

Notes

5. Can the amount standing to the credit of any member in the Fund be assigned, charged or attached?
6. What are the powers of the Inspectors appointed under the Act?
7. What are the offences under the Act and what is the punishment for them?
8. Is any damage leviable on the employer delaying any payment due from him under the Act or the Schemes?
9. Could the employer be punished under section 14B in case the remittance of contribution by him is delayed in a bank or post office?
10. Who is eligible to become a member of the Fund?
11. Are the persons employed by or through a contractor covered under the Scheme?
12. What is the contribution payable by the employer and the employee under the Scheme?
13. Is it permissible for any member to contribute at a rate higher than the rate of $8\frac{1}{3}$ percent?
14. Is any interest payable on the Provident Fund accumulations of a member?
15. What are the benefits provided under the Scheme?
16. Who is entitled to receive the accumulations in the Provident Fund account of a deceased member?

Answers: Self Assessment

- | | |
|--------------------|-------------------|
| 1. False | 2. True |
| 3. False | 4. Insurance Fund |
| 5. Superannuation | 6. Pension Fund |
| 7. True | 8. False |
| 9. True | 10. 10% |
| 11. Provident Fund | 12. Exempted |
| 13. False | 14. True |
| 15. False | 16. Civil |
| 17. Contractor | 18. Employers |
| 19. True | 20. True |
| 21. False | |

11.11 Further Readings



Books

Rao, VSP. *Industrial Relations & Labour Laws*, Excel Books, New Delhi, 2008

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<http://www.epfindia.com/EPFScheme.pdf>

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Unit 12: The Maternity Benefit Act, 1961

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Objectives

After studying this unit, you will be able to:

- Explain the genesis of the Act
- Discuss the definitions under this Act
- Get an overview of the objective of this Act
- Describe the applicability and coverage of this Act
- Discuss the benefits and penalties of this Act
- Get an overview of the restrictions on employment
- Discuss the right to payment of maternity benefit

Introduction

In the previous unit, we dealt with Employees Provident Fund Act. The Maternity Benefit Act, 1961 regulates employment of women in certain establishments for a certain period before and after childbirth and provides for maternity and other benefits. Such benefits are aimed to protect the dignity of motherhood by providing for the full and healthy maintenance of women and her child when she is not working. The Act is applicable to mines, factories, circus industry, plantations, shops and establishments employing ten or more persons, except employees covered

under the Employees' State Insurance Act, 1948. It can be extended to other establishments by the State Governments. The purpose of this Unit is to enable the students to comprehend basic expressions. At the end of this unit you should be able to understand various concepts regarding the Maternity Benefit Act.

12.1 Genesis of the Act

The Convention of "Protection of Motherhood" adopted in 1919 was the earliest among the ILO Conventions. In 1921, the Government of India reported that it was not possible to adopt the Convention passed in 1919 due to various reasons. A Bill was brought before the Central Legislative Assembly by a private member in 1924; urging the Government to make it compulsory for the employers to provide maternity benefit to women workers. However, the Bill was opposed by the government on the ground that the need for such a Bill was not felt and that if legislation was passed to that effect, it might have adverse repercussions on the employment of women. The Royal Commission on Labour, in its recommendations, also stressed the need for suitable maternity legislation, at least for women employed permanently in non seasonal factories. As the Government of India was slow to 'act on these recommendations, the provincial governments took the lead. The Government of Bombay passed the Maternity Benefit Act, way back in 1926. It was followed by Central Provinces, Madras, U.P., Bengal and some other provinces. The period of leave, the quantum of benefit and the qualifying conditions varied slightly from province. With a view to reducing the disparities relating to maternity protection under different provincial or State enactments, the Central Government passed the Maternity Benefit Act in 1961.

The Central Industrial Relations Machinery (CIRM) in the Ministry of Labour is responsible for enforcing this Act. CIRM is an attached office of the Ministry and is also known as the Chief Labour Commissioner (Central) [CLC(C)] Organisation. The CIRM is headed by the Chief Labour Commissioner (Central).

12.1.1 Main Provisions

The main provisions of the Act are:-

- No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery or her miscarriage. Also, no woman shall work in any establishment during the six weeks immediately following the day of her delivery or her miscarriage.
- Every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence immediately preceding and including the day of her delivery and for the six weeks immediately following that day. The 'average daily wage' means the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, or one rupee a day, which ever is higher.
- No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than one hundred and sixty days in the twelve months immediately preceding the date of her expected delivery. For the purpose of calculating the days on which a woman has actually worked in the establishment, the days for which she has been laid off during the period of twelve months immediately preceding the date of her expected delivery shall be taken into account.
- The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks, that is to say, six weeks up to and including the day of her delivery and six weeks immediately following that day.

Notes

- No deduction from the normal and usual daily wages of a woman entitled to maternity benefit shall be made by reason only of - (i) the nature of work assigned to her by virtue of the provisions of the Act; or (ii) breaks for nursing the child allowed to her under the provisions of the Act.
- If a woman works in any establishment after she has been permitted by her employer to absent herself for any period, during such authorised absence, she shall forfeit her claim to the maternity benefit for such period.
- If any employer contravenes the provisions of this Act or the rules made thereunder, he/she shall be punishable with imprisonment or with fine or with both; and where the contravention is of any provision regarding maternity benefit or regarding payment of any other amount and such maternity benefit or amount has not already been recovered, the court shall, in addition recover such maternity benefit or amount as if it were a fine and pay the same to the person entitled thereto.



Caselet

Maternity Benefits in India

Ms. AB was employed in a company for the past 22 months and wishes to avail maternity benefits under the Maternity Benefit Act. She was receiving an annual salary of ₹ 375,000, paid in monthly instalments of ₹ 31,250.

In addition to the non-cash benefits listed above, she is entitled to cash benefits under the Act that include:

1. Advance payment of six weeks leave before delivery – ₹ 46,875
2. Advance payment of six weeks leave after delivery – ₹ 46,875 (after submitting proof of birth)
3. Medical bonus – ₹ 1,000
4. Additional leave with pay up to one month – ₹ 31,250

The total cash benefits that Ms. AB is entitled to amount to ₹ 213,500.

Furthermore, Ms. AB may not be dismissed while she is on maternity leave, and may also not be charged any penalty for not performing her work duties while on maternity leave. She is also entitled to be given light work up to 10 weeks prior to the delivery of the child, and two 15-minute nursing breaks per day until the child is 15 months old.

Source: <http://www.india-briefing.com/news/maternity-benefits-india-5765.html/>

Self Assessment

State whether the following statements are true or false:

1. The Convention of “Protection of Motherhood” adopted in 1920 was the earliest among the ILO Conventions.
2. As the Government of India was slow to act on these recommendations, the provincial governments took the lead.
3. The Central Industrial Relations Machinery (CIRM) in the Ministry of Labour is responsible for enforcing this Act.

12.2 Definitions

Notes

In this Act, unless the context otherwise requires,—

- (a) “appropriate Government” means, in relation to an establishment being a mine, or an establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances, the Central Government and in relation to any other establishment, the State Government;
- (b) “child” includes a still-born child;
- (c) “delivery” means the birth of a child;
- (d) “employer” means—
 - (i) in relation to an establishment which is under the control of the Government, a person or authority appointed by the Government for the supervision and control of employees or where no person or authority is so appointed, the head of the department;
 - (ii) in relation to an establishment under any local authority, the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the chief executive officer of the local authority;
 - (iii) in any other case, the person who, or the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to any other person whether called a manager, managing director, managing agent, or by any other name, such person;
- (e) “establishment” means—
 - (i) a factory;
 - (ii) a mine;
 - (iii) a plantation;
 - (iv) an establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances;
 - (iva) a shop or establishment; or
 - (v) an establishment to which the provisions of this Act have been declared under sub-section (1) of section 2 to be applicable;
- (f) “factory” means a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (g) “Inspector” means an Inspector appointed under section 14;
- (h) “maternity benefit” means the payment referred to in sub-section (1) of section 5;
- (i) “mine” means a mine as defined in clause (j) of section 2 of the Mines Act, 1952 (35 of 1952);
- (j) “miscarriage” means expulsion of the contents of a pregnant uterus at any period prior to or during the twenty-sixth week of pregnancy but does not include any miscarriage, the causing of which is punishable under the Indian Penal Code (45 of 1860);
- (k) “plantation” means a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);
- (l) “prescribed” means prescribed by rules made under this Act;

Notes

- (m) "State Government", in relation to a Union territory, means the Administrator thereof;
- (n) "wages" means all remuneration paid or payable in cash to a woman, if the terms of the contract of employment, express or implied, were fulfilled and includes--
 - (1) such cash allowances (including dearness allowance and house rent allowance) as a woman is for the time being entitled to;
 - (2) incentive bonus; and
 - (3) the money value of the concessional supply of foodgrains and other articles, but does not include--
 - (i) any bonus other than incentive bonus;
 - (ii) over-time earnings and any deduction or payment made on account of fines;
 - (iii) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the woman under any law for the time being in force; and
 - (iv) any gratuity payable on the termination of service;
- (o) "woman" means a woman employed, whether directly or through any agency, for wages in any establishment.

