Employees Provident Fund and Miscellaneous Provisions Act

Introduction

The Supreme Court has stated in **Andhra University v. R.P.F.C. 1985 (51) FLR 605 (SC)** that in construing the provisions of the Employees Provident Funds and Miscellaneous Provisions Act 1952, it has to be borne in mind that it is a beneficent piece of social welfare legislation aimed at promoting and securing the well-being of the employees and the court will not adopt a narrow interpretation which will have the effect of defeating the very object and purpose the Act. The preamble to the Act also states that this is an Act to provide for the institution of:

(i) Provident Funds
(ii) Pension Fund and
(iii) Deposit Linked Insurance Fund

for employees in factories and other establishments. It is with this background that one must interpret the various provisions of the Act and the Scheme related to it.

Applicability

The Employees Provident Funds and Miscellaneous Provisions Act 1952 applies to the whole of India except the State of Jammu and Kashmir (Section 2). This Act applies (Section 3) to:
(i) every establishment which is a factory engaged in any industry specified in Schedule I and in which 20 or more persons are employed, and

(ii) any establishment employing 20 or more persons or class of such establishments which the Central Government may, by notification in the official gazette specify.
The Central Government through the Employees Provident Fund Scheme 1952 {Section 3 (b)} has specified the establishments covered by the Act. Click here for the complete list.

Applicability to NGOs

Considering the operations of charitable institutions these include the following (though they should be read with the relevant notification issued):

(i) Educational, scientific research and training institutions.

(ii) Establishments known as hospitals.

(iii) Societies, clubs or associations which render services to their members without charging any fee over and above the subscription fee or membership fee.

(iv) Establishments rendering expert services.

(v) Financial establishments (other than banks) engaged in the activities of borrowing, lending, advancing of money and dealing with other monetary transactions with a view to earn interest.

(vi) Establishments engaged in poultry farming.

(vii) Establishments engaged in cattle feed industry.

(viii) Agricultural farms, fruits, orchards, botanical gardens and zoological gardens.

Definitions

Employee

An employee – sec. 2(f), means any employee who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets wages directly or indirectly from the employer and includes any person:

(i) employed by or through a contractor in or in connection with the work of an establishment

(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act 1961, or under the standing orders of the establishment.

An apprentice means a person who according to the certified standing orders applicable to a factory or establishment is an apprentice or who is declared to be an apprentice by the authority specified by the appropriate government.

• Accordingly, personal or domestic servants are not employees under the Act.

• Contractor's Employees: It has been held by the court in **Enfield India v RPFC 2000 (85) FLR 519 (Mad)** a person doing work of the principal employer, even though employed by a contractor is also an employee covered by the definition.

• "Excluded Employee" has been defined in para 2(f) to mean an employee:
(i) who having been a member of the fund, withdrew the full amount of his accumulations on retirement or emigration or

(ii) whose pay at the time he is otherwise entitled to become a member of the fund exceeds Rs. 6,500.00 p.m.

Employment

The concept of employment essentially involves three ingredients:
(1)Employer
(2) Employee and
(3) Contract of employment

The employment is the contract of service between the employer and the employee whereunder the employees agrees to serve the employer subject to his control and supervision. If there is no relation as employer and employee then it is not open to anyone claim benefit under the statute. Even if a person is not wholly employed, if he is principally employed in connection with the functioning of the establishment he will be a person employed within the meaning of the Act.

Exemptions

The provisions of the Employees Provident Funds and Miscellaneous Provisions Act 1952 do not apply to the following institutions (sec 16):

(i) any establishment registered under the Co-operative Societies Act 1912 or under any other law for the time being in force in any State relating to co-operative societies, employing less than 50 persons and working without the aid of power.

(ii) Any establishment belonging to or under the control of the Central or State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme framed by such government.

(iii) Any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme framed under that Act.

(iv) The P.F. Scheme is not applicable to tea factories in the State of Assam {para 3(a)(iii)}.

Trainees:

It has been decided by the courts that trainees are not employees and are not covered by the EPF Act. The court has held that stipend paid is not wages. It must be noted that trainees were recruited under a particular Training Scheme and there was no guarantee of employment after completion of the training period and that they were not entitled to other benefits, which were available to other permanent employees. These aspects have been decided in **Sri Rama Vilas Service Ltd. V RPFC 2000 –I-LLJ-709(Mad) and Gandhi Vinita Ashram v PFC 1996 (1) CLR 1140 (P&H).**

Exempted Establishment

The Central Government may, by notification in the Official Gazette and subject to such conditions, exempt prospectively or retrospectively, from operation of all or any of the provisions of the EPF Scheme:

(i) any establishment, the rules relating to its provident fund are not less favorable that of section 6 of the EPF Act or

(ii) (ii) any establishment if its employees are in enjoyment of benefits in the nature of P.F. , pension or gratuity, which are not less favorable to employees covered by the Act or the Scheme.

