



JUNE 2024
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**Discipline is the
bridge between
goals and
accomplishment**

Jim Rohn

UCS POV: Relief for International workers - Karnataka High Court Ruling on EPF Provisions for International Workers

Bala Harish, Vice President

The Employees' Provident Fund (EPF) Act recently saw a significant development concerning international workers (IWs). The Karnataka High Court ruled that paragraphs 83 of the EPF Scheme (EPFS) and 43A of the Employees' Pension Scheme (EPS) are unconstitutional and unenforceable.

- The Court found these provisions to violate Article 14 of the Constitution, guaranteeing equal treatment under the law.
- The ruling raises questions about past and ongoing EPF compliances for IWs.
- The Government of India (GOI) and EPFO may appeal the decision to a higher court.

The main arguments presented before the HC by the petitioner were as follows:

- The previous EPF provisions for IWs were challenged as discriminatory. Unlike domestic workers with a contribution ceiling, IWs had to contribute to the EPF on their entire salary, including income from their home country.
- IWs from non-SSA countries faced stricter withdrawal rules compared to IWs from SSA countries, further highlighting inconsistencies.
- The Government argued the provisions were necessary for international compliance and to attract foreign talent.

The Court ruled that the separate classifications for IWs violated the principle of equal treatment under the law.



Brief about Article 14: The provisions under para 83 of EPFS and para 43A of EPS were deemed violative of Article 14 of the Constitution of India. Article 14 guarantees the right to equality before the law and prohibits unreasonable discrimination between individuals. In the context of the EPF Act for International Workers, the violation of Article 14 can be understood in the following ways:

- Discriminatory Treatment
- Lack of Rational Basis
- Unreasonable Classification

As the honourable High Court has struck down the introduction of section 83 of Employees Provident Fund Scheme and para 43A of Employees Pension Scheme Companies will have to evaluate the impact of the verdict and make necessary IW strategy.



Employees' Provident Fund Organisation (EPFO) To Actively Evaluate The Course Of Action In Response To The Recent Judgment Issued By The Esteemed High Court Of Karnataka



The Employees' Provident Fund Organisation (EPFO) acknowledges the recent judgment issued by the esteemed High Court of Karnataka. The judgment pertains to the specific provisions for International Workers outlined in Paragraph 83 of the Employees' Provident Fund Scheme, 1952 and Paragraph 43A of the Employees' Pension Scheme, 1995, which were deemed to be inconsistent with Article 14 of the Constitution. The EPFO is actively evaluating the course of action in response to this judgement.

India presently has social security agreements with 21 countries. These agreements ensure continued social security coverage for employees from these nations on a mutually reciprocal basis. When citizens from these countries take up employment in each other's territories, their social security coverage remains uninterrupted.

These agreements aim to guarantee the uninterrupted social security coverage of employees during international employment. These agreements are very important for India for promoting International mobility and leverage the demographic dividend. The EPFO serves as the operational agency in India for such social security agreements.

Source : Press Information Bureau

EPFO introduces Auto claim settlement for Education, marriage & housing

EPFO Expands 'Ease of Living': Reducing Service Delivery Time For Claim Settlement

Shri Anirudh Prasad had applied for advance for illness under para 68J on 09.05.2024. His advance claim was settled on 11.05.2024 for an amount of Rs. 92,143/- within 03 days. There are many such stories like that of Shri Anirudh Prasad in EPFO.

For enhancing ease of living for its crores of members, EPFO has now introduced auto-mode settlement of advance claims for the purpose of education & marriage and housing. EPFO has introduced an Auto Claim Solution where in claim is processed automatically by IT system without any human intervention. Auto mode of claim settlement was introduced in April, 2020 for the purpose of advance for illness. Now this limit has been enhanced to Rs.1,00,000/-. During the current year, around 2.25 crore members are expected to reap the benefits of this facility.