Self Assessment

Fill in the blanks:

- 4. means a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948).
- 5. means a mine as defined in clause (j) of section 2 of the Mines Act, 1952 (35 of 1952).
- 6. earnings and any deduction or payment made on account of fines.

12.3 Objective of this Act

The Act was passed with a view to reduce disparities under the existing Maternity Benefit Act and to bring uniformity with regard to rates, qualifying conditions and duration of maternity benefits. The Act repealed the Mines Maternity Benefit Act, 1941, the Bombay Maternity Benefit Act, 1929, the provisions of maternity protection under the

Plantations Labour Act, 1951 and all other provincial enactments covering the same field. However, the Act does not apply to factory or establishment to which the provision of Employee's State Insurance Act 1948 applies, except as otherwise provided in Sections 5A and 5B of the Act.

The Act extends to the whole of India. It applies, in the first instance: to every establishment being a factory, a mine or plantation including any such establishment belonging to Government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances; to every shop or establishment within the meaning of any law for the time being in force in relation to shop and establishments in a state, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months.



Notes The State Government is empowered to extend all or any of the provisions of the Act to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise with the approval of the Central Government by giving not less than two month's notice of its intention of so doing.

The Act has been amended from time to time. The Amendment of 1972 provides that in the event of the application of the Employees' State Insurance Act, 1948 to any factory or establishment, maternity benefit under the Maternity Benefit Act would continue to be available to women workers, until they become qualified to claim similar benefit under Employees' State Insurance Act.

Again, in 1973 the Act was amended so as to bring within its ambit establishments in the circus industry. A 1976 amendment further extends the scope of the Act to the women employed in factories or establishments covered by the ESI Act, 1948 and in receipt of wages exceeding entitlement specified in that Act.

The Act was again amended in 1988 to incorporate the recommendations of a working group of Economic Administration Reforms Commission. The Act was extended to shops or establishments employing 10 or more persons.



Did u know? The rate of maternity benefits was enhanced and some other changes were introduced. The Amendment of 1995 further expanded the coverage of the Act and recognized the medical termination of pregnancy and provided incentives for family planning.

Maternity Benefit (Amendment) Act, 1995 provides that there shall be a six weeks leave with wages in case of medical termination of pregnancy, two weeks leave with wages to women employees who undergo tubectomy operation and one month leave with wages in cases of illness arising out these two. By an amendment in 2008 the existing ceiling of maternity benefit was increased from ₹ 250 to ₹ 1000. The Central Government is empowered to increase the medical bonus from time to time subject to a maximum of ₹ 20, 000.

The Maternity Benefit Act aims to regulate the employment of women in certain establishments for certain periods before and after childbirth. It also provide for maternity benefits including maternity leave, wages, bonus, nursing breaks etc. This Act protects the dignity of motherhood and the dignity of a new person's birth by providing for the full and healthy maintenance of the women and her child at this important time when she is not working.

Self Assessment

State whether the following statements are true or false:

7. The Act extends to the whole of India.
8. The Act was extended to shops or establishments employing 20 or more persons.
9. The Central Government is empowered to increase the medical bonus from time to time subject to a maximum of ₹ 15,000.

12.4 Applicability and Coverage of this Act

The Act extends to the whole of India and applies to every establishment, factory, mine or plantation, including any such establishment belonging to the government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances. The Act was brought into force in mines with effect from 1st November 1963, after repealing the Mines Maternity Benefit Act, 1941. The State government may extend all or any of the provisions of the Act to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.

Notes



Caution But the State Government can do so only with the approval of the Central Government, after giving not less than two months' notice, by a notification in the Official Gazette, of its intention to do so.

The Act specifically excludes the applicability of the provisions of the Act to any factory or other establishment to which provisions of the Act to any factor or other establishment to which provisions of the Act to any factor or other establishment to which provisions of the Employees' State Insurance Act, 1948, apply for the time being. The Act was amended on May 1, 1976 to extend the benefits to all women employees earning more than the wage ceiling in establishments covered by the E.S.I. Act.

Conditions for Eligibility of Benefits

Following are the conditions for the eligibility of benefits:

1. Ten weeks before date of her expected delivery, she may ask employer to give her light work for a month (At that time she should produce a certificate that she is pregnant).
2. She should give written notice to employer about seven weeks before date of her delivery that she will be absent for six weeks before & after her delivery.
3. She should also name person to whom payment will be made in case she cannot take it herself.
4. She should take payment for the first six weeks before she goes on leave.
5. She will be entitled to two nursing breaks of fifteen minutes each in course of her daily work till her child is fifteen months old.
6. Leave for Miscarriage and Tubectomy Operation.
7. Leave with wages at rate of maternity benefit, for a period of six weeks immediately following day of her miscarriage or her medical termination of pregnancy.

Self Assessment

Fill in the blanks:

10. The Act was brought into force in mines with effect from, after repealing the Mines Maternity Benefit Act, 1941.
11. The government may extend all or any of the provisions of the Act to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.
12. The Act was amended on-to extend the benefits to all women employees earning more than the wage ceiling in establishments covered by the E.S.I. Act.

12.5 Benefits and Penalties of this Act

The Maternity Benefit Act is a piece of social legislation enacted to promote the welfare of working women. It prohibits the working of pregnant women for a specified period before and after delivery. It also provides for maternity leave and payment of certain monetary benefits to women workers during the period when they are out of employment because of their pregnancy. Further, the services of a woman worker cannot be terminated during the period of her absence on account of pregnancy, except for gross misconduct.



Notes

The maximum period for which a woman can get maternity benefit is twelve weeks. Of this, six weeks must be taken prior to the date of delivery of the child and six weeks immediately following that date.

To be entitled to maternity leave, however, a woman must have actually worked for not less than 80 days in the twelve months immediately preceding the day of her expected delivery. Only working days are taken into account when calculating these 80 days. Weekly holidays and all leave - paid or unpaid - are not included. However, if a workman is laid off from work, such periods will be deemed as working days.

To avail of the six weeks' leave before expected delivery, a notice must be given in writing stating the date of absence from work also a certificate of pregnancy. (There is a form for both which must be filled in). The employer has to pay the maternity benefit in advance for this period to the concerned employee or any person nominated for this purpose.

For the six weeks' leave from the date of delivery, another notice must be sent together with a certificate of delivery after the child is born. The employer has to pay to the employee, or her nominees, maternity benefit within 48 hours of receiving this notice. The failure to give notice for the subsequent six weeks does not, however, disentitle a woman from maternity benefit.



Did u know? Every woman entitled to maternity benefit is also entitled to a medical bonus of rupees two hundred and fifty if no pre-natal and post-natal care have provided for by the employer free of charge.

In case of miscarriage, a woman is entitled to six weeks leave with pay from the day of miscarriage. In this case, too, she must give notice, together with a certificate of miscarriage.



Example: For illness arising out of pregnancy, delivery, premature birth or miscarriage, a woman employee can take extra leave up to a maximum period of one month. She has, of course, to get a certificate from a doctor in the prescribed form. This leave can be taken at any time during the pregnancy, or can be attached to the six weeks prior to or after delivery or miscarriage.

With a view to encourage planned parenthood, the Act provides for (a) six weeks leave with wages in cases of medical termination of pregnancy (MTP); (b) grant of leave with wages for a maximum period of one month in cases of illness arising out of MTP or tubectomy; and (c) two weeks' leave with wages to women workers who undergo tubectomy operation.,

A female employee can ask for light work for one month preceding the six weeks prior to her delivery or during these six weeks if, for any reason, she does not avail of her leave.

