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THE COMPLIANCE WATCH

An Overview of the BOCW Compliances

Ram Ganesh, Vice President

The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (BOCW Act) is a labour law in India that governs the employment and working conditions of building and construction workers in the country. The Act applies to every establishment carrying out construction projects that involve the building, modifying, maintaining, repairing, or demolishing of buildings or other structures. This covers both interior construction work and work pertaining to the renovation or upgrade of structures or buildings. The definition of "Building and Other Construction" is not limited to construction work and the same includes any repair and maintenance of building/office premises. Therefore, any establishment carrying out civil/interior fit-out works and engage contract workers directly or through third-party agencies and if the total cost of such work exceeds ten lacs, then the establishment shall be responsible to comply under the BOCW Act.

If an establishment is found to be in violation of the rules under the BOCW Act and the Cess Act, they may be subject to fines and other legal repercussions as below:

Under the BOCW Act:

A fine of up to Rs 5,000 may be levied against the establishment for each violation. Additionally, if it is determined that the company and its officials have wilfully disregarded the Act's rules, the Act permits prosecution of both the company and its officers. If found guilty, the establishment and its officers might receive a sentence of up to six months in prison, or a fine of up to Rs. 10,000, or both.

Under the Cess Act:

The Act imposes a levy (cess) on construction firms for the purpose of providing welfare measures for construction workers. If found to be non-compliant, a fine of up to Rs 5,000 may be levied against the establishment for each violation. Additionally, if it is determined that the company and its officials have wilfully disregarded the Act's rules, the Act permits prosecution of both the company and its officers. If found guilty, the establishment and its officers might receive a sentence of up to six months in prison, or a fine of up to Rs. 10,000, or both.



In view of the above, every establishment/Principal Employer carrying out civil/ construction/ repair/ fit-out works for more than Rs. Ten Lacs must ensure the following:

Register with the appropriate authorities:

Any establishment engaged in such construction works and employee 10 or more contract workers and if the total cost of such work exceeds ten lacs must apply for registration under the BOCW Act within 60 days from the commencement of the project.

Payment of Cess:

The Principal Employer shall be liable to pay the cess of 1% of the total cost of the project which excludes only land value & Workmen Compensation premium amount. This is to be paid on time to avoid penal/legal consequences. The cess must be paid for each project work separately and the company should maintain a "company certified" cost sheet for each project separately for any future assessment of cess payment.

Familiarize oneself with the provisions of the Act:

It is important for establishments to be aware of the provisions of the BOCW Act and the Cess Act, especially those pertaining to the employment and working conditions of construction workers, and ensure that they are adhering to these rules.

Maintain records:

The contract agencies must maintain accurate and up-to-date records of the employment and working conditions of their workers, including records related to wages, working hours, leave, and other benefits.

Audit of the contractor's compliance documents:

The Principal Employer must ensure that all the contractors who have deployed manpower resources in connection with the work related to the establishment are compliant by verifying their compliance documents.

Provide necessary amenities:

Establishments must provide the necessary amenities to their workers, such as safe and hygienic working conditions, drinking water, first aid facilities, and other amenities.

By adhering to the above-mentioned requirements, companies can ensure that they are in compliance with the provisions of the BOCW Act and the Cess Act and are providing fair and safe working conditions for their workers.

What will happen to your EPF, EPS if govt hikes PF wage limit to Rs 21,000?

The central government is said to be planning to increase the wage ceiling limit under the Employees' Provident Fund (EPF) scheme to Rs 21,000 from Rs 15,000 now. The previous time the central government enhanced the wage threshold was in September 2014. If this proposal, reported in The Economic Times, goes through, it would impact the amount of contribution made towards the EPF scheme and the Employees' Pension Scheme (EPS). It has a bearing on the amount of pension an employee is entitled to at the time of retirement.

Hike in pension contributions

Currently, contributions towards the Employees' Pension Scheme (EPS) account are calculated by capping the basic salary at Rs 15,000 a month. So the maximum contribution to an EPS account is restricted to Rs 1,250 a month. If the government hikes the wage ceiling to Rs 21,000, this contribution will be increased. "The monthly EPS contribution will become Rs 1,749 (8.33% of Rs 21,000)," says Mallika Noorani, Senior Partner, Parinam Law & Associates. According to the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, both an employee and employer make matching contributions of 12% each of basic salary, dearness allowance and retaining allowance, if any, to the EPF account. The employee's entire contribution is deposited in the EPF account. On the other hand, out of the employer's contribution of 12%, 8.33% is deposited in the Employees' Pension Scheme and the balance 3.67% is deposited in the EPF account.

