

# THE COMPLIANCE WATCH

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JULY 2023

## UCS POV: EPFO Releases Performa for Joint Request Pursuant to Para 26(6)

**Bala Harish, Vice President**

The Employees' Provident Funds (EPF) scheme's Para 26(6) gained attention once again. Existing employees must make use of this actionable opportunity to prevent any claim rejections by the EPFO body in the future.

An employee may make contributions to the EPF on salaries that are higher than the statutory wage limit under Para 26(6) of the scheme. The current statutory EPF contribution cap is Rs. 15,000 per month. Under Para 26(6), an employee can submit a joint written request to the EPFO, along with the employer, to enroll the employee as a member of the EPF scheme or to allow the employee to contribute more than Rs. 15,000 per month to the EPF scheme. The employer must also give an undertaking in writing that they will comply with all statutory provisions in respect of the employee including paying the administrative charges. If the EPFO approves the joint request, the employee will be entitled to the benefits of the EPF scheme, on higher wages.

The exercise of filing Paragraph 26(6) joint declaration for the current employees and a proactive method of filing this proforma for the potential new joiners should be in place if the establishment remits PF on Actual PF salaries, i.e., without restricting it to the PF wage ceiling of Rs. 15,000. Although this provision has been in place since 1952, neither was it enforced nor any prescribed format has been designed by the EPFO body.

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In the recent circular, the necessary Proforma is introduced and it explicitly states that *existing members who have been already contributing EPF+EPS on actual pay (more than the statutory limit), and if they have not submitted their joint request and undertaking of the employer as per paragraph 26(6) of the EPF Scheme, 1952 can now submit the same to avoid further complication during final claim settlement or claiming higher pension thereof.*

Given the above we suggest to establishments who are remitting PF on Actual Wages is to file the Para 26(6) Joint Declaration for all the existing employees and implement this proforma for the new joiners as part of the induction kit towards monthly filing to the concerned PF office. The EPFO-issued permission letter is to be retained by the employee towards the smooth processing of their final EPF claim settlement.

### **Gratuity Is To Be Calculated From Date On Which It Became Payable, Not From Date Of Disbursement: Kerala High Court**



The Kerala High Court recently observed that the maximum amount of gratuity payable under the Payment of Gratuity Act, 1972 must be calculated from the date on which gratuity became payable and not on the date the amount was actually disbursed.

The Court was considering the plea of a retired Regional Engineer from the Kerala State Housing Board whose DCRG and last month pay was withheld due to audit objections. The Petitioner retired in the year 2002. He had earlier approached the Court and the Secretary of the Board was directed to disburse the withheld amounts.

However, according to the petitioner, in light of the 2010 Amendment to the Payment of Gratuity Act, 1972 under Section 4(3) he is entitled to a maximum gratuity of Rupees Ten Lakhs. Dismissing the petitioner's claim a single bench of Justice Murali Purushothaman observed:

*"The gratuity is payable to an employee on the termination of his employment. The gratuity payable to an employee shall not exceed the maximum that is notified under the respective enactments as on the date on which the gratuity becomes payable. Even if it is assumed that the petitioner's claim for gratuity was under the Payment of Gratuity Act, 1972, the maximum amount of gratuity payable under the said Act has to be determined with respect to the date on which the gratuity became payable and not on the date on which sanction was accorded for payment of DCRG or the date on which the amount was actually disbursed to him. Therefore, there is no merit in the contention of the petitioner that he is entitled to the maximum gratuity of Rs.10,00,000/- as per section 4(3) of the Payment of Gratuity Act, 1972, as amended by Act 15 of 2010."*

The Court noted that the Petitioner is governed by the Kerala State Housing Board Employees' (Pension and other Retirement Benefits) Regulations, 1990. According to Regulation 4, Rule 68 of Part III of the Kerala Service Rules deals with the amount of gratuity payable to an employee. However, Section 14 of the Act states that the provisions of the Payment of Gratuity Act will override other enactments. The Court held that due to the overriding provisions contained in section 4(3) of Act the employees of the Board can claim gratuity in terms of section 4(3). But in doing so, they cannot claim gratuity available under the KSR.