During the financial year 2023-24, EPFO settled around 4.45 crore claims, out of which more than 60% (2.84 crore) claims were advance claims. Out of total advance claims settled during the year, around 89.52 lakh claims were settled using auto-mode. To facilitate "Ease of living", the auto claim solution has now been extended for all claims under para 68K (education & marriage purpose) and 68B (housing purpose) of EPF Scheme, 1952. In addition, the limit has been doubled from earlier Rs. 50,000/- to Rs.1,00,000/-. This move is expected to benefit lakhs of EPFO members. The entire process in auto-settlement is IT system driven, eliminating human intervention. Any claim with KYC, eligibility and bank validation is processed for payment by IT tools automatically. As a result of this, the periodicity of claim settlement is reduced significantly from 10 days to within 3-4 days for such advances. The claim that are not validated by system are not returned or rejected. They are further, undertaken for second level of scrutiny and approvals. The expansion of the scope of the auto claims to the housing, marriage and education purposes as well as enhancement will directly help many members to avail their funds within the shortest possible duration, which will substantially aid them in promptly meeting their education, marriage, or housing requirements.

Introduced on 6th May 2024 pan India and since then EPFO has approved 13,011 cases for Rs. 45.95 crores vide this initiative providing speedy service.

Source : Press Information Bureau

26 Percent Jump In Apprenticeship Scheme As More Youths Upskill To Get Better Jobs

More and more Indians are arming themselves with skilling and upskilling courses under the National Apprenticeship Promotion Scheme (NAPS) to get better jobs, with the programme witnessing a 26 per cent jump in enrollment in 2023-24 as compared to the previous year.

The scheme, launched in 2016, saw an enrollment of 35,333 people in 2018-19. In 2023-24, the figure touched 931,406. In 2022-23, the total number of apprentices registered was 738,704.

Maharashtra registered the maximum number of enrollments in the scheme. The state saw an impressive enrollment of 263,239. It is followed by Tamil Nadu at 101,519. The other states are Gujarat (83,611), Karnataka (78,497), and Uttar Pradesh (71,378). "This staggering increase represents a significant Compound Annual Growth Rate (CAGR) of 74.76% over the five years," the officials added. Officials said the enrollment of apprentices has witnessed remarkable growth over the past few years. "This ambitious initiative has emerged as a game-changer, as it helped in bridging the gap between formal education and industry demands while addressing the pressing issues of youth unemployment and underemployment," the officials added.

The programme has helped foster business growth and innovation while providing valuable on-the-job practical training and opportunities for aspiring professionals, they said. "This symbiotic relationship is driving inclusive economic development, empowering individuals from diverse backgrounds, and nurturing personal and professional growth across sectors," the official added. Under the scheme, apprentices not only get training to enhance their capacity, but are offered stipend support. The scheme's objectives include fostering a skilled workforce, incentivising establishment participation, facilitating upskilling opportunities, and encouraging apprenticeship enrollment in small enterprises and underserved regions, thus contributing to inclusive economic development and effectively addressing the skills gap in the country.



The National Skill Development Corporation (NSDC), which manages the programme, also oversees the operation of the apprenticeship portal, which serves as a platform for facilitating the enrollment process. NSDC was set up as part of a national skill development mission in the country.

NSDC is also responsible for disbursing partial stipend support to apprentices, both for designated and optional trades, through the Direct Benefit Transfer (DBT) mechanism. It also undertakes capacity-building initiatives for stakeholders involved in the apprenticeship programme, which includes organising awareness campaigns, trade fairs (melas), workshops, seminars, and other events aimed at promoting the programme and engaging with various participants. Officials added that by fostering inclusive skill development and creating employment opportunities, this scheme is not only empowering individuals but also shaping a workforce that is future-ready and adaptable to the ever-evolving demands of the industry.

Source : [New Indian Express](#)

As EPFO Struggles With Staff Shortage, Higher Pension Subscribers Are Kept Waiting

Over 17 months and counting. That's how long members of the Employees' Pension Scheme (EPS) have been waiting to see the implementation of the November 2022 Supreme Court ruling on higher pension. While they still have hope, there is little clarity on when the apex court's ruling will be implemented by the Employees' Provident Fund Organisation (EPFO), which has been processing hundreds of thousands of application forms.

