

EMPLOYEE STATE INSURANCE SCHEME , 1948 (FAQ's)

Q. What is ESI Scheme?

A. Employees State Insurance scheme of India is the multidimensional Social Security System, to provide social security protection to workers employed in the organized sector in conceivable contingencies like sickness, maternity, and death due to disablement due to employment injury.

Q. What is its applicability?

A. ESI Act 1948 applies to factories and commercial establishments by employing 10 or more persons operating in entire state of Goa. All employers including casual and contractors' employees who are drawing wages up to Rs. 15,000/- per month (excluding over time) are entitled for the comprehensive social security protection under ESI Act by registering the factories/establishments under ESI Act and paying contribution on wages @4.75% as employers share and 1.75% as employees share.

Q. What are the benefits of registering the factories/establishments under ESI Act?

A. ESI Scheme provides total social security protection to the employees of a covered factory/establishment. Employers are absolved of the liabilities of workmen compensation Act and Maternity Benefit Act. Once covered under ESI Act, employers are protected from the liabilities of sickness, employment injury and accidental death of their workmen including commuting accident. ESI Scheme aims for a healthy workforce to contribute to the productivity of the nation.

Q. What are the benefits available under ESI Scheme?

A. Apart from providing medical benefits including super specialty treatment, Insured Persons and their family members, ESI Scheme also provides cash compensation to insured persons for loss of wages or earning capacity in times of physical distress arising out of sickness or employment injury. Maternity benefit to Insured women, family pension to the Dependants in case of death due to employment injury, unemployment allowance, physical/vocational rehabilitation etc. are available under ESI Scheme. Commuting accidents are also covered under ESI Act at present.

Q. How the benefit can be made available to the workmen?

A. It is the primary responsibility of the employer to get the factory/establishment registered under ESI Scheme. Employer has to register all workmen including contract labours immediately on entering the insurable employment, which is very helpful in case of any unexpected industrial accidents. (Please note that employees cannot be registered posthumously.)

Q. How to develop a healthy relationship between ESIC and Employers?

A. ESIC values a healthy relationship between its stake holders, principal employers/owners should personally ensure that monthly ESI contribution submitted, and employees are registered. Even if consultants are engaged for looking after ESI matters, it is in the interest of the principal employer

to personally confirm the timely ESI compliance to avoid unnecessary burden of interest, i.e. 12% and penal damages of up to 25% for the delayed remittance of ESI contribution as well as to avoid contribution assessment proceedings and criminal prosecutions.

Q. What are the recent initiatives of ESI Corporation ?

A. ESI Corporation has empaneled leading in hospital in Goa as well across India to provide cashless super-specialty treatment to lacks Insured Persons and their family members. ESI Corporation has also rolled out computerization of its services by enabling online payments of ESI contribution and issued biometric identity cards for availing ESI services anywhere any time.

Which establishment are covered:

The Act is applicable, in the first instance, to all factories other than seasonal factories. With effect from 12 Nov 1978 the Government of Maharashtra has extended the provisions of the Act to establishments of hotels, restaurants, shops, cinemas and newspapers employing 20 or more employees situated in Greater Bombay and certain talukas of Thane District.

Cinema Theatre, having less than 20 employee excluding security guards engaged through outside agency: The Security Guards came within the definition of employees under Section 2(9) of the Act. The theater was the principal employer of the security guards and therefore the theatre is a covered establishment .

Casual Workers employed for the maintenance of an establishment: Once the establishment is covered by the Act, the employer is liable to pay contribution in respect of the employees in respect of repairs and maintenance of the establishment. The casual workers are employees under Section 2(9) of the Act.

Meaning of “factory” under the Act: By 1989 amendment of the Act, a factory is now defined as:

- i. any premises whereon 10 or more persons are employed and in any part of which a manufacturing process is carried on with the aid of "power"; or
- ii. any premises whereon 20 or more persons are employed and in any part of which a manufacturing process is carried on without the aid of power {Section 2(12)}

Is Petrol Pump a factory?: A petrol pump employing more than 10 employees is a factory. The activity of pumping petroleum product with the aid of power is sufficient to bring in within the definition of ‘manufacturing process’ under the Factories Act.