*"He has to claim gratuity either under the Payment of Gratuity Act, 1972 or under the KSR. If he claims gratuity under the Payment of Gratuity Act, 1972 the amount will be determined under section 4 of the said Act, subject to the maximum amount notified under section 4 (3). If he claims under the KSR, the amount of DCRG will be determined under Rule 68 of the said Rules, subject to the maximum provided therein. He cannot have gratuity under the KSR with the ceiling limit payable under the Payment of Gratuity Act, 1972 and vice versa."*

**Source : LiveLaw**



## Enterprise Being Run On Commercial Lines Involving Generation Of Profit Cannot Escape Liability Under Payment Of Bonus Act: Delhi High Court

Observing that an enterprise being run on commercial lines cannot escape liability under Payment of Bonus Act, the Delhi High Court recently upheld a single judge bench's decision of upholding Industrial Tribunal Award to pay bonus for the year 1997-98 to the workers of Moolchand Kharaiti Ram Hospital & Ayurvedic Research Institute. "If an enterprise is being run on commercial lines involving generation of profit then it cannot escape liability under the Act by contending that it was not established for the purpose of profit," said the division bench of Justice Najmi Waziri and Justice Sudhir Kumar Jain.

The division bench said the Single Judge rightly observed that a multi bedded super-speciality enterprise like the appellant Hospital cannot be said to be neither running on commercial lines nor it is generating profits. "Although the profit generated by the appellant Hospital might not be distributed amongst the Trustees and might be ploughed back into the corpus of the Hospital to better its facilities and augment its quality of services would not allow the appellant Hospital to be exempted from the applicability of the provisions of the Act," said the court.

The court was hearing an appeal filed by the hospital challenging the judgment of the single judge, which upheld the award of the Industrial Tribunal wherein it was held that "the Hospital is liable to pay, to its workmen, bonus for the year 1997-1998."

The hospital argued that the Single Judge in absence of evidence incorrectly assumed that profit earning is its predominant purpose. It was argued that if the primary objective of an establishment is to carry out a charitable activity rather than making profits, then the character of charitable purpose would not be lost merely because the establishment earn some profits from its activities. The court noted that the Hospital was paying a bonus to its workmen and had paid the bonus prior to 1997-98. "The Act was enacted with the objective to provide for the payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity. Section 1 of the Act provides that the Act shall apply to every factory and every other establishment in which twenty or more persons are employed on any day during an accounting year," the court observed.

The court rejected the argument of the hospital that it was granted exemption under section 80G of the Income Tax Act, 1961 being established for charitable purposes and if the primary objective of an establishment is to carry out a charitable activity rather than making profits then character of charitable purpose would not be lost merely because the establishment earn some profits from its activities. "This argument advanced by the learned counsel for the appellant Hospital is without any justification in view of observations made by the learned Single Judge in *Batra Hospital Employees Union*," it said. The court said it was for the hospital to establish and prove that the Act does not require it to pay bonus to its workmen for year 1997-98.

"The learned Single Judge has rightly observed that the onus to prove lack of the liability and exemption from payment of bonus to the workmen for the year 1997-98 was on the appellant Hospital which it could not discharge," said the court.

While dismissing the appeal the Court said, "The learned Single Judge while upholding Award passed by the Tribunal has rightly concluded that the provisions of the Act are applicable to the appellant Hospital and the appellant Hospital cannot be exempted from the liability to pay bonus to its workmen for the year 1997-98."

Source : [LiveLaw](#)



## Arvind Kejriwal approves 24x7 operations for 155 shops, commercial establishments

Delhi Chief Minister Arvind Kejriwal recently approved 24x7 operations of another lot of 155 shops and commercial establishments across the Union Territory. The move has been taken to boost the night-time economy of Delhi, creating job opportunities, and ensuring the welfare of workers. As per details, this is a part of the government's ongoing efforts to promote a business environment in the capital city, under which a total of 523 shops have been granted permission to operate round-the-clock in the last two years. The new move marks a significant departure from the previous trend, where only 269 establishments were allowed such exemptions in the 68-year-long period spanning from 1954 to 2022. Earlier in 2022, only 313 numbers of applications were approved, while in the year 2023 to date, 55 numbers of applications have already been approved. The file has now been sent to the Lt Governor for a decision on whether he would like to express a difference of opinion with the decision of the elected government. Kejriwal has taken proactive measures to encourage commercial activities and facilitate economic growth after recognizing the importance of creating a conducive environment for businesses to thrive. With this move, the government expects to have a positive impact on both businesses and consumers alike, while the extended operational hours will also provide convenience to the residents of Delhi, who can now access essential goods and services round-the-clock. For this, the Delhi Government has granted applicants exemptions from Section 14, 15, and 16 of the Delhi Shops and Establishments Act, 1954. These three sections collectively put restrictions on hiring night-shift employees, and impose related rules upon opening & closing periods digitized and holidays for commercial establishments.



