

## A Sigh of Relief – Employees State Insurance Corporation ESIC Offers COVID-19 Aid Scheme

written by Sivasubramanian N | July 19, 2021



Employees State Insurance Corporation ESIC - The COVID pandemic has proven to be a difficult time for employees/workmen whose main source of income has always been their daily wage – which has now been affected due to salary cuts and employment terminations. Adding to this predicament, the second wave of the pandemic grossly disrupted their lives, proving to be more fatal than the first wave and has cost the lives of many such employees in this economically active age group.[1]

The Employees State Insurance Corporation ESIC, a statutory organization, established under the Employees State Insurance Act, 1948 (“Act”), and dedicated to providing insurance to low-income employees[2], has time and again stepped in to provide benefits to such employees, including, but not limited to medical benefit, maternity benefit, sickness benefit, dependant benefit and funeral expenses. Ever since the pandemic began, and even when the country was under a national lockdown, the ESIC has taken a number of steps, including a waiver on contributions by employees, the establishment of dedicated ESIC hospitals and extending benefits under the Act.

In a much welcome move, the ESIC has, vide circular dated 3<sup>rd</sup> June 2021[3], introduced the COVID-19 Relief Scheme (“Scheme”) which aims at providing periodic monetary relief (“Periodic Payments”) to the dependents of employees who are insured persons (“IP”) under the Act, and who have died due to COVID-19 (“COVID”) disease (“Deceased IP”). The Scheme, which is retrospective and is deemed to have come w.e.f. 24<sup>th</sup> March 2020, has promised a minimum sum of Rs. 1800/- (Rupees One Thousand Eight Hundred only) to be paid to the dependants of the Deceased IP, in such proportions, as provided under the Scheme.

**Statutory Background - Employees State Insurance Corporation ESIC**

As per Section 19 of the Act, the ESIC, in addition to the scheme of benefits provided under the Act, may promote measures for improving the health and welfare and rehabilitation and re-employment of IPs who have been disabled or injured. The Scheme has been introduced as per the powers provided under the said provision of the Act, considering it appropriate to provide for the protection of the families/dependants of the IPs.

**Scheme Validity and Eligibility Criteria**

The Scheme is effective from 24<sup>th</sup> March 2020 and would be valid for a period

of two (2) years from the said date. In order to be eligible under the Scheme, the Deceased IP must have been registered with the ESIC, at least three (3) months before the date of diagnosis of COVID resulting in death ("Diagnosis Date"), must have been in employment on the Diagnosis Date and paid contributions for at least seventy (70) days during the one (1) year preceding the Diagnosis Date.

#### Eligible Relatives/Dependants

The Scheme has specified a list of relatives/dependants of the Deceased IP, who are eligible to receive the Periodic Payments, specified under the Scheme. They are as follows:

1. Spouse, legitimate/adopted son who has not attained the age of twenty-five (25), an unmarried legitimate or adopted daughter;
2. Widowed mother
3. If wholly dependent, a legitimate/adopted son or daughter who has attained the age of twenty-five (25) and is infirm; and
4. If the Deceased IP does not leave behind (a), (b) or (c) at the time of his death, then the following relatives, who are wholly or in part dependent on the Deceased IP:
  1. A parent other than a widowed mother;
  2. A minor illegitimate son, an unmarried illegitimate daughter, or a daughter (legitimate/adopted/illegitimate, if married) and a minor, or if widowed and a minor;
  3. A minor brother or an unmarried sister or a widowed sister, if a minor;
  4. A widowed daughter-in-law;
  5. A minor child of a pre-deceased son;
  6. A minor child of a pre-deceased daughter, where no parent of the child is alive; or
  7. A paternal grand-parent if no parent of the Deceased IP is alive.

#### Periodical Payments – Manner and Proportion

The dependants shall be paid ninety per cent (90%) of the average daily wages<sup>[4]</sup> of the Deceased IP ("Full Rate"), in the following manner:

1. Spouse – During her life, three-fifths ( $3/5^{\text{th}}$ ) of the Full Rate. If there are one or more widows, the amount shall be divided equally;
2. Legitimate/adopted son – Two-fifths ( $2/5^{\text{th}}$ ) of the Full Rate until he attains the age of twenty-five (25); If the son is infirm and wholly dependent, then the amount would be paid till the infirmity lasts;
3. Legitimate/adopted unmarried daughter - Two-fifths ( $2/5^{\text{th}}$ ) of the Full Rate; If the daughter is infirm and wholly dependent, then the amount would be paid till the infirmity lasts;
4. Widowed mother – During her life, two-fifths ( $2/5^{\text{th}}$ ) of the Full Rate;
5. In case of other relatives/dependants, as follows:
  1. To a parent other than widowed mother or grand-parent – For life, three-tenths ( $3/10^{\text{th}}$ ) of the Full Rate, and if there is more than one such parent/grand-parent, it shall be distributed equally; and
  2. Others - To a male dependant, until attainment of eighteen (18) years or female dependant until attainment of eighteen (18) years or marriage, whichever earlier – Two-tenths ( $2/10^{\text{th}}$ ) of the Full Rate and if there is more than one such dependant, it shall be distributed equally.