Higher pension at retirement

An increase in the wage ceiling under the EPF scheme will also lead to a higher pension amount at the time of retirement. According to the Employees Pension (Amendment) Scheme, 2014, the formula to calculate the EPS pension is as follows:

(Number of years of pensionable service X Average monthly salary for 60 months)/70.

If the wage ceiling limit threshold is enhanced to Rs 21,000, then amount of pension received will be increased. Noorul Hassan, Partner, Lakshmikumaran Sridharan Attorneys, explains this with an example. Suppose an employee's pensionable service period is 32 years. The monthly salary will be calculated by taking the average pay of the 60 months before retirement. However, if the basic salary of the employee during the 60 months is higher than Rs 15,000 per month, then Rs 15,000 will be considered as the salary for a month to make the calculation for pension. Further, if an employee has worked more than 20 years, then 2 years are added as bonus to the service period. The monthly pension an EPS member eligible to receive will be Rs 7286, i.e., $(34 \times 15,000) / 70$. However, if the wage threshold is enhanced, the average monthly salary will become Rs 21,000 for the purpose of calculation.

The monthly pension an employee is eligible to receive in such a case will be Rs 10,200, i.e., $(34 \times 21,000) / 70$. So, an increase of Rs 6,000 in the wage threshold takes the monthly pension up by Rs 2,900 approximately



Wider EPS coverage for employees

According to the EPF laws, if an employee's monthly basic salary exceeds Rs 15,000, they cannot join EPS even if they are part of the EPF scheme. However, if the wage threshold is hiked to Rs 21,000, then employees who join the EPF scheme with basic salary exceeding Rs 15,000 will be eligible to join EPS. Noorani says, "An individual whose basic salary is higher than Rs 15,000 but less than Rs 21,000 will mandatorily become an EPS member if the proposal goes through. These employees will become eligible for pension at the retirement age. However, employees should note that if they become an EPS member, then the employer's contribution to the EPF account will become lower. This is because currently, both employees and employer's contributions go into the EPF account. This leads to a higher EPF corpus. However, once these employees become members of the EPS scheme, then 8.33% of the employer's 12% will go into the EPS account. This may lead to lower EPF corpus for employees."

Lower EPF contributions

Enhancement in the EPS contribution from Rs 1,250 per month currently to proposed Rs 1,749 may lead to lower EPF corpus for existing employees. This is because an employer can currently deposit a maximum of Rs 1,250 to the EPS account. Any balance is deposited into the EPF account. If the deposit into EPS is hiked, the balance deposit into the EPF account will become lower. Hassan says, "Suppose an employee's current basic salary is Rs 30,000 per month. Her employer contributes 12% of Rs 30,000 to the EPF account - Rs 3,600 per month.

Out of this 12%, 8.33% goes to the EPS account, the pension account. For EPS contribution, the wage threshold is Rs 15,000. Hence, the EPS pension contribution is restricted to Rs 1,250. The balance amount of Rs 2,350 (Rs 3,600 minus Rs 1,250) goes into the EPF account. If the wage threshold is enhanced to Rs 21,000 per month, the EPS pension contribution becomes Rs 1,749 per month. The balance amount of Rs 1,851 (Rs 3,600 minus Rs 1,749) will be deposited in EPF account.

Source: Economic Times

Hike in EPFO pension not possible in view of its huge financial implications

The Government recently said that increase in EPFO pension is not feasible in view of its huge financial implications, fiscal constraints aggravated by COVID-19 and the burden on the Central exchequer. This was stated by Minister of State for Finance Pankaj Chaudhary in a written reply in Rajya Sabha. He said, the Government for the first time in 2014, provided a minimum pension of 1000 rupees per month to the pensioners under Employees Pension Scheme. Under the Employees' Pension Scheme, the corpus of the employees' pension fund is made up of contributions by the employer as well as the Central Government.

Source: NewsOnAir

Govt examining Supreme Court order on employees' pension scheme: Union minister Rameswar Teli

The government recently said it is examining a Supreme Court judgement which upheld Employees' Pension (Amendment) Scheme, 2014 and allowed employees to opt for enhanced pension coverage alongside their employers in four months' time. "Yes, sir. The directions of the Supreme Court in the judgment are under examination," Minister of State for Labour & Employment Rameswar Teli said in a written reply to Rajya Sabha. Teli was replying to a question on whether the government is aware about the Supreme Court verdict of November 4 on EPF pension scheme and by when it will implement the verdict and instruct the EPFO (Employees Provident Fund Organisation) to take actions for giving higher pension. In another written reply, Teli said the court judgement has legal, financial, actuarial and logistical implications. The scheme has provided for an extension of four months' time for eligible employees to opt for enhanced pension.