In all, the EPFO had received 1.75 million applications for higher pension. This includes about 410,000 applications from pensioners who had retired before September 1, 2014, and another 1.34 million from members under the joint option (where their salaries exceeded the cap of Rs 15,000). By December 2023, about 1.17 million applications were still at various stages of validation by employers and it is unclear how long it will take to process these. EPFO, the retirement fund manager, had also sent out more than 42,000 demand notices for additional payment by members opting for higher pension to deposit funds to meet payments for past dues. "The first leg of the process—submitting applications—is now over. The EPFO is understood to be processing these applications. Members whose applications are found in order in all respects should hear about the amount to be transferred from the EPF account to the EPS sometime soon, if [they have] not heard so far," says Kuldip Kumar, Partner with tax consulting firm Mainstay Tax Advisors.

But on the ground, there has been little progress, leaving many pensioners and subscribers—as well as employers—with an uncertain future. “The delay in implementation with regard to the post September 1, 2014, cases has been very long and many pensioners are suffering because of this. Some have passed away in the interim without getting the benefit,” says pension activist Parveen Kohli. He claims that the method of calculation of higher pension for these retirees has led to the quantum of pension being reduced substantially and many petitions have been filed in the high courts over this. Kumar notes there may be old records involved, and it needs to be seen how these applications would be disposed of for discrepancies. “There might even be cases where employers could not validate and verify the old records in the absence of details,” he says, adding that he has seen cases where employees changed jobs and their accumulated PF was not transferred to their new account, or where employees lack complete details; now those employers have shut their businesses or have been taken over by other firms. “EPFO should provide some help to such employees or even consider alternative methods of verification,” he says.

Several companies and employers’ associations have also been in touch with the EPFO to clarify the processes and ascertain when the higher pension will be implemented, and the retirement fund manager has also been working with them to explain the procedures.



What was the genesis of the issue? For that, one needs to go back in time.

EPS, launched in 1995, is under the EPFO that runs the provident fund scheme for the formal sector. In establishments that have 20 employees or more, both the employer and the employee are mandated to pay 12% of the basic salary capped at Rs 15,000 per month to the EPF. Of the 12% of the employer’s share, 8.33% is diverted to fund the EPS. The centre also contributes 1.16% of the monthly wage. A member of the EPS qualifies for pension after 10 years of service or on attaining the age of 58 or 60 years. The pension to be paid is based on a formula of the period of service and the pensionable salary. But a minimum monthly pension of Rs 1,000 is guaranteed to all eligible members.

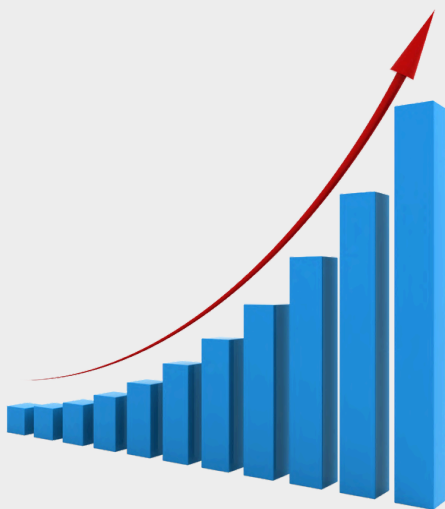
By the end of FY23, the EPS had 7.56 million pensioners and it had disbursed Rs 21,796.85 crore, including pension and withdrawal benefits, that fiscal. The scheme was amended in September 2014 with what experts believe was an aim to expand the coverage and ensure higher contributions, as it was running at a projected deficit. The amendment changed the cap on monthly salary to Rs 15,000 from the earlier Rs 6,500, and allowed members along with their employers to contribute 8.33% of their actual salary (if it exceeded the cap) towards EPS. It gave all EPS members, as on September 1, 2014, six months to opt for the amended scheme. Employees, who opted for the amended scheme, were also required to contribute 1.16% of the monthly salary exceeding Rs 15,000 towards the pension fund. The amendments were contested across states by members as there were many who could not opt for the new benefits. The Supreme Court in 2022 upheld the 2014 amendments, enabling subscribers to opt for higher pension, but struck down the member contribution of 1.16%. The apex court also gave four more months to eligible subscribers to opt for higher pension.

