

# THE POWER OF BEING UNDERSTOOD

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## SOME RECENT CHANGES / PROPOSALS IN LABOUR LAWS IN INDIA (2015)

## 1.0 Background

In India, the Employees Provident Fund is a very important and secured form of Social Security Tool for an Industrial Workers/employee. The Employees Provident Fund is governed by the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (Act). The Social Security provided under the Act is different from that provided under Employees Compensation Act, 1923 and Employees State Insurance Act, 1948. The Act mainly provides retirement or old age benefits like Provident Fund, Superannuation Pension, Family Pension and Deposit Linked Insurance.

The Government is constantly making efforts to simplify the labour law system into a more simplified and transparent system and to make it more employer and labour friendly by reducing the compliances, reporting requirements and widening the coverage of various legislations.

The Employees Provident Fund Authorities has made various amendments by way of circulars, notifications and clarifications in the last six months as also are contemplating more changes in the coming months. Some of these key changes / announcements have been briefly summarized below

## 2.0 Employees Provident Funds Act and Miscellaneous Provisions Act, 1952 with Employees Provident Funds Scheme, 1952 (EPF Scheme), Employees Pension Scheme, 1995 (EPS Scheme) and Employees Deposit Linked Insurance Scheme, 1976 (EDLI Scheme).

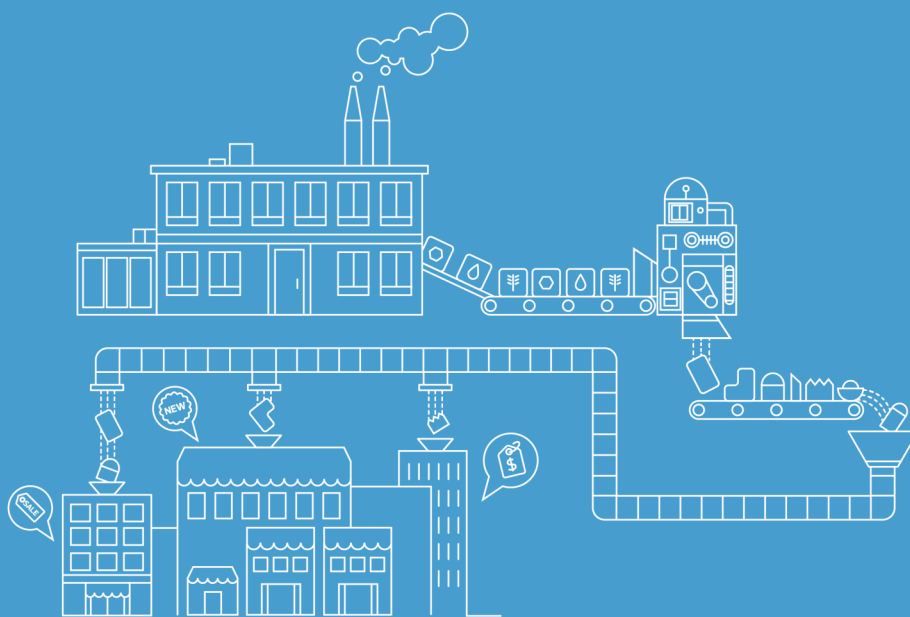
### A. Notification/Circular/Clarification

Sr. No.	Description	Notification/Circular/Clarification		Effective Date
		Present	Revised	
1.	Coverage of all Building and other construction workers employed by or through Contractor / Sub-Contractor and to ensure Compliance thereof like obtain Universal Account Number (UAN) under the ambit of EPF Scheme.	All workers employed by or through Contractors are employees as defined under Section 2(f) of the Act and covered under the Act.	Instructions to all regional PF Commissioners by Central PF Commissioner vide letter dated 15 Oct 2015 on the basis of letter of Secretary, Ministry of Labour & Employment to specifically cover all Building and other Construction Workers whether employed by or through Contractor or Sub-Contractor under the ambit of an Act. Earlier these were not covered.	15 October 2015
2.	Mandatory Deposit of Subscription/Contribution under the Act through Internet Banking.	The Central Government had made it mandatory for employers to pay statutory contributions electronically through Internet Banking from 6 June 2015 vide notification dated 6 June 2015.	Now the Government has allowed employers who remit contributions of less than Rs.1 lakh in a particular month to make such payments through banks' drafts, bankers' cheques or cheques up to transitory period of December 2015. Thereafter, it shall be mandatory from 1 Jan 2016 for all employers to make payments electronically through internet banking vide notification dated 15 Oct 2015.	1 January 2016

