

HR Law Hotline

February 13, 2017

SOCIAL SECURITY COMPLIANCE IN INDIA: ONE-TIME OPPORTUNITY FOR DEFAULTING EMPLOYERS!

- India's Employees Provident Fund Organization has launched the Employees' Enrolment Campaign, 2017.
- The campaign provides opportunity to all employers who have defaulted in making social security (provident fund) contributions for their employees for a specified period to voluntarily rectify the non-compliance before March 31, 2017.
- Various concessions such as waiver of employee contribution, nominal damages etc. extended to employers who avail of this opportunity.
- Employers who make use of this campaign to be completely absolved from all legal actions.
- Post March 31, 2017, strict scrutiny and stringent actions to be taken against all defaulting employers who fail to enroll their employees under the campaign.

The Employees' Enrolment Campaign, 2017 ("PF Campaign") has been introduced to encourage employers who have defaulted in making provident fund ("PF") contributions (which also includes pensions), to voluntarily enroll their employees under the Employees' Provident Fund Scheme, 1952 ("PF Scheme") without incurring any legal liabilities.

The Central Government has amended the PF Scheme by way of the Employees' Provident Funds (Seventh Amendment) Scheme, 2016 ("PF Amendment Scheme, 2016") to launch the PF Campaign. The benefit under the PF Campaign shall apply only with respect to employees who are Indian nationals and does not apply to international workers¹.

The PF Campaign shall be in force for 3 months starting from January 1, 2017. The benefits of the PF Campaign can be availed by those employers who have failed to enroll their employees for the period from April 2009 to December 2016.

Pursuant to the PF Amendment Scheme, 2016, the Employees Provident Fund Organization ("EPFO") has issued directions to all employers to avail the benefits under the PF Campaign to ensure (a) enrolment of their employees who are eligible to PF benefits but have not been enrolled under the PF Scheme for whatsoever reason and (b) enrolment of the eligible employees of contractors/sub-contractors engaged through them.

Key Highlights of the PF Campaign

The key highlights of the PF Campaign are as follows:

1. The employee's share of contribution shall stand waived, provided that the amounts have not been deducted from the employee's wages.
2. The employer will be required to contribute only the employer's share along with interest of 12% per annum.
3. The damages payable under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 ("PF Act") for non-contributions shall be at a nominal rate of Rs. 1 per annum.
4. No administrative charges are to be paid by the employer.
5. Employers shall be absolved from all legal actions for the declared default period.
6. Post March 31, 2017, stringent actions shall be taken against defaulting employers who fail to enroll their employees under the PF Campaign.

Procedure to be followed by Employers

Defaulted employers (in relation to membership of employees and contribution thereto to the PF fund) are required to make a Declaration in the prescribed form² to the Regional Provident Fund Commissioner³, which may be filed online or manually. The Declaration should contain details of all eligible employees and the date of eligibility in respect of each employee for membership⁴, in respect of whom, PF contributions have not been made by the employer. The employer shall also ensure that the Declaration Form in Form 11 has been procured from all the declared employees.

Once the declaration has been made, the employer is required to make PF contributions with respect to such employees' alongwith the contribution deducted from their wages with interest and damages payable in accordance with the PF Act, within 15 days of the declaration. The employer is not required to pay the employee's contribution if it has not been deducted from the wages of the employee⁵. In terms of the manner in which the payments need to be made, the PF contributions are to be remitted as a supplementary Electronic Challan cum Return for every month of

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the past period. Once the employer has completed the above steps, he is required to file a form with the Regional Provident Fund Commissioner⁶.

In the event that the employer fails to remit the contribution alongwith the interest and damages payable by him post submission of the declaration, it shall be deemed that the employer has not made any declaration under the PF Scheme⁷. The PF Amendment Scheme, 2016 further states that in cases where it is determined that the declaration has been made by misrepresentation or suppression of facts, such declaration shall be void and shall be deemed to have not been made under the PF Scheme, and the person making such declaration shall be liable to penal action in accordance with the provisions of the PF Act⁸.

Analysis

Although the primary beneficiaries of PF and pension are the employees, the PF Campaign also grants amnesty to employers by enabling them to rectify their non-compliance without being penalized. This would also ensure that employers who have for *bona fide* reasons been unable to comply with the PF law are not victimized. Further, the FAQs released by the EPFO have also clarified that the benefits of the PF Campaign can be availed by those employers against whom a complaint has been made, provided that no proceedings under the PF Act have been initiated against their establishment/employer to determine the eligibility for membership of such employees⁹.

The PF authorities have been directed to ensure strict compliance of the PF law in order to ensure that employees are not deprived of their social security benefits. In view of the same, inspections have been held at various organizations, leading to imposition of heavy penalties upon employers. The PF Campaign is therefore definitely a window of opportunity for defaulted employers to make good of this opportunity rather than inviting severe legal repercussions.

Whether the PF Campaign achieves its objectives and will be successful, remains to be seen.

– Preetha S & Vikram Shroff

You can direct your queries or comments to the authors

¹ http://www.epfindia.com/site_docs/PDFs/Circulars/Y2016-2017/Coord_FAQ_EEC_04012017.pdf

² http://www.epfindia.com/site_docs/PDFs/Circulars/Y2016-2017/Coord_DeclarationForm_EEC_03012017.pdf

³ Clause (2) of the newly inserted Para 82A of the PF Scheme

⁴ Clause (5) of the newly inserted Para 82A of the PF Scheme

⁵ Clause (3) of the newly inserted Para 82A of the PF Scheme

⁶ Clause (4) of the newly inserted Para 82A of the PF Scheme

⁷ Clause (6) of the newly inserted Para 82A of the PF Scheme

⁸ Clause (7) of the newly inserted Para 82A of the PF Scheme

⁹ FAQ #6 in http://www.epfindia.com/site_docs/PDFs/Circulars/Y2016-2017/Coord_FAQ_EEC_04012017.pdf

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