Since then, much water has passed under the bridge. The EPFO has issued a number of detailed circulars advising subscribers on how to apply for the higher pension and even extended deadlines several times to help them procure the required documentation. It has also released nine FAQs to guide subscribers on the process, a pension calculator for them to assess the higher monthly pension they can get, held over 3,000 meetings and has initiated the process of validating the applications it has received. An actuarial exercise is also on to assess the impact of higher pension on the EPS, which has been running at a projected deficit for years. But given the huge numbers at stake, it has not been a simple exercise. “The EPFO is trying to fast-track the implementation of the Supreme Court ruling but it can make or break the EPS corpus. We are holding multiple generations of PF members’ money and all—current and future members—are stakeholders. We need to protect the EPS to protect all their interests,” says Sougata Roy Choudhury, Executive Director of CII and a member of the EPFO’s Central Board of Trustees (CBT).



A big concern is the projected deficit in the EPS and the impact of the higher pension payout. According to the actuarial valuation for FY18 and FY19, the EPS had a deficit of Rs 37,326.94 crore, up from a deficit of Rs 15,531.91 crore in the combined actuarial valuation for FY16 and FY17, respectively. While the EPS has not had any cash flow problems till date because it has had more receipts than outgo since inception, there is a projected deficit due to declining contributions by members, and the increasing number of pensioners under the scheme.

CBT, the apex decision-making body of the EPFO that is chaired by the Union Labour & Employment Minister Bhupender Yadav, has been regularly reviewing the implementation of the ruling. In a status report, the EPFO had underlined that it has been its "constant endeavour" to process the applications expeditiously, while ensuring consistency and accuracy, and providing ample opportunity to members and pensioners. It also highlighted that there were various dimensions to this task, including the fact that many employees, pensioners and employers have sought additional time to furnish requisite details and clarifications. To assess the impact of higher pension on EPS, an actuary has been appointed specifically for the purpose of evaluating the impact, it had said, adding that this can be done once all applications have been processed. Interim actuarial evaluations will continue for every 50,000 demand letters issued. Further, as much as 52% of the higher wage cases pertain to exempted establishments or privately managed PF trusts, which pay only a nominal fee to the EPFO, and it had called for increasing the charges.



It had also highlighted the huge burden on its workforce noting that a large proportion of applicants permitted to opt for higher pension are in service and the EPFO's work on this will have to continue. "Therefore, there is need for separate staff for pension work in the head office as well as those in the field," it had said, adding there was a need to set up an in-house actuarial team.

Harbhajan Singh Sidhu, General Secretary of trade union Hind Mazdoor Sabha and a member of the CBT, notes that there is slow progress in scrutinising the applications as the EPFO does not have adequate infrastructure. "Officers are overburdened, and the existing staff does not have the time to scrutinise so many applications. A separate division is required for this," he says, adding that the EPFO had about 9,000 vacancies, or about 40% of the sanctioned positions, of which about 4,000 have been filled up recently. Meanwhile, there also continues to be a long-pending demand to review the minimum monthly pension of Rs 1,000, which was fixed in 2014, with pensioners and trade unions calling for at least doubling it. However, since the centre has to pay a subsidy for this pension, it has not been in favour of such a move.

For now, it seems unlikely that these problems will be addressed at one go and stakeholders note that any conclusive move will take place only after the General Elections. But resolving the issue while ensuring the stability of the scheme could go a long way in the objective of providing social security to its workers.

Source : Business Today

Getting The Ball Rolling On The Labour Codes

The four Labour Codes on wages, industrial relations, social security, and occupational safety, welfare and working conditions that were passed in 2019-2020 are still pending enforcement. While the Central Government has already issued the draft Central rules under all the four Labour Codes, eight States and Union Territories are yet to frame their draft rules under one or more Code.

The existing labour and employment laws had been modified from time to time, but were not holistically reviewed from a uniformity, multiplicity, and sufficiency perspective.

The Labour Codes signal the beginning of this vital process. Their enforcement is essential to adapt the existing laws to the modern workforce, the changing business landscape, and the evolving focus on legal compliance. This regulatory overhaul is also going to create an investor-friendly business climate wherein India's demographic dividend, availability of abundant labour, and Government's push for upskilling to foster employability can be gainfully leveraged.

The Labour Codes are expected to be enforced from 1st April 2025 to sync with the business cycles of enterprises. While this would become clear after the General Elections in June 2024, India Inc is expecting concrete direction from the Ministry of Labour and Employment (MoLE).

With only 10 months remaining in this fiscal year, the need of the hour is expedited collaboration between the Centre and the States and Union Territories to ensure that this well-intended regulatory overhaul can be effected nationwide and is not mere tokenism.