Sr. No.	Description	Notification/Circular/Clarification		Effective Date
		Present	Revised	
3.	Clarification of status of student/trainees of educational/technical Institute recognized by Central/State Govt. or any authority constituted by them.	<p>The Apprentice as defined under the Apprentices Act, 1961 is not an employee under Section 2(f) of Act.</p> <p><b>Apprentices Act, 1961</b></p> <p><b>Section 2(aa):</b></p> <p>“apprentice” means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship.</p> <p><b>Section 2(aaa):</b></p> <p>"apprenticeship training" means a course of training in any industry or establishment undergone in pursuance of a contract of Apprenticeship &amp; under prescribed terms and conditions which may be different for different categories of apprentices.</p>	<p>Student/Trainees who are exposed to Industrial on the job training in technical or professional educational institution (recognized by Central/State Govt.) and are getting stipend if any from such institution are not covered under EPF Act as there is no Employer-Employee relationship exist between them. However if such students are getting placement in such company/ institution and appointed as employee then such employee is covered under the EPF Act even such on the job training taken after becoming employee.</p> <p>Clarification dated 12 Oct 2015</p>	12 October 2015
4.	Separate portal for Online Registration of Establishment (OLRE).	<p>Earlier there was no separate portal for registration of Establishment covered under the Act.</p>	<p>Now, separate portal has been established for Online Registration of Establishment covered under the Act by logging into the portal by creating User ID and Password.</p> <p>The Establishment shall be registered on OLRE portal and can get their PF code online and at this stage, there is no contract required with the office whatsoever.</p> <p>The Establishment can start remittance immediately as no document is required as a precondition for getting PF code or for depositing of the remittances.</p> <p>The collection of physical documents is separate process and not linked with registration and remittances and to be done by EPF Officers.</p> <p>Circular dated 28 Sept 2015</p>	28 September 2015

Sr. No.	Description	Notification/Circular/Clarification		Effective Date
		Present	Revised	
5.	Implementation of Social Security Agreement (SSA) between India & Republic of Canada.	<p>The Government of India has through its initiative for the benefit of employer and employee entered into Treaty/SSA with several countries so as to avoid double social security contribution by employer in home country and host country</p> <p>At present, India is enjoying operating SSA with following Countries.</p> <p>Belgium, Germany, Switzerland, Grand Duchy of Luxembourg, France, Denmark, Republic of Korea, Netherlands, Hungary, Finland, Sweden, Czech Republic, Norway &amp; Austria.</p>	<p>India has entered into SSA with Republic of Canada. The Agreement provides for detachment, totalization and portability. Where the employees of one country deputed by their employers to the other country on short-term assignment are exempted from Social Security contribution in that country up to the period of 60 month on the basis of Certificate of Coverage.</p> <p>EPF Organization has been authorized to issue Certificate of Coverage to the employees posted to the Countries having signed Agreement with India.</p> <p>Notification dated 31 July 2015.</p>	1 August 2015
6.	Amendment in Statutory Claim Settlement Period from 30 days to 20 days in all three schemes i.e. EPF Scheme, EPS Scheme & EDLI Scheme	<p>The covered employee/ Beneficiary can claim his/ her PF, Pension and Insurance amount within 30 days from the date of receipt of claim by the Commissioner.</p> <p>Para 72(7) of EPF Scheme</p> <p>Para 17-A of EPS Scheme</p> <p>Para 24(4) of EDLI Scheme</p>	<p>Now the Beneficiary can get his/her PF, Pension and insurance claims within 20 days from the date of receipt of claim by the Commissioner.</p> <p>Notification dated 2 July 2015</p>	2 July 2015