The Delhi Government has also completely digitised the application process, bringing an end to Inspector Raj, as the traders' applications will be processed within 4 weeks of being submitted along with verification and onsite inspection. Under this initiative, the government completely digitized the transport department ending the need for physical RTOs in Delhi. Since then, the government has catered to lakhs of citizens providing them RTO services while sitting at home. The decision to allow round-the-clock operations of these establishments comes as part of the government's commitment to promoting a vibrant business ecosystem and enhancing the ease of doing business in Delhi. Further, even in the case that an application fails to get requisite approval, the government duly allows the applicant to rectify their shortcomings as per the set parameters and seek approval again.

By eliminating such restrictions, businesses will have greater flexibility in meeting the needs and demands of their customers, fostering growth and innovation across various sectors.

*Source : LiveMint*

## Ensure sexual harassment panels constituted under POSH Act: SC

To fulfil the promise that the Prevention of Sexual Harassment at the Workplace (POSH) Act holds out to working women all over the country, the Supreme Court has directed the Union government and all state governments to undertake a time-bound exercise to verify whether all the ministries, departments, government organisations, authorities, public sector undertakings, institutions, and bodies have constituted sexual harassment committees.

The Supreme Court passed the order on a petition filed by former head of department of Goa University, Aureliano Fernandes, who had challenged his dismissal by the GU in 2010 following complaints by students of alleged physical harassment. His appeal was dismissed by the high court in 2012, and he subsequently approached the SC. The POSH Act was legislated a decade ago, and taking stock of its implementation, the court said that the working of the Act is centred on the constitution of internal complaints committees (ICCs) by every employer at the workplace and the constitution of local committees (LCs) and internal committees (ICs) by the government.



“It is disquieting to note that there are serious lapses in the enforcement of the Act even after such a long passage of time,” the division bench consisting of Justice A S Bopanna and Justice Hima Kohli said, pointing to the “glaring lacunae” that a survey of 30 national sports federations conducted and published by a national daily newspaper revealed. The survey found that 16 of the federations have not constituted an ICC till date. “Where the ICC have been found to be in place, they do not have the stipulated number of members or lack the mandatory external member,” the apex court observed. Improperly constituted or ill-prepared committees, the SC said, are an impediment to an inquiry into a complaint of sexual harassment, which can lead to serious consequences, namely, the imposition of major penalties on the delinquent employee, to the point of termination of service. In Fernandes’ case, justice Hima Kohli observed: “glaring defects and procedural lapses in the inquiry proceedings took place in the month of May 2009, when 12 hearings, most of them back-to-back, were conducted by the committee at lightning speed.”

On the one hand, the court observed that the committee kept on forwarding to the appellant the depositions of some more complainants received later on and those of other witnesses and called upon him to furnish his reply. On the other hand, it directed him to come prepared to cross-examine the said complainants and witnesses as also record his further deposition, all in a span of one week. “Even if the medical grounds taken by the appellant seemed suspect, the committee ought to have given him reasonable time to prepare his defence, more so when his request for being represented through a lawyer had already been declined. It was all this undue anxiety that had led to short-circuiting the inquiry proceedings conducted by the committee and damaging the very fairness of the process,” the SC stated. The apex court quashed and set aside “the impugned judgment upholding the decision taken by the EC of terminating the services of the appellant, duly endorsed by the appellate authority”, and remanded the matter back to the complaints committee to take up the inquiry proceeding as they stood on May 5, 2009. It directed the committee to give the appellant adequate opportunity to defend himself. “The appellant will not be entitled to claim immediate reinstatement or back wages till the inquiry is completed and a decision is taken by the disciplinary authority, among others,” the court stated. To ensure that the altruistic object behind enacting the PoSH Act is achieved in real terms, the apex court said the victims must be made aware of how a complaint can be registered, the procedure that would be adopted to process the complaint,



