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Social Security Newsletter

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Feedback invited on proposal for menstrual leave to women workers in Karnataka

As per notification[1], the Government of Karnataka is considering to introduce six days of annual paid menstrual leave for women workers across various industries, including factories, IT companies, multinational corporations, garment industries, and commercial establishments.

An expert committee chaired by Prof. Sapna Mohan, comprising labour department officials, medical professionals, business owners, academics, and social workers, was constituted to study the feasibility and implications of this policy.

After several rounds of discussions and deliberations, the Committee's recommendation was to allow women working in factories, mines, plantation shops and commercial establishments to avail up to six paid leaves per year for the purpose of menstrual health.

To ensure a holistic and inclusive decision, the government is now seeking opinions, suggestions, and objections from all factories, industries, company owners, various organizations, trade unions/ representatives, workers and the public.

Impact

This is a welcome proposal and may help in increasing participation of women in the Indian workforce. While some other States already have some leave days with a more limited applicability, this seems far wider in scope.

Since feedback is awaited, it would be crucial to monitor what changes are made to the proposals before this is finalised and implemented.

If implemented, the next steps will likely include defining operational guidelines like processes for availing menstrual leave.

[1] October 30, 2024, No. PS/Other -02/ CR-39/202-23

Regulatory Updates

Retrospective extension of enhanced EDLI benefits

The Ministry of Labour & Employment, with retrospective application from 28 April 2024, via notification[2] has stated that on the death of an employee, who is a member of the EPFO or exempt PF Trust, the persons entitled to receive the PF accumulations of the deceased shall, in addition to such accumulations, be entitled to receive EDLI assurance benefits. MoLE, on 28 April 2021, amended EDLI Scheme vide EDLI (Amendment) Scheme, 2021 and provided the following enhanced benefits:

- Minimum assurance benefit increased to INR 2,50,000 from INR 1,50,000 and maximum assurance benefit increased to INR 7,00,000 from INR 6,00,000.
- Eligibility - Condition of continuous service of 12 months in the same establishment was relaxed with the removal of the words "in the same establishment". This paved the way for increasing the coverage by including even those employees who changed job during that period.
- The salary multiple increased to 35, i.e., average monthly wages drawn to be multiplied by thirty-five times from the earlier number of thirty.
- Ceiling limit for accumulations enhanced to INR 1,75,000 from INR 1,50,000 and the words "or during the period of his membership, whichever is less" were omitted.

The above notification was valid for a period of 3 years from 28 April 2021 which ended on 27 April 2024.

MoLE, on 18 November 2024, has extended the above enhanced benefits retrospectively from 28 April 2024 until further notice.

Impact

This is a beneficial amendment, especially considering the retrospective application of this notification. There remains a lack of clarity on the status of claims in the intervening period. The enhanced benefits under the amended EDLI scheme provide additional financial assistance to the families of members of EPFO or exempt PF Trust.

Employers could keep their employees updated about the extension notified and the benefits available under the scheme.

[2] November 18, 2024, G.S.R. 715(E).

EPFO directs employers to ensure UAN Activation and seeding of Aadhaar with bank accounts

Through a press release[3] Ministry of Labour and Employment has directed the EPFO to ensure UAN Activation for employees through Aadhaar-based OTP so that the benefits under the Employment Linked Incentive (ELI) Scheme can be seamlessly passed. This exercise, initially, had to be completed by 30 November 2024. However, EPFO extended the timeline to 15 December 2024.

To ensure that the maximum number of employers and employees benefit from the Employment Linked Incentive (ELI) Scheme announced in Union Budget 2024-25, the Ministry of Labour & Employment has directed EPFO to work in a campaign mode with Employers and ensure activation of Universal Account Number (UAN) of employees. EPFO will involve their zonal and regional offices for effective outreach on the same.