Is an automobile workshop a factory? : If twenty or more persons are employed in an automobile workshop to repair vehicles to put them to use, it should be construed that manufacturing process is carried on in the workshop and therefore it is a factory.

Is the Act applicable to Cricket Club of India? : There is a kitchen in the club which caters to the members of the club. The kitchen is not doubt a factory as defined under section 2(12) of the Act. The activities in the kitchen have a direct connection with the activities carried on in the rest of the club. As such, the Act, which is made applicable to all factories, is applicable to the Club.

Are the factories belonging to the Government governed by the Act? : The Act does apply to factories belonging to the Government.

Does the Act continue to apply to an establishment even after the establishment goes out of the municipal limits due to the alteration of boundaries? : Once the establishment goes out of the municipal limits, it ceases to be governed by the Act.

Would the Act cease to apply to a factory or an establishment if the number of person employed therein falls below the limit specified by or under the Act or the manufacturing process therein ceases to be carried on the aid of power? : The factory or the establishment shall continue to be governed by the Act notwithstanding the fall in the number of persons employed or discontinuance of the use of power.6{Section 1(6)}

Who are required to be insured under the Act? : Every employee employed in or in connection with the work of a factory or establishment covered by the Act and drawing wages upto Rs. 21000.00 per month (with effect from 1 May 2016) is required to be insured under the Act. {Section 2(9)(b)}

Whether consultants are employees? : Consultants do not work in the premises of the establishment. Their work is carried out in their own places. They are engaged as consultants in the matter of carrying on the business of the respondent just as retaining tax consultants such engagement cannot create employer-employee relationship.

Does conveyance allowance form part of wages within the ambit of Section 2(22) of the Act? : Since the employer is paying a certain fixed amount as conveyance allowance to every employee working in his concern, in terms of contract of employment , there is not impediment to hold that the definition of Section 2(22) of the Act.

Contribution payable by the employee & employer under the Act: Every insured employee and his employer have to pay to the ESI Corporation contribution at the rate of .75% and 3.25% respectively of the wages of the employee.

Time & Method for payment of contribution payable under the Act: Both the employer's and employees' contribution are required to be paid, in cash or by cheque, into the State Bank of India or any other Bank authorized by the ESI Corporation, by filling in a prescribed challan in quadruplicate within 15 days following the end of the calendar month in which the contribution falls due. The Bank will retain two copies of the Challan and return other two to the employer, one for submitting to the Regional Office of the Corporation and the other for the record of the employer.

Procedure for registration of a factory or and establishment: The employer of a factory or an establishment desirous of registering it under the Act has to send the Regional Office within 15 days from the Act becomes applicable to it a Declaration of Registration in the prescribed form. Upon receipt of the Declaration of Registration the Regional Office shall if satisfied that factory or the establishment is covered by the Act, allot to it a Code Number and thereupon the factory or the establishment shall stand registered under the Act. {Section 2(a) & Regulation 10(b)}

Benefits provided under the Act: The following six kinds of benefits are provided under the Act; (i) Sickness benefit, (ii) Maternity , (iii) Disablement benefit, (iv) Dependents' benefit, (v) Medical benefit and (vi) Funeral expense.

Does the Act apply to an apprentice? : The definition of “employee” as amended by Act 29 of 1989 now includes “any person engaged as an apprentice not being an apprentice engaged under the Apprentices Act or under the Standing Orders of the establishment”. Thus, even after the amendment the ESI Act would not apply to a person engaged as an apprentice under the Apprentices Act of the Standing Orders.

Is a Managing Partner of a partnership business or a Managing Director of a company an employee within the meaning of Section 2(9) of the Act? : A Managing Partner of a partnership business or a Managing Director of a company cannot be treated as an employee. The same person cannot occupy the position of both employer and employee.

Who is an “exempted employee”? : Exempted employee means an employee who is not liable to pay the employee’s contribution by reason of the fact that his average daily wages are below Rs. 50.00 but who at the same time is entitled to the benefits under the Act. {Section 2(10) & Regulation 52}

Does the Act apply to a person employed through a contractor? : The Act does apply to a person employed through a contractor if the person is otherwise covered by the Act. {Section 2(9)}

Does the Act apply to employees working in the Head Office or Branch Office of factories covered by the Act? : The Act does apply to employees working in the Head Office or the Branch Offices of factories covered by the Act if such employees are doing work connected with the administration of factories.