the objective manner in which the ICC, LC or IC is expected to function under the statute, among other things. It directed that necessary information regarding the constitution and composition of the committees, e-mail IDs and contact numbers of the designated persons, the procedure prescribed for submitting an online complaint, as also the relevant rules, regulations and internal policies, be made readily available on the website of the authority, functionary, organisation, institution, body concerned. “A similar exercise shall be undertaken by all statutory bodies of professionals at the apex level and the state level (including those regulating doctors, lawyers, architects, chartered accountants, cost accountants, engineers, bankers and other professionals), by universities, colleges, training centres, and educational institutions, and by government and private hospitals and nursing homes,” the SC stated. “However salutary this enactment may be, it will never succeed in providing the dignity and respect that women deserve at the workplace unless and until there is strict adherence to the enforcement regime and a proactive approach by all the state and non-state actors. It is, therefore, time for the Union Government and the State Governments to take affirmative action,” the apex court stated.

*Source : TimesOfIndia*

## **Higher EPS pension: EPFO releases circular on pension computation method**

The Employees Provident Fund Organisation (EPFO) has released a circular on how the higher pension will be calculated for those employees opting for a higher pension based on actual salary under the Employees Pension Scheme (EPS).

As per the circular, the formula for the calculation of higher pension will be different for those retiring before September 1, 2014, and those retiring after this date

### Those who retired before September 1, 2014

If the pension (EPS) of an eligible applicant started prior to September 1, 2014, then the higher pension calculation will be based on the average monthly pay drawn during the contributory period of service during the 12 months preceding the date of retirement i.e date of exit from the membership of the pension fund.

### Those who retired/will retire on or after September 1, 2014

For those retiring on or after September 1, 2014, the higher EPS pension calculation will be done considering the average salary during contributory period of service in the span of 60 months preceding the date of retirement.

### Why September 1, 2014 is important

It is important to note that the government revised the pension calculation formula in September 2014. Till August 31, 2014, the average salary during the 12 months preceding the date of retirement, was taken into account. However, from September 1, 2014, the government revised it to 60 months. This change resulted in a lower pension for those retiring on or after this date.

*Currently, the formula for calculating pension under the EPS scheme is equal to:*

**=(Average salary of 60 months X service period) divided by 70.**

The 'average salary' above is the basic salary of an employee. However, the salary used for calculation of higher pension for those opting for higher EPS pension will be the full actual salary (inclusive of allowances etc instead of just the basic salary).

Here is an example to understand this. For instance, assuming you joined the EPS scheme in October 2008 and your retirement is in September 2033. Here, the service period is of 25 years (September 2033 - October 2008). The average salary for pension calculation will be calculated on the basis of your average pay in the last 5 years (60 months) of working. Had you retired on or before August 31, 2014, then the average salary for a higher EPS pension would have been calculated on the average pay in the last year of working.

*Source : EconomicTimes*

## EPFO extends deadline to opt for higher EPS pension; last opportunity to apply



The deadline to apply for higher EPS pension has been extended to July 11, 2023 from June 26, 2023. As per the press release issued by EPFO on June 26, 2023, it is the last opportunity to the employees to submit their joint application form for higher pension from EPS. The application form must be submitted within the 15 days to get pension on higher wages. The press release has further provided three months time to employers for uploading wage details online.

"Last opportunity of 15 days is being given to remove any difficulty faced by the eligible pensioners/members. Accordingly, the last date for submission of Applications for Validation of Option / Joint Options by employees is extended to 11.07.2023," said the press release. This is the third time that the EPFO has extended the deadline to apply for higher pension for Employees' Pension Scheme (EPS) subscribers. Originally, the deadline to apply for higher EPS pension was March 3, 2023. This deadline of fourth months was set by the Supreme Court in its judgement dated November 4, 2022. As the EPFO delayed issuing appropriate circulars on how eligible employees can apply for higher pension, the deadline for the first time was extended to May 3, 2023.

However, on this date as well, certain clarifications were pending. Hence, the deadline was extended for the second time till June 26, 2023. The press release has further stated that any eligible pensioner/member who on account of any issue in updation of KYC, faces difficulty in submitting online application for validation of option/joint option may immediately lodge such grievance on EPFIGMS for resolution.