Aadhar-based documentation and identity verification is a simplified and transparent mechanism to ensure wide reach and also ensure the biometric basis of authentication. In the first stage, employers are required to complete the process of UAN activation through Aadhaar-based OTP for all their employees joining in the current financial year by 30 November 2024, starting with the latest joinees. They must then complete the process for all employees working with them. In the second stage, going forward, UAN activation will include the state-of-the-art facility of Biometric authentication, through Face-recognition Technology.

EPFO issues a circular exempting requirement of Aadhaar for claim settlement purposes

Through a circular[4] , the EPFO has exempted the seeding of Aadhaar for certain classes of members for the purpose of claim settlement. Not having an Aadhaar was an issue during settlement of claims. This has created problems for International Workers (IWs) i.e., Indian workers who migrated abroad and who subsequently obtained foreign citizenship, and other IWs including Nepalese and Bhutanese citizens.

Effective 2021, Aadhaar-seeding with UAN was made mandatory for facilitating withdrawals/ benefits, without any exceptions for IWs. To ease the process for those who are unable to obtain Aadhaar, this circular has been issued.

For instance, international workers who have completed their assignments but have not obtained Aadhaar card are one of the categories of members allowed to settle claims in physical mode, without an Aadhaar. The alternative ID proof for this category of members is their passport. Other exempted categories are Indian workers who migrated abroad permanently without obtaining Aadhaar and later obtained foreign citizenship and citizens of Nepal and Bhutan employed in a PF covered establishment in India but residing outside India and not possessing Aadhaar.

Impact

This is a welcome step since Indian secondees who were sent on assignments to companies in another country or foreign nationals (international workers) on assignments in companies in India, are now able process their PF claims without facing the hindrance of non-possession of aadhaar as an ID proof, and it being attested / confirmed by employer where needed.

Without this obstacle, the claim settlement process is expected to be smoother and easier.

[4]November 29, 2024

Integration of ESI with Ayushman Bharat – Pradhan Mantri Jan Arogya Yojana

The Labour and Employment Minister of India, Dr. Mansukh L.Mandaviya, stated that the Employees' State Insurance Corporation (ESIC) will be integrated with Ayushman Bharat – Pradhan Mantri Jan Arogya Yojana (AB-PMJAY). He mentioned that this integration will expand healthcare access for ESIC beneficiaries by enabling them to seek treatment at AB-PMJAY empanelled hospitals nationwide.

Impact

This is a welcome move considering that the extent of hospitals available for medical benefits provided by ESI would be increased with the convergence with the ABPMJAY and its vast network of hospitals. This also would be in line with the having a healthy, productive workforce, working towards a ‘Viksit Bharat’. This partnership will not only enhance the accessibility of healthcare services making healthcare easily accessible for all beneficiaries.

[5]November 28, 2024

II. Case Updates

- **Retention allowance would fall under 'wages' for PF contribution purpose**

The High Court ('HC') of Maharashtra has ruled[6] that retention allowance paid to seasonal employees would fall under the definition of 'wages' for PF contribution purposes under the EPF Act, 1952.

The HC observed that"......basic wages, as defined under Section 2(b) of the EPF Act excludes certain allowances/payment, like dearness allowance, house rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment. It, however, does not include a retaining allowance. The authorities below, therefore, have rightly applied the law and calculated the contribution of Provident Fund by the Federation."

The fact that the retaining allowance is being paid to the employees, it indicates that the employer has retained the services of these employees and, therefore, jural relationship of employer and employee continues. Accordingly, when the workmen return to work when the next seasonal work commences, payment of retaining allowance during off-season partakes of the nature of basic wage on a diminished scale. This allowance is nothing but remuneration co-related to service, and it cannot be treated as a simple allowance," the HC observed.

The HC also pointed out that the basic wages definition of the EPF Act, while excluding certain allowances, doesn't exclude retaining allowance. It went through several Supreme Court judgements on this issue. The HC concluded "Put all together, the authorities below having considered the relevant provisions of the EPF Act as also the relevant authorities, no interference is called for in the impugned orders. There is no merit in the petition."

[6] September 17, 2024

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