12.5.1 Penalties

Penalties in this Act should be given on following perspectives:

Penalty for contravention of Act by employer

- (1) If any employer fails to pay any amount of maternity benefit to a woman entitled under this Act or discharges or dismisses such woman during or on account of her absence from work in accordance with the provisions of this Act, he shall be punishable with imprisonment which shall not be less than three months but which may extend to one year and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees:

Notes

Provided that the court may, for sufficient reasons to be recorded in writing, impose a sentence of imprisonment for a lesser term or fine only in lieu of imprisonment.

- (2) If any employer contravenes the provisions of this Act or the rules made thereunder, he shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both:

Provided that where the contravention is of any provision regarding maternity benefit or regarding payment of any other amount and such maternity benefit or amount has not already been recovered, the court shall, in addition, recover such maternity benefit or amount as if it were a fine and pay the same to the person entitled thereto.

Penalty for obstructing Inspector

Whoever fails to produce on demand by the Inspector any register or document in his custody kept in pursuance of this Act or the rules made thereunder or conceals or prevents any person from appearing before or being examined by an Inspector shall be punishable with imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

Self Assessment

Fill in the blanks:

13. The Act is a piece of social legislation enacted to promote the welfare of working women.
14. Every woman entitled to maternity benefit is also entitled to a medical bonus of if no pre-natal and post-natal care have provided for by the employer free of charge.
15. A female employee can ask for light work for one month preceding the weeks prior to her delivery or during these six weeks if, for any reason, she does not avail of her leave.

12.6 Restrictions on Employment

An employer is prohibited from knowingly employing any woman in any establishment during the six weeks immediately following the day of her delivery or her miscarriage. Likewise, a woman is prohibited from working in any establishment during this period of six weeks. Further, no pregnant woman shall, on a request being made by her, be given–

- Any work which is of an arduous nature;
- Any work which involves long hours of standing;
- Any work which in any way is likely to interfere with her pregnancy or the normal development of the foetus, or is likely to cause miscarriage or otherwise adversely affect her health.

A female employee resuming duties after delivery is to be given two nursing breaks of prescribed duration, in addition to her regular rest intervals, to nurse the child until her child attains the age of fifteen months. Each State has its own rules as to the length of this break. (In Maharashtra, it is fifteen minutes).

An employer cannot reduce the salary on account of light work assigned to her or for breaks taken, to nurse her child. Further, she cannot be discharged or dismissed on grounds of absence arising out of pregnancy, miscarriage, delivery or premature birth. Nor can her service conditions be altered to her disadvantage during this period.

**Notes**

If a woman entitled to maternity benefit dies before receiving her dues, the employer has to pay the person nominated by her in the notice, or to her legal representative, in case there is no nominee. If she dies during the six weeks before delivery, maternity benefit is payable only for the days up to and including the day of her death. If she dies during delivery or during the following six weeks, leaving behind a child, the employer has to pay maternity benefit for the entire six weeks; but if the child also dies during the period, then only for the days up to-and including the death of the child.

Notes

12.6.1 Forfeiture

A female employee, however, can be deprived of maternity benefit if:

1. after going on maternity leave, she works in any other establishment during the period she is supposed to, be on leave; and
2. during the period of her pregnancy, she is dismissed for any prescribed gross misconduct;

The acts which constitute misconduct are

- (a) Wilful destruction of employer's goods or property;
- (b) Assaulting any superior or co-employee at the place of work;
- (c) Criminal offence involving moral turpitude resulting in conviction in a court of law;
- (d) Theft, fraud or dishonesty in connection with the employer's business or property; and
- (e) Wilful non-observance of safety measures or rules or wilful interference with safety devices or with fire fighting equipment.

The aggrieved woman may, within sixty days from the date, on which the order of such deprivation is communicated to her, appeal to the prescribed authority, and the decision of the authority on such appeal shall be final.

Self Assessment

State whether the following statements are true or false:

16. An employer is prohibited from knowingly employing any woman in any establishment during the five weeks immediately following the day of her delivery or her miscarriage.
17. Each State does not have its own rules as to the length of this break
18. An employer can reduce the salary on account of light work assigned to her or for breaks taken to nurse her child.

12.7 Right to Payment of Maternity Benefit

The Right to Payment of Maternity Benefit are as follows:

- (1) Subject to the provisions of this Act, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day.

Notes



Notes

For the purpose of this sub-section, the average daily wage means the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, the minimum rate of wage fixed or revised under the Minimum Wages Act, 1948 or ten rupees, whichever is the highest.

- (2) No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than eighty days in the twelve months immediately preceding the date of her expected delivery:

Provided that the qualifying period of eighty days aforesaid shall not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of the immigration.



Notes

For the purpose of calculating under this sub-section the days on which a woman has actually worked in the establishment, the days for which she has been laid off or was on holidays declared under any law for the time being in force to be holidays with wages during the period of twelve months immediately preceding the date of her expected delivery shall be taken into account.

- (3) The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery:

Provided that where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death:

Provided further that where a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for that entire period but if the child also dies during the said period, then, for the days up to and including the date of the death of the child.

Continuance of payment of maternity benefit in certain cases.-

Every woman entitled to the payment of maternity benefit under this Act shall, notwithstanding the application of the Employees' State Insurance Act, 1948 (34 of 1948), to the factory or other establishment in which she is employed, continue to be so entitled until she becomes qualified to claim maternity benefit under section 50 of that Act.

Payment of maternity benefit in certain cases.-

Every woman--

- (a) who is employed in a factory or other establishment to which the provisions of the Employees' State Insurance Act, 1948 (34 of 1948), apply;
- (b) whose wages (excluding remuneration for overtime work) for a month exceed the amount specified in sub-clause (b) of clause (9) of section 2 of that Act; and
- (c) who fulfils the conditions specified in sub-section (2) of section 5,

shall be entitled to the payment of maternity benefit under this Act.

12.7.1 Notice of Claim for Maternity Benefit and Payment Thereof

Notes

Notice of Claim for Maternity Benefit and Payment are as follows:

- (1) Any woman employed in an establishment and entitled to maternity benefit under the provisions of this Act may give notice in writing in such form as may be prescribed, to her employer, stating that her maternity benefit and any other amount to which she may be entitled under this Act may be paid to her or to such person as she may nominate in the notice and that she will not work in any establishment during the period for which she receives maternity benefit.
- (2) In the case of a woman who is pregnant, such notice shall state the date from which she will be absent from work, not being a date earlier than six weeks from the date of her expected delivery.
- (3) Any woman who has not given the notice when she was pregnant may give such notice as soon as possible after the delivery.
- (4) On receipt of the notice, the employer shall permit such woman to absent herself from the establishment during the period for which she receives the maternity benefit.
- (5) The amount of maternity benefit for the period preceding the date of her expected delivery shall be paid in advance by the employer to the woman on production of such proof as may be prescribed that the woman is pregnant, and the amount due for the subsequent period shall be paid by the employer to the woman within forty-eight hours of production of such proof as may be prescribed that the woman has been delivered of a child.
- (6) The failure to give notice under this section shall not disentitle a woman to maternity benefit or any other amount under this Act if she is otherwise entitled to such benefit or amount and in any such case an Inspector may either of his own motion or on an application made to him by the woman, order the payment of such benefit or amount within such period as may be specified in the order.



Task As a Manager, what maternity benefits will you amend in your organization for the female employees?

Self Assessment

Fill in the blanks:

19. The maximum period for which any woman shall be entitled to maternity benefit shall be weeks.
20. Any woman who has not given the when she was pregnant may give such notice as soon as possible after the delivery.
21. The to give notice under this section shall not disentitle a woman to maternity benefit or any other amount under this Act.

Notes



Case Study

Maternity Benefit Act is Applicable Upon Contractual Employees

The petitioner was appointed on contract basis for three years. She became pregnant. She absented for 106 days. She applied for maternity leave. She was directed to hand over charge. Her absence was treated as leave without pay. Maternity benefits were denied to her as per terms of contractual employment. The petitioner was notified that till the date of handing over the charge, the absence will be treated as leave without allowance and she was directed to hand over the office mobile and other assets, if any. Since the maternity leave applied was not sanctioned, the petitioner got issued a legal notice for sanction of maternity leave and for extending the legitimate benefits.