Need for clarity

To enable employers to smoothly transition into the Labour Codes, clarifications are needed on certain core issues such as salary thresholds for applicability of the social security laws proposed to be repealed by the Labour Codes; overtime and minimum wage exemptions for white-collar employees performing non-supervisory and/or non-managerial roles; treatment of highly compensated employees or professionals, including those designated as consultants; permissible clawbacks; exclusion of stock option plans from the new statutory definition of "wages", overlaps between traditional and gig/platform work, etc. Issuance of FAQs by the MoLE would serve to address some of these concerns and aid in preparation for proper implementation of the Labour Codes.



Catering to the evolving era of work and workplace

Given that considerable time has passed since the Labour Codes were consolidated, they may not fully cater to the contemporary, dynamic and flexible work arrangements. Nevertheless, their enforcement in the current form will be the initial step, paving the way for more reforms to follow. Thereafter, as a second step, the Labour Codes could be supplemented by amendments, clarifications, official guidance, etc to close the loopholes, introduce other new evolving practices and procedures, and finetune implementation mechanisms.

Pushing for D&I

In the context of equal remuneration for equal work, the Wages Code promotes gender equality. However, this is narrow in scope and nature. While Diversity and Inclusion (D&I) in the workplace is relevant in the current milieu, it finds limited mention in corporate law. Given that D&I impacts human resource, it is time to incorporate D&I provisions in the fundamental laws on labour and employment. This will not only change the status quo in the Indian context, but also attract those foreign investors for whom D&I is non-negotiable.

Implementation Strategy

To effectively modify their internal systems to comply with the Codes, companies will need to undertake full-fledged impact assessment. They will have to analyse the financial impact and strategize to optimize cost while being legally compliant. This requires time, resources, and a clear grasp of the legal requirements. The MoLE should provide guidance on how they intend to implement the Codes to ensure that organizations can suitably gear up and meet the compliance requirements and timelines.

Need for Labour authorities to be up-to-date and in sync

Socio-cultural and geographical differences have played a significant role in shaping the way the labour laws have been implemented in different jurisdictions.

Now that the idea for more uniformity has been mooted, labour authorities across the country need to have a similar understanding and approach towards the Codes. Trainings and workshops should be organized at the national level to upskill the authorities and create a sense of synchronicity. The authorities should be adequately trained to be able to assist and guide employers to comply with the law.

Source: HREconomic Times

Do International Employees Still Have To Make EPF Contributions After Karnataka High Court Ruling?

In a recent ruling by the Karnataka High Court, the special provisions for 'International Workers' under the Indian Employees Provident Fund law were struck down as unconstitutional and arbitrary. These special provisions for international workers were first notified by the Central Government on October 1, 2008 through the introduction of Paragraph 83 in the Employees' Provident Funds Scheme, 1952 ('EPF Scheme') and Para 43A in the Employees' Pension Scheme, 1995 ('EPS').

Who is an international worker as per EPF Scheme?

An international worker in the EPF Scheme is defined as an individual having a foreign passport and working for an employer in India to which the EPF Scheme applies.

Laws for international workers under EPF Scheme
Special provisions applicable to international workers under the EPF Scheme are as follows:

1. Mandatory coverage as members under the EPF Scheme, irrespective of the basic salary amount (except where covered under a Social Security Agreement / Bilateral Comprehensive Economic Agreement signed by India with the worker's home country). India has entered into Social Security Agreements with 20 countries including Belgium, Germany, Australia, Canada, Japan, etc. and Bilateral Comprehensive Economic Agreement with Singapore.

2. Provident Fund contributions to be made @ 12% of basic salary and most allowances (such as conveyance allowance, host country allowance, hardship allowance, etc.), without any ceiling on contributions by employer or employee. Hence, if an international worker joins EPF scheme with basic salary of Rs 500,000, then he/she will be required to join the scheme and contribution to EPF account will be made on actual salary without any restrictions. As against the 'no restrictions' on international workers contributions, remember, there are certain limits on contribution for domestic workers.

3. Provident Fund accumulations can be withdrawn only on retirement after attainment of 58 years of age (unless covered under a Social Security Agreement or retirement is on account of permanent and total incapacity for work). Remember, international workers cannot withdraw EPF and EPS after two months of leaving job whereas domestic workers can do so.