The grievance may please by submitted by selecting the grievance category of 'Higher Pensionary benefits on higher wages'. This will ensure proper record of such grievance for further action. According to experts, the latest extension will allow individuals to properly evaluate and decide whether they should apply for higher pension or not. This is because the EPFO has issued the information related to applying for higher EPS pension in a fragmented manner. For instance, the circular on the method for applying for higher EPS pension was issued on February 20, 2023. Then the notification clarifying additional contribution of 1.16% came on May 3, 2023. And most recently, the method of pension computation came on June 1, 2023.

Puneet Gupta, Partner, People Advisory Services EY India says, "The extension of the due date for filing higher pension option provides additional time for pensioners/ EPF members to analyse whether to opt for higher pension. The EPFO has now provided clarity on many aspects including manner of computation of pension, method/timeline for deposit of funds and manner of processing the joint option applications. Thus, members who have not yet opted for higher pension can now re-evaluate and take an informed decision on whether to opt for the higher pension. Considering the complications and hardship faced by employers in submitting the wage details for each pensioner/ EPF member for the entire period of employment while approving the application, representations were filed with the EPFO to extend the time period for employers to approve the application. The EPFO has considered these requests as well and has granted an extension of three months for employers to submit the wage details (i.e., till 30 September 2023). This provides much needed relief for employers who were facing practical challenges in collating and filing wage details for the entire period of employment."

The dissemination of information in a fragmented manner made it difficult for eligible employees to evaluate whether they will benefit by opting for higher EPS pension. The EPFO is also trying to ease the process of applying for higher pension from EPS. In a circular dated June 14, 2023, the EPFO has directed an alternate mechanism to the field offices, as well as documents that can be submitted if an eligible employee does not have proof of joint declaration as required under Para 26(6). This joint declaration is needed if an employee's basic salary exceeds the specified wage ceiling limit (currently Rs 15,000) and wants to join or continue as a member of the Employees' Provident Fund (EPF) scheme.

Meanwhile, many representations have been received from Employers & Employers Association wherein requests have been made to extend the time period for uploading wage details of applicant pensioners/members. This request has been considered sympathetically and the employers are being given further period of further three months to submit wage details etc. online latest by September 30, 2023, said the press release.

### **Who is an eligible employee to apply for higher EPS pension?**

The Supreme court in its judgement has specified which category of employees can apply for the higher EPS pension. As per the judgement, an employee is eligible for higher EPS pension if.

- member of EPS and/or EPF on September 1, 2014 and continued to remain the same after.
- retired prior to September 1, 2014 and was making higher contribution to their EPF account. However, their higher EPS pension request was rejected by the EPFO.

### **How to apply for higher EPS pension?**

The EPFO has provided an online link on the Member Sewa portal for eligible employees to apply for higher EPS pension. A member who meets the eligibility criteria can visit the portal to apply, irrespective of whether the EPF account is held with the private trust or EPFO.

*Source : EconomicTimes*

## **Shri Bhupender Yadav emphasises need for comprehensive and forward-looking social security policies that take into account the evolving nature of work**

*Governments, employers, trade unions, and international organizations must collaborate to ensure that social security systems are inclusive, adaptable, and accessible to all*

**Shri Yadav**

Union Minister for Labour and Employment and Environment, Forest and Climate Change Shri Bhupender Yadav has said the Labour 20 plays a significant role in the G20 due to its importance in representing workers' interests and advocating for labour-related issues on a global scale. In his valedictory message he said he would like to express his deep appreciation for the outstanding accomplishments of the L20 engagement team regarding the adoption of two crucial Joint Statements: one on the universalisation of Social Security and the portability of social security funds, and another on empowering women in the future of work and upskilling the women workforce in tech-intensive environments. Shri Yadav said the adoption of both statements within the L20 serves as a testament to the spirit of social dialogue.

Shri Yadav expressed his delight for having the L20 summit in the great state of Bihar. He said the state has been a cradle of ancient civilizations and has nurtured some of the world's greatest thinkers and scholars. The Union Minister said Bihar also holds significant historical importance as the birthplace of some of the world's oldest religions i.e. Jainism and Buddhism. He said nestled in this state is the magnificent Nalanda University, which being a beacon of knowledge, attracted scholars from all around the world, the state of Bihar thus exudes a unique charm.