The petitioner delivered twins. The respondent terminated the contract of service with the petitioner by invoking terms and conditions of her appointment letter. The petitioner filed writ petition to quash the communications sent by the respondent, terminating the contract and office order treating the period of absence as leave without allowances and to direct the respondent to sanction maternity leave and disburse the pay and allowances for the period of maternity leave and for consequential benefits, including permitting her to resume duty after the expiry of the maternity leave or as per the medical advice.

The respondent in the counter has resisted the demands of the petitioner contending that the petitioner accepted the offer and is bound by the terms and conditions of the contract which does not provide for maternity leave benefits and hence, it is not open to the petitioner to claim maternity leave benefits. The respondent further stated that as the petitioner remained absent frequently on different dates on health grounds, issuance of the office order is justified. It was also stated that the post to which the petitioner was appointed was crucial post of Manager (Finance) which could not be kept vacant and it adversely affects the work. She was given one month's notice and thereafter her service was terminated. Even the respondent is not notified under section 2 of the Maternity Benefits Act, 1961.

Held, in terms of the provisions of the Maternity Benefits Act, 1961, a woman is prohibited from working in an establishment during the period of six weeks from immediately following the day of her delivery, miscarriage or medical termination of pregnancy. She would not be asked to work for the specified period in sub-section (4) of section 4. She would be entitled to the benefits of sections 6 and 9 of the Act. Any Rule or Regulation being subordinate legislation, is subject to provisions of the Parliament Act. Though the appointment order along with the terms and conditions appended thereto issued to the petitioner did not provide for grant of maternity leave and other benefits to which a woman employee would be entitled to, the respondent has an obligation to provide the benefits in view of the provisions contained in the Act as well as the Directive Principles of State Policy enshrined in Article 42 of the Constitution of India. It is not disputed that the petitioner had 17 days in her credit whereas she remained absent for 106 days on health ground.

Since she was a contract employee and did not have the leave to her credit, the respondent is right in treating the period as leave without allowance in excess of leave to her credit. Petitioner's prayer to permit her to resume her duty is not tenable since the appointment was purely on contract basis and that period is already over. However, the petitioner is entitled to all the benefits from the terms of appointment for the period of her maternity

Contd...

leave including maternity benefits and thereafter for a period of one month being the notice period. The petitioner is entitled to costs and the counsel fee of ₹ 5,000. Payment to the petitioner is made within one month. Petition is disposed of in part accordingly.

Question

Critically analyse the above case.

Notes

Source: <http://www.indianstaffingfederation.org/maternity.html>

12.8 Summary

- The Act was passed with a view to reduce disparities under the existing Maternity Benefit Acts and to bring uniformity with regard to rates, qualifying conditions and duration of maternity benefits.
- The Act repealed the Mines Maternity Benefit Act, 1941, the Bombay Maternity Benefit Act, 1929, the provisions of maternity protection under the Plantations Labour Act, 1951 and all other provincial enactments covering the same field.
- One of the primary objectives of India's Maternity Benefit Act (1961) is to maintain the health of a pregnant female employee and her child.
- An abstract of the provisions of the Act and the rules made thereunder has to be exhibited in the language or languages of the locality in a conspicuous place in every of the establishment in which women are employed.
- The Act provides for penalties for the contravention of the provisions of the Act.
- The Central Government has power to exempt an establishment from the operation of all or any of the provisions of the Act if it is satisfied that the benefits granted by the establishment are not less favourable than those provided in the Act.
- Apart from the benefits provided under the Central Act, some State enactments provide additional benefits, such as free medical aid, maternity bonus, provision of creches, and additional rest intervals.
- If benefits are improperly withheld, a complaint can be made to the inspectors appointed by the government.
- Every woman shall be entitled to, and her employer shall be liable for, the payment of Maternity benefits at the rate of the average daily wage for the period of her actual absence immediately preceding and including the day of her delivery and for the six weeks immediately following that day, says the provision under Section 5.
- The act applies to every factory, mine or plantation (including those belonging to government), and to every shop or establishment wherein 10 or more people are employed.
- To be eligible to receive maternity benefits, the pregnant female employee must have worked for at least 80 days within the 12 months immediately preceding her date of delivery.
- Pregnant female employees can receive payment of up to six weeks of leave before delivery, and then can receive payment while taking up to six weeks of leave after delivery (within 48 hours of submitting proof of birth).

Notes

12.9 Keywords

Claim: Legal demand or assertion by a claimant for compensation, payment, or reimbursement for a loss under a contract, or an injury due to negligence.

Factory: A building or buildings where goods are manufactured or assembled.

Maternity Benefit: Maternity Benefit is a payment by the Department of Social Protection to women on maternity leave from work.

Mines: A mine is an excavation in the earth from which ores and minerals are extracted.

Miscarriage: The expulsion of a fetus from the womb before it is able to survive independently, esp. spontaneously or as the result of accident.

Overtime: Time in addition to what is normal, esp. time worked beyond one's scheduled working hours.

Penalty: A punishment imposed for violating a law or agreement; money one will pay for breaking a law or violating part or all of the terms of a contract.

Protection: The action of protecting someone or something, or the state of being protected.

Provisions: The action of providing or supplying something for use.

Restrictions: The limitation or control of someone or something, or the state of being limited or restricted.

Wages: A fixed regular payment, typically paid on a daily or weekly basis, made by an employer to an employee, esp. to a manual or unskilled worker.

12.10 Review Questions

1. What is the object of the Maternity Benefit Act, 1961?
2. Which establishments are covered by the Act?
3. What are the benefits payable to a female employee under the Act?
4. Highlight the main provisions of the Maternity Benefit Act, 1961.
5. Discuss the applicability and coverage of the Maternity Benefit Act, 1961.
6. Explain the conditions for eligibility of benefits.
7. Elucidate the Penalties in this Act.
8. What are the Restrictions on Employment?
9. A female employee, however, can be deprived of maternity benefit. Discuss.
10. Describe the notice of claim for maternity benefit and payment.

Answers: Self Assessment

- | | |
|----------|-----------------|
| 1. False | 2. True |
| 3. True | 4. Factory |
| 5. Mines | 6. Overtime |
| 7. True | 8. False |
| 9. False | 10. 1 Nov. 1963 |

- | | | |
|-----------------------|-----------------|--------------|
| 11. State | 12. 1 May, 1976 | Notes |
| 13. Maternity Benefit | 14. 250 | |
| 15. Six | 16. True | |
| 17. False | 18. False | |
| 19. 12 | 20. Notice | |
| 21. Failure | | |

12.11 Further Readings



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Unit 13: The Employees' State Insurance Act, 1948

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Objectives

After studying this unit, you will be able to:

- Explain various definitions under this Act
- Discuss the scope and objective of the Act
- Get an overview of the applicability and coverage of this Act

- Describe the benefits of this Act
- Discuss the role of ESI Corporation
- Get an overview of the role of ESI Hospital
- Discuss penalties and damages under this Act

Introduction

In the previous unit, we dealt with the act relating to Maternity Benefit. The Employees' State Insurance Act was promulgated by the Parliament of India in the year 1948. It was the first major legislation on Social Security in independent India to provide certain benefits to the employees in the organized sector in case of sickness, maternity and employment injury. It is important for the students to be thoroughly acclimatized with this branch of law to know its practical significance. The Employees State Insurance Act, 1948 has been enacted with the objective of welfare of the employees and benefits in case of sickness, maternity and employment injury and certain other related matters. Articles 41, 42 and 43 of the Indian Constitution enjoin the state to make effective provision for securing the right to work, to education and public assistance in cases of unemployment, old age, sickness and disablement. The Act attempts to achieve such goal of socio-economic justice enshrined in the Directive principles of state policy under part 4 of the Constitution. The benefits extended under this Act are applicable to all employees whether working inside the factory or establishment or else where they are directly employed by the principal employee or through an intermediate agency, if the employment is incidental or in connection with the factory or establishment. The Act applies to non-seasonal, power using factories or manufacturing units employing ten or more persons and non-power using establishments employing twenty or more persons. The purpose of this Unit is to enable the students to comprehend basic expressions. At the end of this unit you should be able to understand various concepts regarding ESIC.