The apex court order provides that employees who were existing EPS-95 members as on September 1, 2014 can contribute up to 8.33 per cent of their actual salaries, as against 8.33 per cent of the pensionable salary capped at Rs 15,000 a month, towards pension. It had also struck down the requirement in the 2014 amendments mandating employer contribution of 1.16 per cent of the salary exceeding Rs 15,000 per month.

This will facilitate the subscribers to contribute higher to the scheme and get enhanced benefits accordingly. There are more than six crore subscribers of the retirement fund body. A large number of contributing members of the pension scheme would benefit from opting for contribution on wages higher than threshold of Rs 15,000 per month. The minister also said EPFO has a corpus of Rs 18,64,136 crore. This amount consists of Rs 11,37,096.72 crore in Employees' Provident Fund Scheme, 1952; Rs 6,89,210.72 crore in Employees' Pension Scheme, 1995 and Rs 37,828.56 crore in Employees' Deposit-Linked Insurance Scheme, 1976, as on March 31, 2022.

Source : EconomicTimes



Moonlighting: Staff can't take up work that's against company's interests, says govt

The government said staff can't take on work that's against the interests of their employers in addition to their jobs, clarifying the law as a debate rages over moonlighting in India's tech industry. "As per the Industrial Employment (Standing Orders) Act, 1946, a workman shall not at any time work against the interest of the industrial establishment in which he is employed and shall not take any employment in addition to his job in the establishment, which may adversely affect the interest of his employer," minister of state for labour Rameswar Teli said in a written reply in response to a question in the Lok Sabha on moonlighting recently. He was replying to a question on whether the government considers moonlighting to be a valid reason for firing employees. "No specific information is available to indicate that layoffs are happening due to moonlighting," the minister of state said.

IT Sector Red-flagged Cases

He added that the government had not conducted any study on moonlighting in the country. Moonlighting refers to a full-time employee of a company taking up an additional job, usually without the employer's knowledge. There have been multiple reports of IT professionals moonlighting during the pandemic when companies switched to full-time work from home.

IT company Wipro sacked 300 employees for moonlighting, saying it was a violation of integrity. Minister of state for IT Rajeev Chandrasekhar had earlier backed the idea of moonlighting, saying companies should not put a lid on employees' dreams but adding the caveat this should not violate contractual obligations. "Employment and retrenchment including layoffs are a regular phenomenon in industrial establishments," Teli stated in response to a query on whether the government had observed that staff were being fired for moonlighting.

Legal Perspective

Replying to a question on whether the government had instructed companies not to fire employees for moonlighting, the minister stated that jurisdiction in such matters lay with the respective state governments. However, he said layoffs and retrenchment are governed by the provisions of the Industrial Disputes (ID) Act, 1947, which also regulates various aspects such as conditions precedent to retrenchment. As per the ID Act, establishments employing 100 persons or more are required to seek prior permission of the appropriate government before effecting closure, retrenchment or layoff, he stated. Further, retrenchment and layoffs not carried out as per the provisions of the ID Act are illegal, he said. The ID Act also provides for the right of workmen laid off and retrenched to compensation and it also contains a provision for the re-employment of retrenched workers. Based on their respective jurisdictions, as demarcated in the ID Act, central and state governments take actions to address the issues of workers and protect their interests as per the provisions of the law. In establishments under the jurisdiction of the central government, the Central Industrial Relations Machinery (CIRM) is entrusted with the task of maintaining good industrial relations and protecting the interest of workers including on matters relating to layoffs and retrenchment and their prevention, he stated.

Source: EconomicTimes

Labour and Employment Ministry updates Labour Codes

The Government has formulated four Labour Codes, namely, the Code on Wages, 2019, the Industrial Relations Code, 2020, the Code on Social Security, 2020 and the Occupational Safety, Health and Working Conditions Code, 2020, and published these Codes in the Official Gazette for general information. As a step towards implementation of the four Labour Codes, the Central and several State Governments have pre-published the draft Rules, inviting comments from all stakeholders. The four Labour Codes envisage strengthening the protection available to workers, including unorganized workers in terms of statutory minimum wage, social security, and healthcare of workers. Some of the important provisions are as follows:-