Here's an example to understand this: If a foreign passport holder employee works in India for say 4 years (i.e., from 36 years of age till 40 years of age) - 24% of his salary (12% employee + 12% employer) for each of the 4 years would be contributed into the Employees Provident Fund account with the EPFO or Private Trust maintained by the employer, which the employee will not be able to access for another 18 years even after leaving India.

Different rules for international and domestic workers

More than 15 years after the introduction of 'International Worker' provisions in the EPF Scheme, the Karnataka High Court has now struck down these special provisions for international workers and held them to be arbitrary and violative of Article 14 of the Constitution of India which prescribes 'equality before law'.

The Court took a view that Article 14 equally applies to foreigners working in India and equal protection should be given to foreigners before the law. The notified provisions for international workers were held to be discriminatory in nature on the following key grounds:

a. For coverage under the Provident Fund Scheme: A domestic worker with basic salary exceeding Rs 15,000 per month is not mandatorily required to join the Provident Fund Scheme. However, the same threshold does not apply to international workers.

b. For contributions under the Provident Fund law: A domestic worker is required to contribute on basic salary up to Rs 15,000 per month whereas an international worker is made to contribute on the entire salary. For a domestic worker, contribution on salary exceeding Rs 15,000 is optional.



The Court also observed that the provisions for international workers were not in alignment with the aims and objects of Provident Fund law - which is to provide retirement benefit to employees in lower income bracket and hence Para 83 of the Employees' Provident Fund Scheme and Para 43A of Employees' Pension Scheme were struck down as incompatible, arbitrary, unconstitutional and ultra vires.

Impact of court ruling on international workers' EPF contributions

The Ministry of Labour & Employment in its recent statement said that EPFO is actively evaluating the future course of action in response to this judgement. As per media reports, EPFO is likely to challenge this judgement. Until the matter is finally decided, organisations may continue to deposit the EPF contributions to ensure compliance with the international worker provisions, unless specific guidance / instructions to the contrary are provided by the Employees' Provident Fund Organisation ('EPFO'). Alternatively, organisations may consider other options such as filing writ petition against the order etc.

However, if the ruling is ultimately upheld, it may have far reaching implications for international workers and employers. International workers will not be required to contribute towards India's Employees' Provident Fund and any past contributions deposited may have to be refunded by the EPFO along with applicable interest. Further, any recoveries of past contributions (which had not been made i.e. not contributed) pertaining to international workers made by the EPFO from employers pursuant to litigation / inspections in this matter may also need to be refunded. Since the High Court has entirely struck down the provisions inserted in October 2008 as unconstitutional, it may have effect from October 2008 (i.e., retrospectively), subject to further clarity that may come up from the Courts / EPFO.

Source : Economic Times

India Inc Has To Deal With 1,536 Acts, 69,233 Compliances: Study

Despite attempts to improve the ease of doing business, India Inc still has to deal with numerous laws and compliances.

A research paper released by TeamLease RegTech, a regulatory compliance management firm, finds there are 1,536 Acts and rules, 69,233 compliances, and 6,618 annual filings to comply with. However, each company may not have to contend with all the compliances.



That varies depending on the nature of business, geographical location and reach, and employee headcount. It says that a major part of the compliances for corporates is with regard to labour. Labour accounts for 30.1% of the applicable laws and rules, 47% of the compliances, 46% of the filings, and 68% of the provisions that carry clauses for imprisonment. Govt had sought to streamline several labour laws by enacting four labour codes but has failed to implement them, citing lack of support from some states. Most economists have argued that the new labour codes should be among the first set of key reforms that the new govt should implement. The current sets of laws and regulations come with their own set of internal processes with labour consultants seen to be heavily reliant on spreadsheets for data storage and sharing, the paper said. "Currently, the digitalisation of compliance processes is limited to monitoring and administering regulatory obligations. Automation will enable businesses to reduce both the expense of compliance and the cost of poor compliance," the report said.