13.1 Definitions

Employee

The term "employee" as defined under Section 2(9) of the Act, refers to any person employed on wages in, or in connection with, the work of a factory or establishment to which this Act applies. It has a wide connotation and includes within its scope clerical, manual, technical and supervisory functions. Persons whose remuneration (excluding the remuneration for over-time work) does not exceed ₹ 6,500 a month are covered under the Act. The Act does not make any distinction between casual and temporary employees or between technical and non-technical employees. There is also no distinction between those employed on time-rate and piece-rate basis.



Notes

Employees employed directly by the principal employer and those employed by or through a contractor on the premises of the factory and those employed outside the factory premises under the supervision of the principal employer are all included under the Act: It also covers administrative staff and persons engaged in the purchase of raw materials or the distribution or sale of products and similar or related functions. However, the definition of "employee" does not include any member of the Indian naval, military or air force.

Notes

Wages

“Wages” means all remuneration paid in cash if the terms of the contract are fulfilled, and includes any payment in any period of authorised leave, lockout or strike which is not illegal or lay-off, and includes other remuneration paid at intervals not exceeding two months but does not include –

- (i) Contribution paid to the provident fund or pension fund;
- (ii) Travelling allowance or value of travelling concession;
- (iii) Sum paid to defray special expenses; and
- (iv) Gratuity payable on discharge.



Caselet

Endless wait at Noida ESI Hospital

Patients at the Model Hospital in Noida of the Employees’ State Insurance Corporation face queues that sometimes don’t end.

Every day many in the lines at the outpatient department (OPD) go back home because their turn didn’t come – and are compelled to visit again another day. Pregnant women have a particularly bad time.

They are seen standing in the queue for long hours to get their registration done for a check-up as the hospital doesn’t allow male family members to stand in line for them.

“Husband or family members accompanying the patients are treated as cattle class. No matter how ill a woman is, the hospital has made it compulsory for them to stand in the registration queue,” said Vimal Kumar, who came for his wife’s treatment.

“I came to the hospital at around 7.30 a.m. from Dadri in Uttar Pradesh and my wife had to stand in the queue for almost two hours to get the registration done,” he added.

Ill-treatment

When Mohammad Arif, who was accompanying his sick wife, questioned this rule, a security guard abused and asked him to go away basic information, like locating a doctor’s cabin.

Such is the rush at the OPD that many patients who come from far away places return without consulting doctors after waiting for six to seven hours.

“I came in the morning at 9 a.m. Then I had to stand in the queue for almost two and half hours for the registration. When my turn came around 5 p.m., the security guard asked me whether I had got my weight and blood pressure checked,” said a seven-month-old pregnant Roji Kumari.

“I forcibly entered the room but doctor asked me to come back after getting these check-ups done. So I left the hospital without treatment,” she said.

She was not alone, and around 20 to 30 patients shared her plight. Some of them had been trying to meet the doctor for a week.

“There are no attendants to guide and help. We have to deal with security guards who are rude,” said Shalini Sharma.

ESIC claims to be one of the largest social security organisations in the world and has state-of-art facilities at its various hospitals.

Source: <http://www.deccanherald.com/content/290769/endless-wait-noida-esi-hospital.html>

Self Assessment

Notes

State whether the following statements are true or false:

1. The Act makes any distinction between casual and temporary employees or between technical and non-technical employees.
2. The definition of "employee" includes any member of the Indian naval, military or air force.
3. "Wages" means all remuneration paid in cash if the terms of the contract are fulfilled, and includes any payment in any period of authorised leave

13.2 Scope and Objective of the Act

The Employees' State Insurance Act, 1948, is a pioneering measure in the field of social insurance in our country. The subject of health insurance for industrial workers was first discussed in 1927 by the Indian Legislature, when the applicability of the Conventions adopted by the International Labour Conference was considered by the Government of India. The Royal Commission on Labour, in its report (1931), stressed the need for health insurance for workers in India. One of the earlier decisions of the Labour Ministers' Conferences between 1940 and 1942 was to invite an expert to frame a scheme of health insurance for workers. In pursuance thereof, the responsibility for preparing a detailed scheme of health insurance for industrial workers was entrusted in March 1943 to Prof. B.P. Adarkar who submitted his report in December 1944. This was considered by the Government of India and State governments as well as other interested parties. The Adarkar Plan and various other suggestions emerged finally in the form of Workmen's State Insurance Bill 1946, which was then referred to a Select Committee in November 12, 1947: The Select Committee. extended the cover-age to all the employees in factories, and changed its name from Workmen's State Insurance Bill to Employees' State Insurance Bill.



Did u know? The Employees' State Insurance Act came into force from 19th April 1948. The scheme framed under the Act aims at providing for certain cash benefits to employees in the event of sickness, maternity, employment injury, and medical facilities in kind, and 18 contains provisions for certain other matters having bearing thereon.

The Employee State Insurance Act, [ESIC] 1948, is a piece of social welfare legislation enacted primarily with the object of providing certain benefits to employees in case of sickness, maternity and employment injury and also to make provision for certain others matters incidental thereto. The Act in fact tries to attain the goal of socio-economic justice enshrined in the Directive principles of state policy under part 4 of our Constitution, in particular articles 41, 42 and 43 which enjoin the state to make effective provision for securing, the right to work, to education and public assistance in cases of unemployment, old age, sickness and disablement. The act strives to materialise these avowed objects through only to a limited extent. This Act becomes a wider spectrum than factory Act. In the sense that while the factory Act concerns with the health, safety, welfare, leave etc. of the workers employed in the factory premises only. But the benefits of this Act extend to employees whether working inside the factory or establishment or else where or they are directly employed by the principal employee or through an intermediate agency, if the employment is incidental or in connection with the factory or establishment.

13.2.1 Objectives of this Act

The object of the Act is to secure sickness, maternity, disablement and medical benefits to employees of factories and establishments and dependents' benefits to the dependents of such employees.

Notes

The major objective of the Act was to provide certain benefits to employees in case of sickness, maternity and injury (during employment) and for providing other benefits in relation to the main objectives.

Self Assessment

Fill in the blanks:

4. The Act, 1948, is a pioneering measure in the field of social insurance in our country.
5. The Employees' State Insurance Act came into force from
6. The Act in fact tries to attain the goal of socio-economic justice enshrined in the principles of state policy under part 4 of our Constitution.

13.3 Applicability and Coverage of this Act

Under Section 1(4) of the Act, the implementation of the scheme is territorial. The Act applies in the first instance to all factories using power and employing 20 or more persons on wages. The provisions of the Act have also been extended, or are being gradually extended, under Section 1(5) of the Act to cover

- Smaller power-using factories employing 10 to 19 persons;
- Non-power using factories employing 20 or more persons;
- Shops;
- Hotels and restaurants;
- Cinemas, including preview theatres;
- Newspaper establishments; and
- Road motor transport undertakings employing 20 or more persons.

The Act, however, does not apply to a mine or railway running shed, and specified seasonal factories. The State Government may extend the provisions of the Act to cover other establishments or class of establishments, industrial, commercial, agricultural or otherwise, in consultation with the Corporation and with the approval of the Central Government, after giving six months notice of its intention to do so in the Official Gazette.



Example: The ESIC Act applies to non-seasonal, power using factories or manufacturing units employing ten or more persons and non-power using establishments employing twenty or more persons.

Under the enabling provisions of the Act, a factory or establishment, located in a geographical area, notified for implementation of the scheme, falls in the purview of the act. Employees of the aforesaid categories of factories or establishments, but drawing wages only up to ₹ 6,500 a month are entitled to health insurance cover under the ESI act. The wage ceiling for purpose of coverage is revised from time to time; to keep pace with rising cost of living and subsequent wage hikes.



Caution The present ceiling of ₹ 6,500 has been effective from 1 January 1997 the appropriate government state or central is empowered to extend the provision of the ESI Act to various classes of establishment, industrial, commercial, agricultural or otherwise in nature.

**Notes**

As soon as the above conditions are fulfilled the employer should furnish the details in Form-01 to ESI office for registration under the ESI Act, 1948 and Obtaining of the employer's Code No.

Notes

13.3.1 Wage Ceiling for Coverage

The monthly wage limit for coverage under the ESI act would be such as prescribed by the central government in the ESI Central Rules, 1950. The existing wage ceiling for coverage excluding remuneration for over-time work is ₹ 6500 per month rule 50 of ESI Central Rules, 1950. An employee who is covered at the beginning of a contribution period shall continue to remain covered till the end of that contribution period notwithstanding the fact that his wages may exceed the prescribed wage ceiling at any time after the commencement of that contribution period. Wage ceiling for purpose of coverage is revised from time to time by the central government on the specific recommendation of the corporation, at present the corporation has recommended for the increase of the wage limit to ₹ 10,000 and its implementation is awaited.