- A statutory right for minimum wages and timely payment of wages has been made available to all workers to support sustainable growth and inclusive development
- To avoid multiple interpretations and litigations, a uniform definition of 'wages' across all four Labour Codes has been provided that is simple, coherent, and easy to enforce.
- Provision for annual health check-ups and medical facilities has also been made which enhances labour productivity and increases life expectancy.
- Statutory provision has been made for the first time to issue appointment letters to every employee of the establishment which leads to the formalized contract of employment that increases job security and enables a worker to claim statutory benefits such as minimum wages, social security, etc.
- Provision of a Re-skilling Fund for the skill development of workers.
- The gig worker and the platform worker have been defined to formulate schemes to provide social security benefits. Social security schemes can be formulated from the contribution of aggregators and the other sources can include funds from the Central and State Governments.
- The Central Government may extend benefits to unorganized workers, gig workers, platform workers, and the members of their families through the Employees' State Insurance Corporation or Employees' Provident Fund Organization.
- A worker engaged under Fixed Term Employment (FTE) is entitled to all the benefits which are available to permanent employees and has also been made eligible for gratuity if he renders service for a period of one year.
- Every worker is entitled to annual leave with wages after working for 180 days in comparison to 240 days at present. Provision for encashment of leave on demand by a worker while in service at the end of the calendar year.
- Applicability of the Employees' Provident Fund has been extended to all industries as against scheduled industries at present.

Rameshwar Teli the minister of state for labour and employment presented the draft Rules in front of the Parliament recently.

Source: SightInPlus

ESIC to invest up to 15% surplus funds in stock market via ETFs

Labour and Employment ministry-backed Employees' State Insurance Corporation (ESIC) Sunday accorded approval for investments of surplus funds in equity, however, restricted to Exchanged Traded Funds (ETFs). Union Labour Minister Bhupender Yadav said, ESIC to upgrade and modernize its infrastructure under the 'Nirman Se Shakti' initiative. The announcement was made in the 189th meeting of ESIC held under the chairmanship of the labour union minister. In the meeting, ESIC accorded approval for investments of surplus funds in equity, restricted to ETFs due to the relatively low returns on debt instruments coupled with the need to diversify. As per the PIB statement, the initial investment shall start at 5% and increase up to 15% gradually, after a review of two quarters.

Further, the investment will be confined to ETFs i.e., Nifty50 and Sensex, while fund managers of AMCs will manage the funds. It said, the equity investment will be monitored by the existing Custodian, External Concurrent Auditor, and Consultant looking after the debt investments in addition to the management of ETF for equity.

Meanwhile, to improve the healthcare and benefits services delivery mechanism and strengthen the infrastructure of ESIC towards managing the increasing number of insured workers coming into the ambit of the ESI Scheme, approval was granted to the proposal for setting up a new 100 bedded ESIC Hospital at Shyamlibazar, Agartala, Tripura and 100 bedded ESIC Hospital at Idukki, Kerala. The 100 bedded ESIC Hospitals at Agartala and Idukki will cater to the medical needs of around 60 thousand beneficiaries each.

Also, ESIC approved the proposal of increasing the number of seats under the Wards of Insured Persons (IPs) category in two of its ESIC Nursing Colleges at Gulbarga and Bengaluru. Further, the ESI Corporation also approved the proposal to start Ph.D., MDS, nursing, and paramedical courses in its medical institutions spread across the country.

Further, ESIC gave in-principal approval for the execution of Annual Repair Maintenance & Operational work (ARMO) and Special Repair (SR) works by the Engineering Wing under the Project Management Division (PMD) of ESI Corporation.

Additionally, they decided to execute the Capital works in ESIC through Central / State PSUs besides CPWD. A fresh empanelment of such Central / State PSU will be invited by the ESIC for empanelment in due course. During the meeting, Yadav directed ESIC to emphasize on strengthening the infrastructure. He further informed that the 'Nirman Se Shakti' initiative has been started to strengthen and modernize the infrastructure of ESIC hospitals and dispensaries in a phased manner.

Further, in the meeting, Rameswar Teli, Minister of State for Labour and Employment informed that the latest technologies are proposed to be adopted by ESIC for the construction and monitoring of projects using drones and an online real-time dashboard



EPFO Rule Changed! Now Without e-nomination, you will not be able to see the PF balance, EPFO is telling the whole process

EPFO has made e-nomination (EPF/EPF nomination) mandatory for EPF account holders. By doing this, it helps the nominee / family members to withdraw money related to PF, Pension (EPS) and Insurance (EDLI) in case of death of the account holder.