Where an establishment is exempted from any of the provisions of the Act, then such institution must have its own trust and:

(i) have a Board of Trustees for the trust

(ii) maintain detailed accounts

(iii) submit such returns to the Regional P.F. Commissioner.

(iv) invest monies in accordance with the directions of the Central Government issued from time to time.

(v) transfer the account of any employee, where necessary

(vi) perform such other duties as may be specified.

Employees Required to Join the Fund

The following employees are required to join the fund (Para 26 of EPF Scheme):

(i) Every employee employed in or in connection with the work of the factory or other establishment to which the EPF Scheme applies except an excluded employee i.e. drawing a salary exceeding Rs. 6,500.00 p.m. {Para 26(1)}.

(ii) Every employee is required to join the fund from the date of joining the factory or establishment {Para 26(2)}.

(iii) Every excluded employee on his ceasing to be excluded employee i.e. makes an application jointly with the employer.

Registration

If an organisation finds that the Employees' Provident Fund and Miscellaneous Provisions Act 1952 is applicable to it,then it can fill-in the attached proforma for registration. The duly filled-in proforma alongwith one or more of the documents mentioned in the Performa can be submitted to the respective provident fund offices for getting the registration.

Contributions

The contribution envisaged under sec 6 read with notification dated 9th April 1997 and para 29 of the EPF Scheme, specifies that the rate of contribution under the E.P.F. Act as 12%. The employer has to deposit 12% of the basic wages, dearness allowance and retaining allowance (if any), on his part and an equivalent amount on behalf of the employee, which is to be recovered from the employee' salary (para 32 of EPF Scheme).

• For this section '**dearness allowance'** shall be deemed to include the cash value of any food concession allowed to the employee. The 'retaining allowance' means an allowance payable for the time being to an employee for retaining his services, when the establishment is not working.

• **Basic Wage** {sec 2(b)}means emoluments which are earned by an employee while on duty or on leave or on holidays with wages. It includes cash value of food concession, dearness allowance and any presents made by the employer.

• **Encashment of leave** does not fall under dearness allowance or retaining allowance or basic wages and is not to be considered in computing the amount to be deposited under the EPF Act. This aspect has been upheld by the court in **Hindustan Lever Employees Union v RPFC 1995 (71) FLR 46 (Bom).**

• The Supreme Court, in **M.P. Shikshak Congress v RPFC (1999) 1 SCC 396** decided that the EPF Act was applicable to the teachers and employees of the aided school in Madhya Pradesh. Further the inclusion of dearness allowance (D.A.) for computing salary was upheld in the case of **Gyan Bharti v RPFC (1996) 2 CLR 734 (Cal).**

Upper Limit: There is no upper limit for contribution by an employee towards the E.P.F.

Inspection Charges: The employer has to contribute 0.18% of the basic wages, D.A., retaining allowance and cash value of food concession towards inspection charges, (para 30 (3) of the EPF Scheme). This amount cannot be recovered from the employees.

Duties of Contractors: Every contractor shall within 7 days of the close of the month, submit to the principal employer a statement showing the recoveries of contributions for employees employed by or through him and such other information to the principal employer as is required to be filed with the Regional PF Commissioner, (para 36B of the EPF Scheme).

Time Frame for Deposits: Para 38 of the EPF Scheme specifies that the contributions and administrative charges have to be deposited within 15 days of the close of the month by separate drafts / cheques on account of contributions and administrative charges. The cheque should be on a local branch and deposited with the Reserve Bank or the State Bank of India.

Attachment: The contributions made towards provident fund cannot be attached by any decree or order of any court, nor can it be assigned or charged (Sec. 10).

Employees Pension Scheme

1. The Employees Pension Scheme was introduced w.e.f. 16th November 1995.

2. Contributions:

(i) The contribution envisaged under sec 6 is 8.33% of the basic wages, dearness allowance and retaining allowance (if any) from the employer's contribution. {Sec.6A (2)(a)}.

(ii) **Ceiling:** The contribution of 8.33% has a ceiling of Rs. 541.00 p.m. w.e.f. 1st June 2001. This implies that there is a ceiling on the salary, D.A., and retaining allowance of Rs. 6,500.00 in computing the contribution towards the pension scheme. {Para 3(2) of the E.P. Scheme}.

(iii) **Central Government Contribution**: It shall contribute 1.16% of the pay of the members of the Employees Pension Scheme to the Fund {Para 3(2) of the Employees Pension Scheme}.

3. Retention of Membership: An employee shall cease to be a member of the pension fund on attaining the age of 58 years or from the date of vesting of admissible benefits under the scheme, whichever is earlier.

4.Commutation: A member after completing 3 years of membership of the pension scheme can opt for commuting 1/3 of his pension so as to receive 100 times the monthly pension as commuted value {Para 12A).

5. Monthly Pension: This is based on a formula = (Pensionable Salary x Pensionable Service) / 70.

(i) Pensionable Salary = average monthly salary over 12 months immediately preceding the date of exit from the scheme.

(ii) Pensionable Service = service in years rendered by the member for which contributions have been received. Normally this would be limited to Rs. 6,500.00 p.m. unless certain enhanced contributions are made by the employer.