13.3.2 Coverage

With the implementation of ESI scheme, at just two industrial centres in 1952, namely Kanpur and Delhi, there was no looking back since then in terms of its geographic reach and demographic coverage. Keeping pace with the process of industrialization, the scheme today stands implemented at over 679 centres in 25 states and union territories. The Act now applies to 230 thousand factories and establishments across the country, benefiting about 8.30 million family units of workers in the wage brackets. As of now, the total beneficiary population stands at about 32 million.

The Act applies, in the first instance, to, non-seasonal factories employing 10 or more persons. The provisions of the Act are being extended area-wise by stages. The Act contains an enabling provision under which the "appropriate government" is empowered to extend the provisions of the Act to other classes of establishments - industrial, commercial, agricultural or otherwise. Under these provisions most of the State Govts. have extended the provisions of the Act to new classes of establishments namely: shops, hotels, restaurants, cinemas including preview theatres, road-motor transport undertakings and newspaper establishments employing 20 or more coverable employees. The Scheme has also been extended to Educational Institutions employing 20 or more persons in Rajasthan, Bihar, Pondicherry, Jammu & Kashmir, Uttarakhand, Chattisgarh, West Bengal, Jharkhand, Kerala, Uttar Pradesh, Andhra Pradesh, Assam, Punjab, Tamil Nadu and to Private Medical Institutions in the State of West Bengal, Rajasthan, Bihar, Kerala, Himachal Pradesh, Uttarakhand, Andhra Pradesh, Punjab, Assam, UT Chandigarh, Jharkhand and Orissa. As of now, employees of factories/establishments mentioned above in the implemented areas and drawing wages (excluding overtime) not exceeding ₹ 15,000 per month are covered under the Act.

Self Assessment

State whether the following statements are true or false:

7. The Act applies in the first instance to all factories using power and employing 20 or more persons on wages.
8. The monthly wage limit for coverage under the ESI act would be such as prescribed by the central government in the ESI Central Rules, 1960.

- Notes** 9. The Act applies, in the first instance, to, non-seasonal factories employing 10 or more persons.

13.4 Benefits of this Act

All the benefits under the scheme are paid in cash except medical benefit, which is given in kind. The benefits are:

13.4.1 Sickness and Extended Sickness Benefit

For sickness during any period, an insured person is entitled to receive sickness cash benefits at the standard benefit rate for a period of 91 days in any two consecutive benefit periods. The eligibility condition for sickness benefit is that the contribution of an insured person should have been paid/or payable for not less than half the number of days of the corresponding contribution period. An insured person suffering from, any special, long-term ailment - for example, tuberculosis, leprosy, mental disease - is eligible for extended sickness benefit at a rate which is 40 % higher than the standard, benefit rate, rounded to the next higher multiple of 5 paise, for a period of 124/309 days.



Notes

The Director General may enhance the duration of extended sickness benefit beyond the existing limit of 400 days to a maximum, period of 2 years in deserving cases duly certified by a medical board. The facility of extension would be available up to the date on which the insured person attains the age of 60 years. The rate of this benefit is 40 per cent more than the standard benefit rates for 7 days for vasectomy and 14 days for tubectomy. This is paid in addition to the usual sickness benefits.

13.4.2 Maternity Benefit

An insured woman is entitled to maternity benefit at double the standard benefit rate. This is practically equal to full wages for a period of 12 weeks, of which not more than 6 weeks shall precede the expected date of confinement. Additional maternity benefit is given in case of miscarriage. In case of sickness arising out of pregnancy, confinement, premature birth of a child or miscarriage, an additional benefit is given for a period not exceeding one month. The eligibility condition for maternity benefit is 80 days in one or two preceding contribution periods of one year.

13.4.3 Disablement Benefit

If a member suffers an injury in the course of his employment, he will receive free medical treatment and temporary disablement benefit in cash, which is about 70 per cent of the wages, as long as the temporary disablement lasts, provided that the temporary disablement has lasted for not less than 3 days, excluding the day of the accident. In case of permanent total disablement, the insured person will be given a life pension at full rate i.e., about 70 per cent of his wages, while in case of partial permanent disablement, a portion of it will be granted as life pension. The benefit is paid for-Sundays as well. At the option of the beneficiary, the permanent disablement pension may be commuted to a lump sum payment, if the rate of benefit is less than one rupee and fifty paise per day.

13.4.4 Dependants' Benefit

The dependants' benefit consists of timely help to the eligible dependants of an insured person who dies as a result of an accident, or an occupational disease arising out of, and in the course of, employment. Pension at the rate of 40 per cent more than the standard benefit rate (70 per cent of wages) will be paid periodically to the widow and children. It will be available to the widow as long as she lives or until she marries; to sons' and unmarried daughters up to the age of 18 without any proof of education; and to infirm or wholly dependant offsprings long as the infirmity lasts. Where neither a widow nor a child is left, the dependants' benefit is payable to a dependant parent or grandparent for life, but equivalent to 3/10ths of the full rate; and if there are two or more parents or grandparents, the amount payable to them shall be equally divided between them.

13.4.5 Funeral Benefit

This benefit was introduced in 1968. Accordingly an amount not exceeding rupees one thousand five hundred is payable as funeral benefit to the eldest surviving member of the family of the deceased insured person. The time limit for claiming the benefit is three months from the death of the insured person.

13.4.6 Medical Benefit

The kingpin of the scheme is, medical benefit, which consists of free medical attendance and treatment of insured persons and their families. This benefit has been divided into three parts:

- (i) **Restricted Medical Care:** it consists of out-patient medical care at dispensaries or panel clinics.
- (ii) **Expanded Medical Care:** This consists of consultation with specialists and supply of such medicines and drugs as may be prescribed by them.
- (iii) **Full Medical Care:** It consists of hospitalisation facilities, services of specialists and such drugs and diet as are required for in-patients.

An insured person and members of his family are entitled to medical care of all the above three varieties.

13.4.7 Other Benefits

- (a) Vocational rehabilitation: In case of disabled insured persons under 45 years of age with 40% or more disablement.
- (b) Free supply of physical aids and appliances such as crutches, wheelchairs, spectacles and other such physical aids.
- (c) Preventive health cares services such as immunization, family welfare services, HIV/AIDS detection, treatment etc.
- (d) Medical bonus ₹ 250 is paid to an insured woman or in respect of the wife of an insured person in case she does not avail hospital facilities of the scheme for child delivery.



Task

As a Manager, what benefits will you provide to your female employees?

Notes

Self Assessment

Fill in the blanks:

10. The rate of this benefit is per cent more than the standard benefit rates for 7 days for vasectomy and 14 days for tubectomy.
11. at the rate of 40 per cent more than the standard benefit rate (70 per cent of wages) will be paid periodically to the widow and children.
12. Medical bonus is paid to an insured woman or in respect of the wife of an insured person in case she does not avail hospital facilities of the scheme for child delivery.

13.5 The Role of ESI Corporation

Section 3 of this Act provides for the establishment of Employees' State Insurance Corporation by the Central Government for administration of the Employees' State Insurance Scheme in accordance with the provisions of Act. Such Corporation shall be body corporate having perpetual succession and a common seal and shall sue and be sued by the said name.

13.5.1 Constitution

The Central Government appoints a chairman, a vice-chairman and other members representing interests of employers, employees, state governments/union territories and medical profession. Three members of the Parliament and the Director General of the Corporation are its ex-officio members. [Section 4]

13.5.2 Powers and Duties of the Corporation

Section 19 empowers the Corporation, to promote (in addition to the scheme of benefits specified in the Act), measures for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured and incur in respect of such measures expenditure from the funds of the Corporation within such limits as may be prescribed by the Central Government.



Notes

Section 29 empowers the Corporation (a) to acquire and hold property both movable and immovable, sell or otherwise transfer the said property; (b) it can invest and reinvest any moneys which are not immediately required for expenses and or realise such investments; (c) it can raise loans and discharge such loans with the previous sanction of Central Government; (d) it may constitute for the benefit of its staff or any class of them such provident or other benefit fund as it may think fit.

However, the powers under Section 29 can be exercised subject to such conditions as may be prescribed by the Central Government.