Sr. No.	Description	Notification/Circular/Clarification		Effective Date
		Present	Revised	
7.	Declaration in the Form 11 (New) on joining and Universal Account Number (UAN)	Form 2 for Declaration and Nomination by employee on the date of joining.	<p>The Employer should have first obtained UAN for all its employees by 25 Aug 2015 and after which all claims pertaining to PF shall be settled online through UAN.</p> <p>UAN must be disseminated to employee within 15 days from the date of receipt of UAN by Employer.</p> <p>Employer must get the UAN activated from its employee within 15 days of dissemination.</p> <p>The employer must seed the KYC Details within 1 month of receipt of UAN.</p> <p>Submission of declaration in Form 11(New) in respect of employee joined during the month (New) by employers and upload the same in Universal Account Number (UAN) within 25 days of close of each month.</p> <p>Circulars &amp; Order of EPFO dated 22 Aug 2015.</p>	22 August 2015



Sr. No.	Description	Notification/Circular/Clarification		Effective Date
		Present	Revised	
8.	Amendment in section 192A of the Income Tax Act, 1961 & Instruction for deduction of TDS on withdrawal from PF.	-----	<p>Following are some of the important points for deduction of TDS: Where the amount of withdrawal of PF is more than or equal to Rs.30000 with less than 5 years of service then TDS shall be deducted @ 10% where PAN is submitted unless Form 15H &amp; 15H has been filed.</p> <p>Where neither PAN not Form 15G &amp; 15H is submitted then TDS shall be deducted at maximum marginal rate of 34.608%.</p> <p>TDS is deductible at the time of payment of PF in the Form 19.</p> <p>TDS shall not be deducted under following circumstances:</p> <ul style="list-style-type: none"> <li>■ Transfer of PF from one account to another PF account.</li> <li>■ Termination of service due to ill health of member, discontinuation / contraction of business by employer, completion of project or other cause beyond the control of the member.</li> <li>■ If employee withdraws PF after a period of five years of continuous service, including service with former employer.</li> <li>■ If PF payment is less than Rs.30,000/- but the member has rendered service of less than 5 years.</li> <li>■ If employee withdraws amount more than or equal to Rs.30,000/-, with service less than 5 years but submits Form 15G/15H along with their PAN.</li> </ul>	1 June 2015

Sr. No.	Description	Notification/Circular/Clarification		Effective Date
		Present	Revised	
9.	Minimum Pension of Rs.1000/-.	The Central Government vide its notification dated 19-08-2014 provided for minimum pension of Rs.1000/- per month for member or widow and Rs.250 & Rs.750 per month for children and orphan pension respectively for Financial 2014-15 only.	EPFO has vide its notification dated 30 April 2015 provided for minimum pension of Rs.1000/- per month after it has received approval from Central Government for proposal for continuation of amendment of disbursement of minimum pension of Rs.1,000/- beyond FY 2014-15.	30 April 2015

## B Certain Amendments / Proposals under Discussion

The Government is considering several bills / proposals for legislation, which may be presented for approval to Parliament in the coming months.

### I Amendments under consideration in Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (Act) vide Office Memorandum dated 17 Dec 2014 issued by Central Labour Ministry for inviting views by EPFO Body/authorities by 30 Dec 2014.

With the changed economic scenario, employment pattern and social security requirements of workers in the organized sector, it was necessary to make amendment in the Act hence the Government is considering amending various provisions of the Act viz; reduction of employees strength from 20 to 10, amendment in existing definition like wages, employee, introduction of new definition say Establishment, wage ceiling, voluntary contribution, small establishment, unorganized sector, unorganized workers etc., penalties.

### II The Payment of Bonus Amendment Bill 2015 (Source: Labor Law Reporter – 20 Oct 2015)

The Cabinet on 21 Oct 2015 decided to double the wage ceiling for calculating bonus to Rs.7,000 per month for factory workers and establishments with 20 or more workers. "The Payment of Bonus (Amendment) Bill, 2015 to enhance the monthly bonus calculation ceiling to Rs.7,000 per month from existing Rs.3,500 was approved by Union Cabinet," a source said after the meeting. The amendment bill will be made effective from 1 April 2015. Now the bill will be tabled in Parliament for approval.

The bill also seeks to enhance the eligibility limit for payment of bonus from the salary or wage of an employee from Rs.10,000 per month to Rs.21,000. The Payment of Bonus Act 1965 is applicable to every factory and other establishment in which 20 or more persons are employed on any day during an accounting year.

