

Employees' Provident Funds and Miscellaneous Provisions (Amendment) Bill, 2019: A Knight in the Shining Armour for the Distressed Employers

written by Sindhuja Kashyap | September 23, 2019

The Ministry of

Labour and Employment has, with view to the changing industrial and economic scenario of the nation, proposed to amend the

Employees' Provident Funds and Miscellaneous Provisions Act, 1952 vide the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Bill, 2019

("Bill") on August 23, 2019. The

Bill is open for suggestions and objections from the concerned stakeholders and

other members of the public till September 22, 2019.

Key Highlights

In this Article we shall

discuss the salient features of the Bill as follows:

- Wages

Bill has removed the basic wage as existed in the Act and has replaced it with "Wages" which is in conformity with the definition

of "Wages" as brought in by the Code on Wages, 2019, as notified on August 8, 2019. While earlier, the basis for

computation of provident fund was basic wage, it has now become computational to wage which is inclusive of basic pay, dearness allowance and retaining allowance. The amendment specifically excludes various specific payments made by the employer to the employee such as any bonus, the value of house accommodation, contribution by an employer to pension or provident fund, conveyance allowance, house rent allowance, overtime allowance, retrenchment allowance etc. However, the Bill specifically states that if all such excluded

payments exceed 50% or such other percent of all remuneration calculated, then

such exceeded payment shall be deemed as remuneration and shall be made part of

"Wages".

- Contribution by Employee

The Bill has proposed flexibility regarding the rate of contribution for various class of employees. Central Government has been given the power to determine such percentage and the period for which such rates shall be applicable. Further, the Bill clarifies that the employer shall not be under an obligation to pay any contribution over and above his contribution of 12%. This modification and flexibility in rates come in pursuance to the announcement made in the annual budget of year 2015-2016 wherein it was stated that Employees' Provident Funds contribution shall be made optional for employees below a certain threshold of monthly income. While the idea took 3 years to come on papers, it is a positive change to ensure no additional burden on low income earner is brought in.

- Limitation to inquiries

Section

7A of the Act deals with the initiation of inquiry regarding the applicability

of the Act and determining the amount due from any employer under any provision

of the Act. The Act provided no limitation to the initiation of inquiries under

Section 7A of the Act, thereby allowing the competent authorities to initiate inquiries for any period of time, be it from the date of the commencement of such establishment. Such an ambiguous and open-ended power to the authorities was prone to misuse. Therefore, the Bill now amends Section 7A wherein a limitation period of five years has been brought in to initiate inquiry from the date the alleged amount is considered to be due. Further, the Bill also states that the inquiry should be held on a day to day basis and should be concluded within a period of two years, as far as practicable. In the event the

inquiry is not concluded within two years, the authority must record the reason

for such delay.

- **Prioritizing payment of Provident Fund**

Bill clearly emphasizes

vide Section 11 that any amount due for the provident fund shall be considered

as the first charge on the assets of the establishment and it shall be paid in

priority to all debts. Therefore, the Bill proposes that if an establishment has various debts and the creditors approached competent authorities under

the Insolvency and Bankruptcy Code, 2016, it must be ensured that the amount due under this Act is prioritized and paid before any other dues.

- **Fines**

Bill proposes to enhance

the penalties as are levied under the Act. For instance, failure on behalf of an

employer to contribute towards PF is punishable with imprisonment up to 3 years

and fine of INR 50,000 which at present is punishable at INR 5000 in the Act. Therefore, one can note that the penalties have enhanced ten times to what existed.

- **Compounding of certain offences**

Bill introduces a Clause 14AD wherein it states

that all offences other than those specified in Section 14(1), (1A) and (1B) can be compounded by paying such compounding rates without the need to undergo

a trial. This insertion, therefore, reduces the burden on the officers to conduct a trial for minor offences.

Conclusion

The Bill proposes to make various positive amendments in the Act, such as the introduction of the limitation period for initiation of inquiry. Post Supreme Court observation on basic wage, in the case of *Regional Provident Fund Commissioner (II) West Bengal vs Vivekananda Vidyamandir and Others*^[1] ("Judgement"), establishments witnessed various random inquiries being initiated by the authorities, to check compliance with the law. The case law fails to state the time period of applicability of the Judgement and whether

the same can be made retrospectively applicable and thereby penalized by the authorities for non-compliance. Consequently, a notice was thereby issued by the Employees' Provident Fund Organisation on August 28, 2019^[2] ("Circular") wherein the authorities namely Additional Central Provident Fund Commissioners and Regional Provident Fund Commissioner were directed to refrain from initiating roving inquiries into the wage structure of the complying establishments on the presumption that certain allowances being in the nature of basic wages might not have been treated as part of pay for employee provident fund contribution. Such rogue issues were being initiated on the basis of the Judgement. The Circular stated that any inspection/investigation into the wage structure of the establishments shall be made only if there exists a prima facie evidence of illegal intention to avoid Employees' Provident Funds liability by arbitrary bifurcation of wages and upon obtaining permission from CAIU. Further, the Circular also stated that no coercive action shall be taken for the recovery of dues till disposal of review petition as pending before the Hon'ble Supreme Court. However, the review petition in the matter has been dismissed by the Hon'ble Supreme Court on not finding any merit in the case to entertain the same. Therefore, the establishments are now left to the mercy of the Circular and the Bill to come into effect at the earliest, to understand the impact and liability of the Judgement on them and avoid arbitrary harassment by the authorities vide arbitrary inquiries.

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- ^[1] 2019 LLR 339
- ^[2]http://114.143.193.164/ergo/Vivekanand_Vidyamandir_EPF0%20Circular.pdf

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