13.5.3 Appointment of Regional Boards etc.

The Corporation may appoint Regional Boards, Local Committees and Regional and Local Medical Benefit Councils in such areas and in such manner, and delegate to them such powers and functions, as may be provided by the regulations. (Section 25)

13.5.4 Role of ESIC

Notes

The roles of ESIC are as follows:

1. To develop a responsive, purposive and productive relationship with employers.
2. Seek their active involvement in the improvement of the scheme as a confidence building measure.
3. Provide them necessary guidance in fulfilling their lawful obligations under the ESI Act.
4. Make available to them requisite Forms and proformaes as may be required by them from time to time.
5. To ensure that any lax medical certification on part of ESIC does not bring down the productivity of a factory or establishment.
6. To ensure that in case of any difficulty, doubt or misunderstanding, employer is given a chance to be heard at an appropriate level.
7. To ensure that all correspondence emanating from the employer is responded to, timely and objectively.
8. To ensure that an employer is not being harassed by any official of the Corporation authorised to inspect the premises or the records.
9. To ensure that any grievances received from employers are looked into promptly and pointedly for speedy redressal.

Self Assessment

Fill in the blanks:

13. of this Act provides for the establishment of Employees' State Insurance Corporation by the Central Government for administration of the Employees' State Insurance Scheme in accordance with the provisions of Act.
14. The Corporation may appoint Regional Boards, Local Committees and Regional and Local Medical Benefit Councils in such areas and in such manner, and delegate to them such powers and functions, as may be provided by the
15. The appoints a chairman, a vice-chairman and other members representing interests of employers, employees, state governments/union territories and medical profession. Three members of the Parliament and the Director General of the Corporation are its ex-officio members.

13.6 Role of ESI Hospital

Employees' State Insurance Hospitals in India are a part of ESIC (Employees' State Insurance Scheme of India), ESIC is a multidimensional social security system tailored to provide socio-economic protection to worker population and their dependants covered under the scheme. Besides full medical care for self and dependants, that is admissible from day one of insurable employment, the insured persons are also entitled to a variety of cash benefits in times of physical distress due to sickness, temporary or permanent disablement etc. resulting in loss of earning capacity, the confinement in respect of insured women, dependants of insured persons who die in industrial accidents or because of employment injury or occupational hazard are entitled to a monthly pension called the dependants benefit.

In ESIC, comprehensive medical care ranging from OPD, medical attendance, treatment, drugs, specialist consultation, hospitalization of insured persons (IPs) and their family members to super-speciality treatment, are provided under the Scheme.

Notes



Caution The ESI Scheme has the largest medical infrastructure under one umbrella, in India. Medical Care is provided through a huge network of 150 ESI Hospitals, 1372/91 ESI Dispensaries/ISM Units, 1380 Panel Clinics and 7340 IMOs. The ESI Scheme is also the largest employer of Medical and Para-Medical personnel of the country.

The ESI Corporation incurred about ₹ 268962.11 lakhs on the delivery of medical care in the last year. The expenditure is shared between the ESI Corporation and State Govt. in the ratio of 7:1. Medical Care expenditure is reimbursed to State Govt. based on ceiling which at present is ₹ 1500/- per IP unit/per annum.

The ESI Corporation has set up five zonal occupational Diseases Centre at New Delhi, Chennai, Kolkata, Mumbai and Indore for providing facilities for early detection and diagnosis of Occupational Diseases, and to cater to the needs of ESI Beneficiaries of the neighbouring State in the respective zones. The occupational diseases as defined in the third schedule of ESI Act, 1948 are considered to be arising out of/in the course of employment and are taken as equivalent to employment injury for providing Cash Benefits like Disablement Benefit, Dependents Benefit etc.



Example: All ESI Hospitals/Dispensaries provide services related to family welfare. The Corporation has also taken measures for control of AIDS among the working class of the country. A full fledged Directorate is working specially for family welfare services and AIDS Control at New Delhi. This Directorate works in co-ordination with NACO and also with Ministry of Health & Family Welfare, Govt. of India. Along with the Allopathic system of medicine, the ESI Corporation is also providing medical care through Indian System of Medicine (ISM) including Ayurveda, Yoga, Unani, Siddha and Homeopathy (AYUSH). About 95 ISM units are working in ESI Hospitals/Dispensaries throughout the country. For the purpose of providing of Disablement Benefit (in cash), references are made for measuring incapacity. There is a network of about 70 Medical Refrees throughout the country for finalizing such incapacity references.

The eligibility for super-specialty treatment is 3 months (with contribution paid for at least 39 days) of insurable employment for insured person (for self) and 6 months (with contribution paid for at least 78 days) of insurable employment by Insured Person for their family members. Such tertiary care (super-specialty treatment) is provided through in-house super speciality facilities available in some of ESI Hospitals or ESI-PGIMSRs or through large no. of advanced empanelled medical institutions on referral basis through tie-up arrangements. About 750 private hospitals in all India are now empanelled as tie-up Hospitals for ESIC.

ESI Corporation has taken a decision to set up one hospital in each State as Model Hospital. At present, ESIC has set up Model Hospital in 18 states. These hospitals are being up graded as per norms and standards laid down by ESI Corporation. The expenditure on Model Hospitals is fully borne by ESI Corporation. ESI Corporation is getting its hospitals and dispensaries graded by reputed organizations. Further action has been initiated for getting ISO certification in respect of hospitals and dispensaries. The range of services provided covers preventive, promotive, curative and rehabilitative services. Besides the out-patients services through dispensaries and IMP Clinics, the in-patient services are provided through ESI Hospitals or under arrangements with other hospitals. The ESI Corporation in its meeting held on 23.12.1997 approved the revision in the limit of expenditure on provision of initial equipments for new ESI Hospitals, Dispensaries, Detention wards and Ambulances. The expenditure on items given will be under shareable pool but from outside the ceiling on medical care.

As a part of initiative for overcoming the shortage of medical manpower and improving the services in ESI Hospitals, ESI Corporation has under taken a project for starting medical colleges, nursing colleges, dental colleges and training school for other para medical staff in ESIC/ESI Hospitals. Hospital Development Committees have been constituted in all ESI Hospitals and have

been given adequate administrative and financial powers for taking decisions for improvement in medical care facilities.

Notes



Did u know? ESI Corporation has decided to provide primary and secondary medical care services in the areas directly where the concentration is more than 5000 and there is no dispensary within 8 kms (5 kms in hilly areas) and where concentration is 25000 (15000 in hilly areas) and there is no hospital within 25 kms. This facility will be available till the ESI establishes its own hospital and dispensary.

Initial equipments for ESI Hospitals

The limit of expenditure for the purpose of providing initial equipments at the time of commissioning a new hospital is given below:-

1. Upto 50 beds ₹ 60 lacs
2. For 51 to 100 beds ₹ 85 lacs
3. For 101 to 250 beds ₹ 100 lacs
4. For 500 and above ₹ 150 lacs

Approved the Action Plan for the year 2000-2001 to develop the Super specialty within the existing ESI Hospitals and review of action on previous Action Plans for 1998-99 and 1999-2000. The State Govt. shall have to delegate adequate powers to the field level functionaries i.e. Director ESI Scheme, Medical Superintendents of ESI hospitals and Medical Officer In-charges of the ESI dispensaries for ensuring hassle free day-to-day functioning including purchase of drugs and dressings, maintenance of equipments and reimbursement of bills etc.

ESIC has taken a decision to provide primary, secondary and tertiary medical care services directly in the areas where there is no ESI Hospital within a distance of 25 kms. The facilities of ESIC would now be extended to workers in the unorganized sector under Rashtriya Swasthya Bima Yojna by making optimum use of under utilized hospitals and dispensaries of ESIC Corporation.

Self Assessment

State whether the following statements are true or false:

16. ESI Corporation has taken a decision to set up one hospital in each State as Model Hospital. At present, ESIC has set up Model Hospital in 20 states.
17. ESI Corporation has decided to provide primary and secondary medical care services in the areas directly where the concentration is more than 5000 and there is no dispensary within 8 kms.
18. ESIC has taken a decision to provide primary, secondary and tertiary medical care services directly in the areas where there is no ESI Hospital within a distance of 25 kms.

