**") applies.

The Notification also defines an 'excluded employee' as an International Worker, who is contributing to a social security programme of his/her country of origin either as a citizen or resident, with whom India has entered into a SSA on reciprocity basis and enjoying the status of detached worker for the period and terms as specified in such SSA. Currently, India has signed an SSA with Belgium, France and Germany. Pursuant to this Notification, all International Workers other than excluded employees will be required to contribute to the EPFO. Further, a member of the pension fund being an employee from a country with which India does not have an SSA, would be entitled to withdraw his pension benefits on the principal of reciprocity as may be available to Indian employees in that country.

To start initiating the process, the Government has now requested establishments to provide details of the International Workers in a prescribed form IW-1.

IMPLICATION

There are over 4,00,000 establishments which are registered under the EPFO¹. According to NASSCOM, the number of expatriates in India is around 65,000. However, the Ministry of Overseas Indian Affairs ("**MOIA**") states that this figure is around 1,50,000. Due to the disparity in the numbers given by the NASSCOM and the MOIA, it seems that this figure may not be up to date. In order to implement this Notification, the EPFO needs to get the exact figures of the country wise and sector wise distribution of such International Workers who would get covered under the EPFO. The format of the statement showing details of employees qualifying for membership as International Workers requires the establishment to provide the name, provident fund account number, salary pay, nationality, passport number, country of issue, date of issue and validity. The format of the form is available in the EPFO website: www.epfindia.nic.in.

In terms of returns to be filed by the establishment, it has been clarified by the Government that where an establishment does not employ an International Worker, it has to file a nil return.

From the employer's perspective, this amendment has increased the costs associated with employing expatriates in India. It has also increased the administrative burden on the Company as all companies including those which do not employ any International Workers, will now have to comply with the new set of compliances under the EPF Act. However, this amendment will certainly encourage several countries to enter into similar totalization agreements with India in order to safeguard the interests of Indian employees working overseas as well as expatriates working in India.

Source: www.economictimes.com

- Radhika Iyer & Khushboo Baxi

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

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