Shri Yadav extended his gratitude to all the representatives of trade unions of G20 countries and guest countries, experts on labour, state government and the people of Bihar for participating enthusiastically in the summit. He said the two days of deliberations have proven to be incredibly enlightening, as we had the opportunity to listen to diverse perspectives and viewpoints from various stakeholders.

Shri Yadav said a changing work environment characterized by technological advancements, globalization, and evolving labour markets has significant implications for employment and the provision of adequate social security. He said there is therefore, a need for comprehensive and forward-looking social security policies that take into account the evolving nature of work. He said Governments, employers, trade unions, and international organizations must collaborate to ensure that social security systems are inclusive, adaptable, and accessible to all. The Union Minister said this may involve expanding the coverage of social security to encompass informal and gig and platform workers, implementing portable benefits that follow individuals across jobs, and leveraging technology to enhance the efficiency and effectiveness of social security administration.

Shri Yadav said given that Gender equality plays a pivotal role in fostering widespread economic prosperity and promoting social justice, it is highly commendable that the L20 has prioritized the theme of 'Women & Future of Work.' He said in order to fully harness this potential, it is crucial to focus on skilling, up-skilling and reskilling women and enabling their active participation in Science, Technology, Engineering and Mathematics (STEM) -related fields and technology-intensive industries. He said by equipping women with the necessary skills and knowledge, we can ensure their meaningful engagement in the evolving job market and promoting gender parity.

Shri Yadav said the outcomes of the L20 summit will play a pivotal role in realizing our objective of advancing decent work, with a particular emphasis on women while ensuring equitable and enduring social protection for all in the times ahead.

*Source : PressInformationBureau*





## Higher EPS pension: Can EPFO change the current pension formula in future?

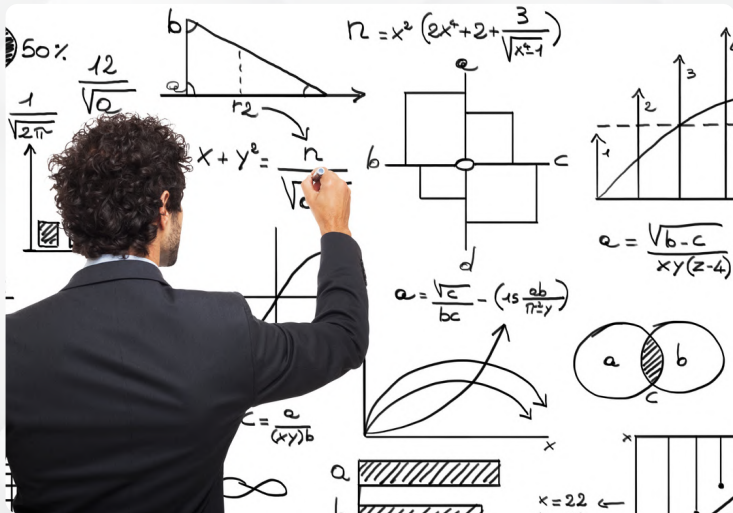
Higher EPS pension has become one of the most critical issues for eligible members. While the Supreme Court judgement has come in the eligible members' favour, however, not everyone is optimistic about the future. Going by past history of many bureaucratic roadblocks being put in their way of higher pension; members are now skeptical about it being repeated in the future. They are especially skeptical with regards to retrospective changes in pension calculation methodology.

Let us understand how a possible change in the pension calculation methodology could impact EPS members and whether EPFO can go for such a change in future?

The current pension formula under EPS 95 is: Monthly Pension = (pensionable service x pensionable salary)/70. So, the higher the pensionable service and pensionable salary, higher will be the pension of a member. While pensionable service period will largely remain same all scenarios, pensionable salary can be changed by tweaking the rules. If EPFO makes any changes which results in lower pensionable salary, then members will receive a lower pension.

### The current rule about pensionable service

Before September 1, 2014, pensionable salary was computed by taking the average salary of the last 12 months. However, it was changed later. "The methodology of computation of pensionable salary amended by the September 2014 notification provides that the pensionable salary will be computed basis the average wages drawn during the contributing period of 60 months prior to the date of exit," says Pooja Ramchandani, Partner, Shardul Amarchand Mangaldas & Co.



This is the current methodology of computing pensionable salary which members applying for higher pension are hoping to get in future. "The revised computation formula for pensionable salary was effectively in force from September 01, 2014. Since this revised mechanism is already applicable to pensioners, it is likely that members who are opting for a higher pension now will also be covered in this regard," says Vaibhav Bhardwaj, Partner, Induslaw.