If the total amount paid to the dependants specified in (a), (b), (c) and (d), exceeds the Full Rate, then the share of each of these dependants shall be proportionately reduced so that the total amount payable does not exceed

the Full Rate.

#### Implementation of the Scheme

As specified earlier, the minimum amount payable under the Scheme shall be Rs. 1800/- (Rupees One Thousand Eight Hundred only) per month. In order to claim the benefit under the Scheme, the claimant (eligible relative/dependant) shall be required to submit the appropriate form along with the COVID positive report and death certificate of the Deceased IP to the nearest/designated ESIC office. Further, the dependants shall also provide the age and identity proof and submit a claim for payment under the Scheme in the specified manner. The ESIC has entrusted the power to decide cases under the Scheme to the Regional Director/Sub-Regional office in charge, as the case may be ("Authorities").

In cases where the death of the IP occurs after discharge from the hospital, claims can be submitted if the Deceased IP had died within thirty (30) days of discharge from the hospital. The cases would be decided by the Authorities in consultation with the Medical Board<sup>[5]</sup>. Where the date of recovery cannot be ascertained due to lack of COVID negative report, then cases where the death of the IP has occurred post forty-five (45) days of testing COVID positive shall also be considered. All claims under the Scheme shall be settled within fifteen (15) days of receipt of claim.

A claimant in receipt of relief under the Scheme shall submit a declaration in the specified form along with a life certificate duly certified by any authority, provided under the Scheme, for every year. Further, an infirm child shall submit a certificate of infirmity every year using the specified form.

The first tranche of payment under the Scheme shall be credited in the bank account of the claimant within fifteen (15) days of receipt of the complete claim (along with required details).

The branch officer of the benefit branch in the Regional Office/Sub-Regional Office shall act as a grievance redressal officer for resolving grievances under the Scheme and also monitor the progress of claims received under the Scheme. Further, a help desk shall also be created at every Branch Office/Sub-Regional Office to provide information about the Scheme and help claimants in getting the relief amount sanctioned under the Scheme, including assistance in filling of claim forms.

#### Other Information

For Deceased IPs who were availing Maternity Benefit ("MB") or Extended Sickness Benefit ("ESB") or Temporary Disablement Benefit ("TDB") and who fell short of the required seventy (70) day period, as a result of being on such benefits, the number of days the Deceased IPs were on such MB, ESB or TDB, during one (1) year prior to the diagnosis of COVID, would be counted for eligibility for relief under the Scheme.

Further, the Scheme also provides that the spouse of a Deceased IP shall be eligible for medical care (as provided to a widow of an IP who died due to employment injury), upon depositing a lumpsum amount of Rs. 120/- (Rupees One Hundred Twenty only) for one (1) year.

#### Endnote

The Scheme is one of its kind and is a laudable effort by the Government of India to protect the dependants of IPs registered under the Act. Moreover, the retrospective implementation of the Scheme ensures that even IPs who had died during the first wave of COVID are protected.

However, one of the major lacunae of the Scheme is that the monetary relief provided thereunder is meagre. Given the intention of the Act to cover low-income employees, one would have expected the ESIC to provide a higher relief to the dependants, especially given the intention of the Scheme. Another major lacuna of the Scheme is with respect to the claims made in cases where the Deceased IP died after discharge from the hospital.

Firstly, it is not clear as to how the cases would be decided in such a scenario and as to what are the factors that would be considered in deciding such a claim. Secondly, it is also not clear as to whether there is an option for appealing the decision of the Authorities before any higher forum/the judiciary.

It needs to be seen with a close critical eye how the Scheme will be implemented in order to better understand the practicalities and practical issues surrounding the Scheme.

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- [1] As per the Organization for Economic Cooperation and Development ("OECD"), an economically active population comprises all persons of either sex who furnish the supply of labour for the production of economic goods and services as defined by the United Nations System of National Accounts during a specified time-reference period. OECD, "Glossary of Statistical Terms", Available at: <https://stats.oecd.org/glossary/detail.asp?ID=730>
  - [2] As per the provisions of the Act and the rules made thereunder, the wage limit for coverage of an employee under the Act is Rs. 21,000/- (Rupees Twenty One Thousand only) per month.
  - [3] ESIC Circular No. P-11/14/11/COVID-19 Relief Scheme/2021-Bft II dated 4<sup>th</sup> June 2021, Available at: <https://www.esic.nic.in/attachments/newseventfile/1643a97e53be5028acbf711c59915bc5.pdf>
  - [4] Average daily wages shall be calculated in the same manner as that used for calculation of Dependant's Benefit under the Act. However, where the contribution period April 2020 to September 2020 comes into picture and the contribution paid by the Deceased IP during the period is zero (0), then the Deceased IP shall be treated as a new entrant and average daily wages would be calculated accordingly.
  - [5] The Medical Board would consist of the Medical Superintendent of the nearest ESIC/ESIS Hospital, Specialist (Pulmonology) and Specialist (Medicine)

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