EPF e-nomination is mandatory

EPFO is also providing the facility of e-nomination to give the information of the nominee. Those who are not enrolled in this, they are being given a chance. After this, information like name of the nominee, date of birth will be updated online. EPFO has told its subscribers that EPF account holder should do e-nomination (EPF / EPS nomination). By doing this, it helps the nominee / family members to withdraw money related to PF, Pension (EPS) and Insurance (EDLI) in case of death of the account holder. With this, the nominee can also claim online.

7 lakhs facility is available

EPFO members also get the facility of insurance cover under the Employee Deposit Linked Insurance Scheme (EDLI Insurance cover). In the scheme, a maximum insurance cover of Rs 7 lakh is paid to the nominee. If the member dies without any nomination, then there are difficulties in processing the claim. So let's know how to fill nomination online.

This is how you can do e-nomination in EPF / EPS

- EPF / EPS First EPFO's official website Nomination epfindia.gov.in
- Click FOR EMPLOYEES in the Services section and Member UAN / Online Service (OCS / OTCP Click on)
- A new page will open on that login with UAN and Password

Source: LiveMint

- Select E-Nomination under Manage Tab. By doing this, the Provide Details tab will appear on the screen, then click on Save.
- Click on Yes for family declaration, then click on Add family details (Here you can add more than one nominee).
- For total amount share click on Nomination Details, then on Save EPF Nomination Click.
- Click on E-sign to generate OTP here, now enter OTP on registered mobile number linked in Aadhaar.
- By doing this, your e-nomination gets registered with EPFO. After this you do not need to send any hard copy document.

Source : BusinessLeague

EPFO pension 15000 salary limit rejected: Supreme Court cancels the limit of Rs 15 thousand for pension contribution



EPS: The biggest court of the country has given a big relief to the employees. The Supreme Court has upheld the validity of the Employees’ Pension (Amendment) Scheme for the year 2014 on Friday, November 4. However, the court has struck down the limit of Rs 15,000 monthly salary for joining the pension fund.

Due to this, the workers whose monthly salary is more than Rs 15 thousand have got a big relief. The workers who have not yet joined the Employees’ Pension Scheme (EPS) scheme have been given an additional time of six months so that they can join it.

For this reason the court gave additional time of six months

A bench of Supreme Court Chief Justice UU Lalit, Justice Aniruddha Bose and Justice Sudhanshu Dhulia said that employees who have not exercised the option to join the pension scheme will have to do so within six months. According to the bench, the workers who could not join the scheme till the last date should be given one more chance as there was no clarity in the judgments given by the High Courts of Kerala, Rajasthan and Delhi in this matter.

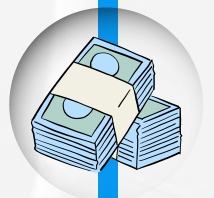
The condition of additional contribution on the salary of more than 15 thousand rejected

Employees of most companies are covered under the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952. Under this, the workers contribute 12 per cent of their salary to the pension account and the company also contributes the same amount. Earlier this contribution was fixed according to the pensionable salary of Rs 6500, which was increased to Rs 15 thousand monthly through amendment in 2014.

However, if you contribute even if you have a salary of more than Rs 15,000, you would have to make an additional contribution of 1.16 per cent. Now the court has rejected this additional contribution. However, the court said that this part of the judgment will not be implemented for six months so that the rights can collect funds. The Employees’ Provident Fund Organization and the Center had challenged the decisions of the High Courts of Kerala, Rajasthan and Delhi that struck down the 2014 scheme.

Source : BusinessLeague

MORE INFO



MIN. WAGES



NFH 2023



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UCS CompliTool[®]

Streamline Compliance & Risk

UCSCompliTool is a technology to ease the complexities of navigating through the changing Labour laws. With our past experiences and feedbacks, we have developed an in-house Software solution and have created this robust mechanism which represents our motto – Compliance Simplified. It provides a real time and 360-degree view of compliance status for the Principal employer (CompliTool - Compliance) and with risk matrix to monitor the contractors (CompliTool - Audit). We have developed a Role Based Access Control model and being a cloud-based system, we are offering an absolute security and protection of data.

Following are some of the major benefits of the Tool:

- Real Time Statistical Data
- Informative Tool
- Transparency
- Ease of Documentation
- Ease of Monitoring
- Highlighting of Critical Points
- Security and Data Confidentiality
- Centralization of Data
- Readily Available Documents
- Data Integrity
- Extensive Reporting
- User friendly Dash Boards
- Overall compliance review from front end maneuver

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UCSCompliTool



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