“Contribution period” and “Benefit period”: Contribution period and Benefit period are periods fixed for the purpose of paying contributions and deriving benefits under the Act. In respect of the contribution period from 1st April to 30th September, the corresponding benefit period shall be from 1st January of the year following, to 30th June; and in respect of the contribution period from 1st October to 31st March of the year following, the corresponding benefit period shall be from 1st July to 31st December of the year following. In the case of a newly employed person, the first contribution period shall commence from the date of employment, and the corresponding first benefit period shall commence on the expiry of 9 months from the said date. {Rule 2 & Regulation 4}

What is meant by “Standard Benefit Rate”? : The daily rate at which sickness benefit is payable to an insured employee during the period of his sickness is called “Standard Benefit Rate”. The

standard benefit rates are specified in Rule 54, lowest rate being Rs. 14.00 and the highest being Rs. 145.00. {Rule 2(7-A) & Regulation 54}

What is meant by “Sickness Benefit”? : When an insured employee is sick, he is entitled to receive for the period of his sickness, benefit at the daily “Standard Benefit Rate” specified in Rule 54. This benefit is available to the insured employee for sickness occurring during any benefit period if he has paid contributions for not less than seventy eight days of the corresponding contribution period. Sickness benefit is not available for the first 2 days of sickness. The maximum period for which sickness benefit is available is 91 days in one year. {Section 46 & Rule 55}

What is meant by “maternity”? : In case of (i) confinement, miscarriage or medical termination of pregnancy; or (ii) in case of sickness arising out of pregnancy, confinement, premature birth of child or miscarriage or medical termination of pregnancy, an insured workman is entitled to receive periodical payments called “maternity”. This benefit is available to the insured woman, at such rate and for such period as is specified in Rule 56, for confinement occurring or expected to occur in a benefit period if she has paid contribution for not less than 70 days in the immediately preceding consecutive contribution periods. {Sub-Section 46, 50 & Rule 56}

What is meant by “Disablement Benefit”? : When an insured employee is suffering from temporary disablement as a result on an employment injury, he is entitled to receive for the period of such disablement periodical payment called “Disablement Benefit”. When an insured employee is suffering from permanent disablement, whether total or partial, as a result of an employment injury, he is entitled to receive disablement benefit for the whole of his life. The rate of disablement benefit is determined in accordance with the provisions of Rule 57. There is no condition of payment of any contribution for receiving disablement benefit. {Rule 57}

What is the meaning of “Employment Injury”? : “Employment injury” is defined under Section 2(8) of the ESI Act, as a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment. The expression “arising out of employment” means caused by employment or had its origin in the employment. The expression “arising in the course of employment” means occurring during working hours, actual or notional. {Rule 57}

Is an employee, who was assaulted at the bus stop while he was waiting for the bus to his house, entitled to disablement benefit? : It cannot be stated that the injury sustained by the employee due to assault of some person will come under the purview of employment injury as defined in Section 2(8) of the Act. Unless an employee can establish that the injury was caused or had its origin in the employment, he cannot succeed in a claim based on Section 2(8) read with Section 46(1)(c) of the Act.

What is meant by “Dependants’ Benefit”? : When an insured employee dies as a result of an employment injury, his widow and children and in case the employee does not leave behind him a widow or children, his other dependants, are entitled to receive periodical payments called

“Dependants’ Benefit” at such rates and for such periods as are specified in Rule 58. {S52 & Rule 58}

What is meant by “Medical Benefit”? : When an insured employee or (where medical benefit is extended to his family) a member of his family is sick, he is entitled to medical treatment and attendance of such kind and on such scale as may be provided by the state government or by the Employees’ State Insurance Corporation. This benefit is called “medical benefit” and is available to the employee during any period for which contributions are paid in respect of him or in which he can claim sickness benefit. {Sub-Section 56, 57}