### III Wages for the purpose of calculating PF (Source: Indian Express New Delhi Published on May 21, 2015)

The Labour Ministry has proposed to include ESI contribution, house rent, gratuity, traveling and other allowances as part of the "contributing wages" on which provident fund would be deducted. These amendments have already been cleared by the EPFO's Central Board of Trustees and are expected to be taken to the Union Cabinet by next month and tabled in Parliament in the Winter Session.

### IV Factories with up to 40 workers may be kept out of major labour laws (Source: Business Standard New Delhi Published on May 04, 2015)

The Cabinet is set to discuss a Bill to exempt the factories that employ up to 40 workers from 14 labour laws. The government has drafted the Small Factories (Regulation of Employment and Conditions of Services) Bill, which is meant to keep small factories out of the ambit of certain major labour laws, such as the Industrial Disputes Act, the Factories Act, and the Payment of Wages Act. Besides, there will also be some relaxation in provisions of the Employees Provident Funds Act for these firms.

#### Regulating Small Factories

- The Government is considering a labour Bill for small factories.
- It will exempt factories with up to 40 workers from 14 labour laws, including Industrial Disputes Act, Factories Act.
- Bill to give boost to around 70 per cent factories in the country.

- It will allow employers to register or close their factories electronically.
- Workers will get their salaries via bank accounts.
- Inspectors to be replaced by facilitators, who will issue “improvement notices” in case of defects.
- Workers will be allowed to do 96 hours of overtime in a quarter, compared with the earlier provision of 50 hours.
- At least 51 per cent workers will be required to raise disputes related to unfair labour practices at work. In the Industrial Disputes Act, there is no minimum requirement to raise a dispute. Also, workers who have worked for up to 240 days in a calendar year might be retrenched without prior notice.
- For the welfare of workers, all social security schemes will continue to apply at small factories, too. For instance, firms with more than 20 workers will mandatorily contribute to the Employees Provident Fund Organization (EPFO).
- Filing annual reports will become simpler for employers, as these will now be a considerably reduced document. For that purpose a unique labour identification number (LIN) will be allotted to each employer after registration.
- The Bill will make it tougher for workers to go on strike. If 10 or more workers are absent from duty without proper reason and in "a concerted manner", the employer will be allowed to deduct eight days' wages of each worker.

#### **V To fix 75% cap to tighten premature PF withdrawals**

***(Source: Indian Express New Delhi Published on 23 July 2015)***

In order to protect the retirement savings of workers, the Government has finalized a proposal to cap premature withdrawals from the Employees’ Provident Fund at 75 per cent of the total accumulation in case of loss of employment. At present, EPF subscribers can withdraw their entire savings by showing that they have not been employed for two months and can open a new account on moving to a new job.

The EPFO also plans to raise the age for withdrawal of up to 90 per cent of the PF accumulation from the current limit of 54 years to 57 years. Additionally, members would be allowed to retain a part of the EPF and the related Employees’ Pension Scheme (EPS) until the age of 58 years from the current provision of 55 years.

#### **VI EPFO to raise maximum insurance cover to Rs.6 lakhs**

***(Source: Indian Express New Delhi Published on 17 September 2015)***

Apex Decision making body of EPFO i.e. Central Board of Trustees, (CBT) has decided to increase the maximum amount assured under its Employees' Deposit Linked Insurance Scheme (EDLI) to Rs.6 Lakhs (which is more than that proposed of Rs.5.5 lakhs) from the existing Rs.3.6 lakhs.

#### **VII Government issues common form for registering under ESIC, EPFO and other Labour Laws**

Unified Registration for 5 Labour Acts (ESIC, EPFO, Building & Other Construction, Rules, 1998 (BOCW), Contract Labour Act (CLA) & Inter-state Migrant Workers Act (ISMW), Press Release, Dated 3 Nov 2015.



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This newsflash is general in nature. In this newsflash, we have summarised various amendments by way of circulars, notifications and clarifications in the last six months made by Employees Provident Fund Authorities. It may be noted that nothing contained in this newsflash should be regarded as our opinion and facts of each case will need to be analyzed to ascertain applicability or otherwise of the respective circulars and notifications and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this newsflash.