Employees Deposit Linked Insurance Scheme:

This is a scheme to provide life insurance benefits t employees. The employer shall pay 0.5% of the salary comprising of basic wages, dearness allowance and retaining allowance (if any), subject to a maximum salary of Rs. 6,500.00. In addition he has to pay 0.01% as administrative charges. In the case of an exempted establishment the inspection charge is 0.005%.

The employee does not contribute to the Employees Deposit Linked Insurance Scheme.

Attachment: The amount due under EDLI cannot be attached by any decree or order of any court, nor can it be assigned or charged.

Declarations, Contributions and Returns

The details of filing declarations, deposit of contributions and returns can be seen as under:

Purpose	Form No.	Time Frame	Para No. of EPF Scheme
Declaration Form by Employee	2	On Demand	33
Preparation of Contribution Cards by Employer (prepared and kept but filed with RPFC when employee leaves the scheme)	3A	Prepared Monthly and filed at least yearly	35
Deposit Contributions and Administration Charges Separately	Challan	15th of following Month	38
Details of Employees qualifying to become members of scheme	5 with Form 2	15 days from close of month	36
Particulars of Ownership of Employer i.e. details of branches etc.	5A	Within 15 days of any change	36A
Consolidated Return at Commencement of Scheme	9	Within 15 days	36(1)
Return of Members Leaving Service	10	Within 15 days of close of Month	36(2)(b)
Monthly Abstract showing aggregate recoveries made	12 & 12A of EP Scheme	25 days of close of month	38(2)

Consolidated Annual Contribution Statement	6A	By April 30, i.e. within one month of close of period of currency	38(3)
Submission of Contribution Cards to RPFC	6	By March 31 and within 20 days of the close of the month when an employee leaves the service	43
Details of Recoveries made by Contractor submitted to Principal Employer	Copy of Form 12 & names.	By 7th of the month	36B
Application for Transfer of EPF a/c	13	Within 15 days of close of Month	57
Claim of P. F. Dues by Adult Member	19	After 60 days of leaving service & leaving the scheme	69(2)(b)
Claim of P. F. Dues by Minor Nominee	20	- do -	69
Application for Advance	31	-	-

Penalties

Para 32A of the EPF Scheme provides for claiming of damages for default in making payment of any contribution. The details are given below:

Sl. No.	Period Of Default	Rate of Damages (% of arrears p.a.)
1	Less than 2 months	17%
2	2 months & above but less than 4 months	22%
3	4 months & above but less than 6 months	27%
4	6 months & above	37%

The Central Board has the power to reduce the damages upto 50%, depending on the merit of the case (para 32B).

Section 14 of the E.P.F. Act also prescribes for penalties, which are:

Sl. No.	Details of Violation	Penalty
1	For avoiding any payment knowingly makes any false statement or representation	Shall be punishable with imprisonment upto 1 year or fine of Rs. 5,000.00 or both.
2	An employer who contravenes sec. 6 (re. contributions) or sec 17(3)(a) for payment of inspection charges or para 38 re. payment of Administration Charges	Shall be punishable with imprisonment upto 3 years but: (a) will not be less than 1 year and fine of Rs. 10,000.00 if it relates to payment of employees contribution, which has been deducted by the employer. (b) will not be less than 6 months and fine of Rs. 5,000.00, in any other case. The court can decide a lesser term for imprisonment but for

		reasons recorded.
3	An employer who contravenes sec 6C Re. EDLI or sec 17(3A)(a) re. inspection charges	Shall be punishable with imprisonment upto 1 years but will not be less than 6 months and fine of upto Rs. 5,000.00.
4	Failure to comply with any provision of the Act or Schemes	Shall be punishable with imprisonment upto 1 years or with fine of upto Rs. 4,000.00 or both.
5	Contravenes any provision or condition for which exemption u/s 17 was given and no other penalty is prescribed	Be punishable with imprisonment upto 6 months but not less than 1 month and also fine upto Rs. 5,000.00.

Benefits to Employees

1. The employees are entitled to certain benefits by being members under the E.P.F. Act, which can be seen to be the following:

(i) Income Tax deduction u/s 88 subject to certain conditions.

(ii) Full refund of P.F. with interest on retirement, resignation, retrenchment or death.

(iii) Partial withdrawal for the purposes of:

(a) Housing

(b) Marriage / Higher Education

(c) Temporary Unemployment

(d) Medical Treatment

(e) Natural Calamity

(f)Purchasing equipments for physically handicapped.

(iv) Partial withdrawal of 90% of the amounts standing to the credit of the member before one year of retirement.

(v) Under EDLI, an amount equal to the average balance in PF of deceased member subject to a maximum of Rs. 60,000.00.

(vi) Monthly pension under the Employees Pension Scheme 1995, on superannuation, retirement, permanent / total disablement, for widow / widower, for children, for orphan.

2. An important aspect is that there is a regular saving for the employee and a certain social security.