HR Law Hotline

March 20, 2010

EMPLOYEES' STATE INSURANCE ACT OF INDIA: LABOUR MINISTRY ISSUES DRAFT RULES FOR ENHANCEMENT OF WAGE CEILING

The Ministry of Labour and Employment has recently issued[1] draft rules for enhancement of wage ceiling (salary limit) from INR 10,000 (approx US$ 225) per month to INR 15,000 (approx. US$ 330) per month for coverage under the Employees' State Insurance Act, 1948 ("**ESI Act**"). Once the draft rules enter into force, a greater section of employees would get covered under the ESI Act, a federal labour law. It is expected that this new wage ceiling will be implemented from April 1, 2010, which is the beginning of the new financial year.

BACKGROUND

The ESI Act provides insurance coverage to eligible employees in the case of work related injury, sickness, maternity, disablement and death. The ESI Act applies to all factories employing at least 10 employees. It has also been extended to shops, hotels, restaurants, cinemas, transport undertakings, etc. The ESI Act requires the employer and the eligible employees to contribute insurance premium to the Employees State Insurance Fund, which is administered by the Employees' State Insurance Corporation ("**ESIC**"). The contributions are to be made at specified rates which are revised from time to time. With effect from 1997, the rate of employer's contribution is 4.75% of each eligible employees' wages and that of the employee is 1.75% of the wages. These contributions are to be made during two contribution periods of six months each. In addition to the insurance coverage, to the extent an employee is already covered under the ESI Act, the employer is exempted from its financial liability under the Employee's Compensation Act, 1926 and the Maternity Benefit Act, 1961.

As of March 31, 2008, the coverage of the ESI Act extends to approximately 46.8 million beneficiaries and to approximately 0.35 million employers[2].

As recent as October 2006[3], the ESI Act was amended to extend its coverage to employees drawing wages of up to INR 10,000 (approx US$ 225) per month from the earlier limit of INR 7,500 (approx US$ 165) per month.

ANALYSIS

The proposal seems to have been approved in view of the fact of the increase in cost of living index and subsequent rise in salary levels in India. Further, the Parliamentary Standing Committee on Labour has also been making recommendations in this respect. The Indian Government seems to be in favour of expanding the social security benefits to cover a wider stratum of employees. The Government continues to aggressively pursue certain other amendments under labour laws, *inter alia,* to increase their coverage or benefits. Recent examples include changes to the Payment of Bonus Act, 1965 and the Employee's Compensation Act, 1923. Further, discussions are ongoing with respect to increasing the limits under the Payment of Gratuity Act, 1972 and the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

The intention of the ESIC proposal is to provide insurance coverage to a larger section of employees. However, in recent times, employers in some of the new economy sectors have preferred to tie up with private insurance companies / third party administrators, who in turn have tied up with some of the leading hospitals which promise prompt and superior medical facilities. While the ESIC manages over 140 government funded hospitals across the country, there continue to be concerns over the infrastructure and the facilities provided in these hospitals. Besides the procedural formalities involved, some of the ESIC managed hospitals do not appear to be adequately staffed for handling emergency situations. Private insurance companies (both for life and health insurance) and third party administrators, although may be more expensive, have managed to provide customized products and services to meet their clients' needs. This has made such service providers a preferred choice for some of the progressive Indian companies, who provide extended support to their employees and their families during the times of any health crisis. In view of the background, the ESIC should focus on improving their hospitals' infrastructure and facilities and address the concerns faced by employers and employees alike. Alternatively, necessary flexibility may be provided to employers to consider private insurance arrangements. At the end of the day, as a welfare legislation, the employees' interest should be the determining factor.

- Ajay Singh Solanki & Vikram Shroff

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1 Vide notification G.S.R no. 164 (E) dated February 26, 2010

2 http://www.indiastat.com/

3 Vide Central Government notification no. S-38025/9/2006-SS-I dated September 22, 2006, effective from October 1, 2006.

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Scope of judicial interference and inquiry in an application for appointment of arbitrator under the (Indian) Arbitration and Conciliation Act, 1996

September 22, 2024