### The source of apprehension among eligible members

While most of the doubts of eligible members were cleared by EPFO through many circulars in 2023, but there is one pending action which may impact the pension amount of members. "Since the latest EPFO circular dated May 11, 2023 indicates that a subsequent circular on the computation of pension will be issued, further clarity in this regard can be expected," says Bhardwaj. Unless EPFO issues a circular arresting such worries, there will always be apprehension among members that EPFO may come up with a rule which will be detrimental to their higher pension expectations.

### What's the catch in pension formula change?

As people grow in their careers, they typically receive higher salaries during the last years of their service. So, if the average salary of the last year is taken as pensionable salary, it will be higher. However, if any rule that requires to take the average salary of a longer period, it will mean that the previous years low salary will become a part of this average salary and hence, the average salary will come down. The current rule of pensionable salary is calculated by taking the average of the last 60 months. This has already reduced the eligibility of the members.

Despite this reduction, many eligible members, who find the current pension calculation to be advantageous, are opting for higher pension thinking that they will get the same uninterrupted pension during their retired life. If this formula is changed in the future, it will be a highly unfair act towards members who are extending their consent based on the current pension formula.

### Does EPFO have the right to change the pension formula retrospectively?

The most critical question which members are looking for answer to is whether the EPFO has the right to change the pension formula or related rules in future with retrospective effect.

"Section 7 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, permits a rule change with retrospective effect," says Sonam Chandwani, managing partner at KS Legal & Associates.

Some experts suggest that for it to do this it require legislative action from the government. "Any change to the EPS Scheme can be brought about by way of a legislative amendment," says Ramchandani.

Therefore, in technical terms, EPFO may change the formulae either through existing EPFO rule or through a legislative action. "The Supreme Court in its November 04, 2022 judgment clearly stated that it cannot, in exercise of its judicial power, require the government to operate a pension scheme in any particular manner. The Court further observed that altering the computation of pension is a part of the government's legislative prerogatives. Based on these observations, it is possible that the EPFO is able to implement a further change in the computation of pensionable salary," explains Bhardwaj.

#### **Any change in computation can be challenged in court**

Last time when the EPFO changed the average pensionable salary period from 12 months to 60 months it was challenged in court. "In 2022, the Supreme Court in its verdict on the EPS amendment of 2014, upheld the methodology amended with retrospective effect for calculating the employees' pensionable salary. The Court looked into whether there was a reasonable basis for effecting change in the computation methodology for determining pensionable salary," says Chandwani. While the court upheld the change last time it does not guarantee that it will always do so.

In case the EPFO goes for any rule change which has adverse impact on pension of eligible members, the legal challenge route will again be open. "In case any such alteration is significantly detrimental to the pensioners' welfare, it is likely that it will be challenged by the affected members," says Bhardwaj.

Finally, it will rest on the wisdom of the courts to judge whether the rule change is valid or not.

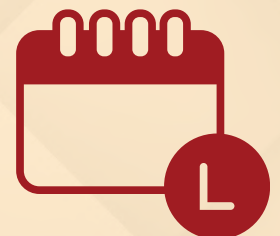
*Source : economictimes*



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- User friendly Dash Boards
- Overall compliance review from front end maneuver

For Demo, Please write to us at [enquiry@ucsdel.com](mailto:enquiry@ucsdel.com) or Call us @ 0124 2656864

[UCSCompliTool.com](http://UCSCompliTool.com)





# ABOUT US

United Consultancy Services is one of the leading consulting firms in India providing compliance, advisory and audit services in the field of Labour Laws, Human Resource Development and Legal matters pertaining to Industrial Relations. We provide meaningful, forward looking and compliance oriented solutions to help organizations grow while being compliant under labor laws. Proactive teams led by domain experts, use insight, experience and best practices to understand complex issues of publicly listed and privately owned clients and simplify compliance.

With over 30 years of existence and with more than 200 professionals the firm provides robust compliance services and solutions on complex requirements under Labour law. The information shared in the newsletter is on the basis of Government notifications and newspaper articles. This is for general information purposes only and does not constitute legal advice. Please reach out to your UCS contact or the Company legal counsel before taking any action.

***We Simplify Compliance For You.***



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