

## HR Law Hotline

November 14, 2009

### EMPLOYMENT & LABOR: INDIA PROPOSES TO WIDEN ITS SOCIAL SECURITY NET

The Indian Employee Provident Fund Organization ("EPFO") has proposed to widen the coverage of India's most important social security legislation for employees, the Employees Provident Fund and Miscellaneous Provisions Act, 1952 ("EPF Act"). The proposal, sent to the Ministry of Labor & Employment, includes:

- (i) increasing the basic (base) salary limit for coverage from INR 6,500 per month to INR 10,000 per month; and
- (ii) reducing the number of employees per establishment in terms of its coverage, from 20 to 10 employees.

The proposal, if implemented by way of amendments to the EPF Act and the schemes framed thereunder, is likely to have a far reaching impact as it would significantly increase the coverage of the EPF Act.

### BACKGROUND

The EPF Act, which applies to all factories and specified establishments having a minimum of 20 employees, requires the employer to contribute 12% of the base salary to the accounts maintained by the EPFO (or an eligible trust in certain approved cases) for each eligible employee. The employee is also required to contribute a matching amount. The amount deposited with the EPFO is segregated into three schemes, i.e., the Employees' Provident Fund Scheme, 1952, the Employees' Pension Scheme, 1995 and the Employees' Deposit-Linked Insurance Scheme, 1976 (the "Schemes"). While the balance in the provident fund account currently earns an interest rate of 8.5% per annum, there are certain restrictions with respect to withdrawals from the accounts. Employees earning more than INR 6,500 who do not have existing provident fund membership, may on a voluntary basis, be made eligible for benefits under the EPF Act and the Schemes.

### ANALYSIS

The rising salary levels in India seem to be the most obvious reason for increasing the threshold of salary for eligibility under the EPF Act. At the same time, the reason to reduce the number of employees for the purposes of applicability of the EPF Act, seems to be to cover several small establishments that have 10 or more employees but less than 20 employees. It has been observed that the EPF Act fails to provide adequate social security to most of the workers of the organized labor industry since the enactment currently applies only to establishments with a minimum of 20 employees. A large number of employees working in the small scale industries continue to be deprived of various social security benefits due to either lack of applicability or poor enforcement machinery. As per news reports, the proposal, once implemented, is likely to extend the coverage of the EPF Act to an additional 100 million employees in the organized labor market.

The proposal of the EPFO, once implemented, will bring the EPF Act in line with the Employees State Insurance Act, 1948 ("ESI Act"). The ESI Act provides certain insurance benefits to employees. The ESI Act, which applies to factories and specified establishments having a minimum of 10 employees, was amended in 2006 to increase the coverage to employees drawing a base salary of up to INR 10,000 per month.

This proposal is definitely likely to please the trade unions that have been seeking more employment related benefits. However it is unlikely to go well with the industry which has been craving for more flexibility in employment related matters. Needless to mention that once the smaller companies are brought within the purview of the EPF Act, it is likely to increase the costs of compliance and administration.

In 2008, the EPF Act was extended to foreign employees employed in India, irrespective of their salary amount. As a result, expatriate employees in India are mandatorily required to contribute to the Indian social security system. Withdrawal by expatriates from the provident fund account would largely be based on the reciprocity arrangements in relation to Indian citizens employed in foreign countries. In recent times, the Indian government has been proactive in negotiating and signing Social Security Agreements with other countries. India has already signed such agreements with 6 countries, being Belgium, France, Germany, Switzerland, Luxembourg and the Netherlands. This development should provide relief to citizens from these countries employed in India or Indian employees employed in those countries.

- Harshita Srivastava & Vikram Shroff

Reference: Business Standard article titled "EPFO proposes salary cap rise to Rs. 10,000" dated November 7, 2009

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