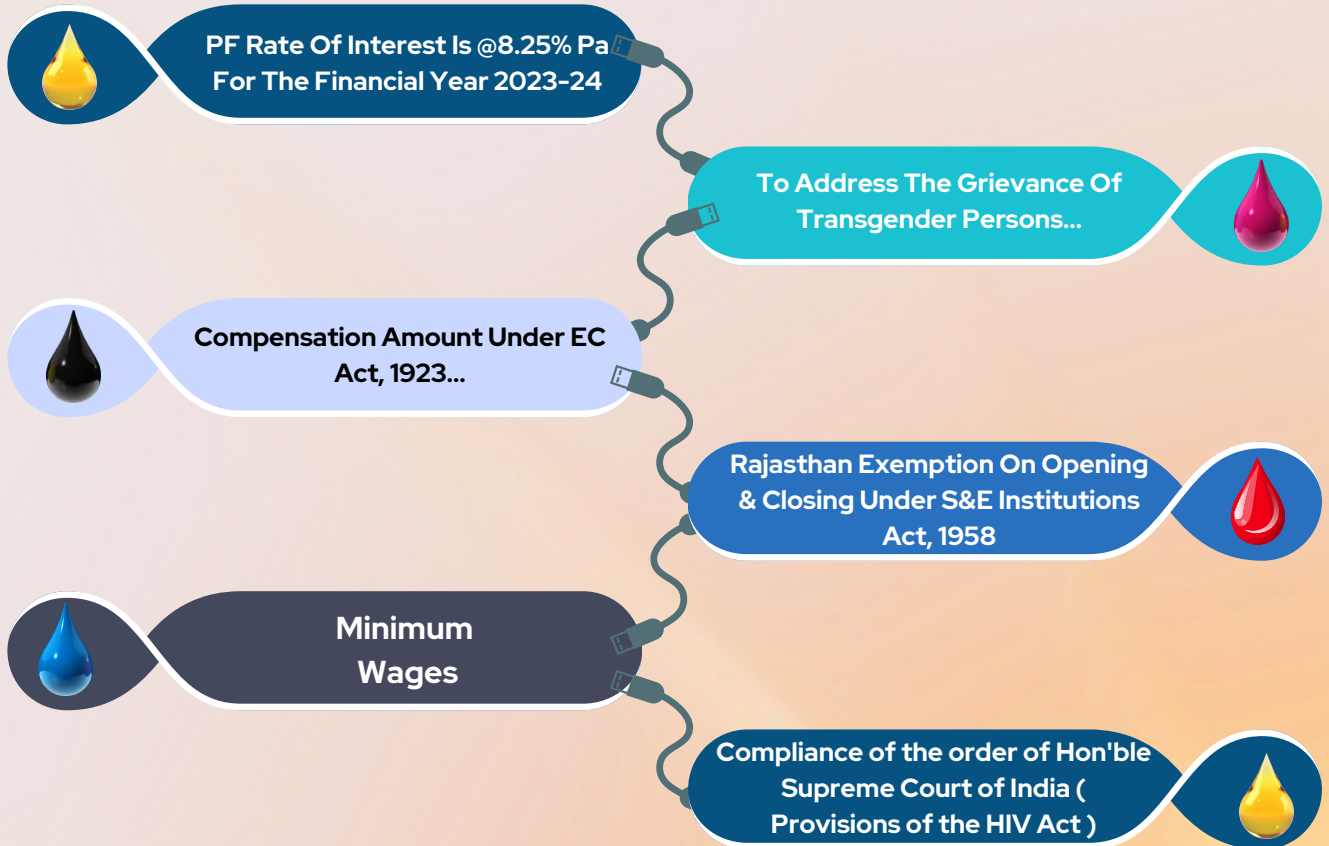
TeamLease RegTech pointed out that there is a lot of redundancy and overlap in labour laws.

It suggested that companies and govt should start using open APIs so that they can exchange data seamlessly with regulators. "It will allow regulators to publish updates to compliance requirements, which affected businesses can quickly ingest. In addition, using a network of RegTechs, the infrastructure will enable enterprises to complete straight-through filings. Eventually, the grid will eliminate the need to create, maintain, and submit paper documents. It will automatically detect compliance obligation delays, evasions, and leaks," TeamLease RegTech said.

However, one company may not have to contend with all the compliances. That varies depending on the nature of business, geographical location and reach, and employee headcount.

Source : Times Of India

MORE INFO



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