Which family members of an insured employee are entitled to medical treatment where medical benefit is extended to families of insured employees? : Where medical benefit is extended to families of insured employees, medical treatment is available to; (i) the husband or wife of the insured employee, (ii) the minor legitimate or adopted children of the insured employee dependent upon him, and (iii) the dependent parents of the insured employee. {Sub-Section 2(11) & 58}

What is meant by “Funeral Expenses”? : In case of death of an insured employee, the eldest surviving member of his family, and if the employee had no family or was not living with his family at the time of his death, then the person who actually incurs the expenditure on the funeral of the employee, is entitled to receive an payment called “Funeral Expenses”. This payment is given to the person concerned to meet the expenditure actually incurred by him on the funeral of the employee and the maximum permissible amount of such payment is Rs. 10000.00. {Section 46 & Rule 59}

Is an insured person who ceases to be in an insurable employment on account of permanent disablement eligible to receive any benefits under the Act? : An insured person who ceases to be in an insurable employment on account of permanent disablement caused due to an employment injury shall be eligible to receive only medical benefits for himself and his spouse, till the date on which he would have vacated the employment on attaining the age of superannuation had he not sustained such permanent disablement, if he pays contribution of Rs. 120.00 every year in advance. {Section 56 & Rule 60}

Does a conviction of an insured person under the Act disentitle him to any benefits admissible under the Act? : A conviction of an insured person under Section 84 of the Act (for false statement) disentitles him only to cash benefits admissible under the Act for a period of three months for first conviction and six months for each subsequent conviction from the date of receipt of judgment of the Court in the office of the Corporation. { Section 56 & Rule 60}

Is a retired insured person eligible to receive any benefits under the Act? : An insured person who retires on attaining the age of superannuation shall be eligible to receive only medical benefits for himself and his spouse if (i) he had been in the insurable employment for not less than 5 years ad (ii) if he pays contribution of Rs. 120.00 every year in advance. {Section 56 & Rule 61}

Can a person, who was not an insured person at the time of his superannuation but who remained an insured person at some stage of his employment, claim medical benefits? : For the purpose of entitlement to medical benefits, a person must be an insured person immediately preceding his superannuation. He cannot claim medical benefits on the strength of remaining an insured person at some stage of his employment.

Is it permissible for any person to transfer or assign the various benefits under the Act? : The transfer or assignment of the right to receive the payment of any benefit under the Act is prohibited. {Section 60}

Is it permissible to pay benefits under the Act by account payee cheques instead of cash? : As provided under Regulation 52(4), it is not permissible to pay benefits under the Act by cheques. Such a practice causes hardship to concerned employee. It will be too much to expect low paid employees to keep a Bank account.

Is it permissible for any person to draw a benefit of the same kind under the ESI Act and also under any other Act? : When a person is entitled to any of the various benefits provided under the ESI Act, he will not be entitled to receive any similar benefit admissible under any other enactment. An insured person or his dependent is also not entitled to receive any compensation or damages under the Workmen's Compensation Act in respect of any employment injury sustained by the insured person. {Sub-Section 53 & 61}

Are there any circumstances in which an employee is not entitled to receive any benefit under the Act? : An employee cannot claim sickness benefit or disablement benefit for temporary disablement in respect of any day on which he works or remains on strike. {Section 63}

Is it permissible for any employee to receive two benefits at the same time? : An employee is not entitled to receive two benefits at the same time. That means he cannot receive for the same period; (a) both sickness benefit and maternity benefits; or (b) both sickness benefit and disablement benefit for temporary disablement; or (c) both maternity benefit and disablement benefit for temporary disablement. Where an employee is entitled to more than one benefit, he has to choose which one of them he shall receive. {Section 65}

Is there any restriction on the employer in the matter of termination of services of any employee during the period the employee is in receipt of any benefit under the Act? : The employer is prohibited from dismissing or discharging an employee during the period the employee is in receipt of any benefit under the Act. Any notice of dismissal or discharge given to an employee in contravention of this provision will be invalid and inoperative. Besides, the employer dismissing or discharging an employee in contravention of this provision would be punished with imprisonment up to 1 year or with fine up to Rs. 4000.00 or with both. {Sub-Section 73 & 85}