13.7 Penalties and Damages

The Act provides for penalties and damages for various offences. It also provides that if any person commits any offence after having been convicted by the court, he will be punishable, for every such subsequent offence, with imprisonment for a term which may extend up to ₹ 2,000 or both. If the subsequent offence is for failure to pay any contribution, then for every such subsequent offence a person is liable to punishment for a term of imprisonment which may extend up to one year and which shall not be less than 3 months; and he will also be liable to pay a fine up to ₹ 4,000:

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Any contribution due under the Act and not paid can be recovered through the District Collector under Section 45B of the Act as arrears of land revenue. The employer can raise any dispute for adjudication in the Employees' Insurance Court of the area, set up under Section 74 of the Act.

Under Regulation 31A, the employer is liable to pay interest at the rate of 6 per cent per annum for each day of default or delay in the payment of his contribution. In addition, under Section 85-B of the Act, the Corporation is empowered to recover damages from the employer who fails to pay the contribution or delays payment. The amount of damages, however, cannot exceed the amount of contribution. The damages can also be recovered as arrears of land revenue.

Self Assessment

State whether the following statements are true or false:

19. The Act does not provide for penalties and damages for various offences.
20. The employer can raise any dispute for adjudication in the Employees' Insurance Court of the area, set up under Section 76 of the Act.
21. Under Regulation 31A, the employer is liable to pay interest at the rate of 6 per cent per annum for each day of default or delay in the payment of his contribution.



Case Study

The Role of ESIC in Universal Health Care

Medical care is widely regarded as the foremost concern of a social security system since health is important to all age groups and all categories of people. All comprehensive social security programmes therefore make provision for medical care. It is one of the benefits to be provided on a universal basis under the Social Protection Floor programme envisaged by the ILO.

Improvement in the health status of the population by providing access to health care and facilitating utilisation of health, family welfare, and nutrition services with special focus on the underserved has been the main thrust of social development programs in the country. The responsibility of building infrastructure and manpower rests with the State governments, supported by funds from the Central Government. Major disease control programmes and family welfare programmes are funded by the Centre (some with assistance from external agencies) and are implemented through the infrastructure provided by the States.

There are a variety of arrangements available for providing healthcare to people in India. They consist, from the point of view of financing, of social assistance programmes, social insurance schemes including the Employees State Insurance Scheme (ESIS) and Rashtriya Swasthya Bima Yojana, health insurance schemes introduced by State governments, and health insurance schemes run by insurance companies in the public as well as private sector. As far as the actual provision of healthcare services is concerned, there are hospitals and dispensaries being run by Central and State Governments, including the Central Government Health Service Scheme, the Railways Health Service Scheme, Defence Services Health Service Scheme, the Employees State Insurance Corporation (ESIC), as well as hospitals and dispensaries being run by private and voluntary agencies.

Yet coverage of all these arrangements is limited and there is a wide gap between demand and supply for these services. In order to bridge this gap, the Approach to the Twelfth Plan approved by the Government envisages the introduction of a Universal Health Care Scheme. The Planning Commission High level Expert Group on Universal Health

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Coverage, under the chairmanship of Prof K.Srinath Reddy, has recommended inter alia that the National Health Package be financed by the State with services being provided by public as well as private institutions. The Committee has further recommended that insurance companies (for profit ones) not be used for the purchase of healthcare on behalf of the Government.

There is however lack of clarity about the role of various agencies in providing healthcare. In particular, the policy papers are silent about the role of the Employees State Insurance Corporation.

The ESIC is a statutory corporation responsible for administration of the Employees State Insurance Scheme framed under the Employees State Insurance Act. This scheme was, until recently, the only social insurance scheme in the country. The main objective of the Scheme is to provide certain benefits to workers and their families in the event of sickness, maternity, employment injury or death of workers.

Of all the services offered by the ESIC, the Corporation attaches the greatest importance to medical benefit; bulk of its funding is used for providing this benefit. Medical benefit is available to an insured person and his family in kind from the date of his entry into insurable employment. Medical benefit has also been extended to permanently disabled persons who cease to be in employment due to employment injury. The benefit is also extended to insured persons after their retirement on the same conditions.

The Scheme provides for comprehensive medical care in the form of medical attendance and specialist consultations, supply of drugs and injections, free hospitalization care, outpatient service, specialist and hospital services.

Within the ambit of the program is a drive towards immunisation of young children, of insured persons against diseases like diphtheria, polio, tetanus, measles and tuberculosis. It provides family welfare services to the beneficiaries of the Scheme. Insured persons and members of their families are provided with artificial limbs, hearing aids, cervical collars, walking calipers, crutches, wheelchairs and pacemakers as part of their medical treatment.

Conceptually, from the point of view of the insured persons, the ESI Scheme can be said to be one of the best medical insurance schemes in India. But it suffers from several drawbacks.

The Act envisages that the medical benefits will be provided by the State Governments; the Corporation may enter into agreements with these State Governments to decide the nature and scale of medical treatment that should be provided and cost sharing thereof. The Act also provides for the Corporation itself, in consultation with the State government concerned, undertaking the responsibility of providing medical benefit to insured persons in a State. Accordingly, medical treatment and attending to insured persons and their families is being provided by the State Governments everywhere, except in Delhi where the Corporation has undertaken this responsibility.

The responsibility for creating the necessary infrastructure for providing medical benefits therefore rests with the State Governments though the cost is met by the Corporation. The inability or the unwillingness of the State governments to discharge this responsibility has come in the way of expansion of the ESI Scheme. This is one of the reasons for the slow growth of the scheme.

The arrangements under which the Corporation provides funds and the State Governments implement the scheme has come in for criticism on the ground that there is a dichotomy in the administration of medical benefit which is not conducive to efficiency and has resulted in dissatisfaction among the insured persons. The committees which reviewed the workings

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of the Scheme have recommended that the Corporation take over the administration of the medical benefit. There has been no decision on this recommendation but the process of taking over the administration of medical benefit by the Corporation is reported to have commenced with the Corporation taking charge of a few hospitals to be run as model ones.

If the Corporation is free from this constraint, it should be possible for it to expand medical facilities significantly. It can become a major instrument for providing Universal Health Care and assume responsibility for providing medical care to all workers in the organised as well as the unorganized sector.

Question

Critically analyse the above case.

Source: <http://thealternative.in/content-type/views/rka-subramanya-the-role-of-esic-in-universal-health-care/>

13.8 Summary

- The comprehensive and well-designed social security programme is administered by an apex corporate body called the Employee State Insurance Corporation.
- It comprises members representing vital interest groups that include, employee, employers, the central and state government, besides, representatives of parliament and medical profession.
- The corporation is headed by the union minister of labour, as its chairman, where as, the director general, appointed by the central government functions as its chief executive officer.
- A standing committee constituted from amongst the members of the corporation, acts as an executive body.
- The medical benefit council, constituted by the central government, is yet another statutory body that advises the corporation on matters related to effective delivery of services to the beneficiary population.
- The corporation with its central head quarters at New Delhi operates through a network of 26 regional and sub- regional offices located in various States.
- The respective state governments take care of the administration of medical benefit except in case of Delhi and Noida, Greater Noida areas of Uttar Pradesh, where, the corporation administers medical facilities directly.
- The Government of India through notification in the Official Gazette has amended the Employees' State Insurance (Central) Rules, 1950. Accordingly, as per rule 50, the wage limit for coverage of an employee under Employees State Insurance Act has been enhanced from ₹ 10,000 to ₹ 15,000 with effect from 1st May 2010.
- ESI Corporation has taken a decision to set up one hospital in each State as Model Hospital.
- The Central Government appoints a chairman, a vice-chairman and other members representing interests of employers, employees, state governments/union territories and medical profession. Three members of the Parliament and the Director General of the Corporation are its ex-officio members.

13.9 Keywords

Applicability: Relevance by virtue of being applicable to the matter at hand.

Corporation: Corporations are business entities separate from their owners, corporations have shareholders, and the shares may be privately or closely held.

Coverage: The initiation of coverage leads to the subsequent publishing of reports, research and recommendations related to the issue.

Disablement: A disability may be physical, cognitive, mental, sensory, emotional, developmental or some combination of these.

Employee: An individual who works part-time or full-time under a contract of employment, whether oral or written, express or implied, and has recognized rights and duties.

Insurance: Insurance is the equitable transfer of the risk of a loss, from one entity to another in exchange for payment.

Maternity: The quality of having or showing the tenderness and warmth and affection of or befitting a mother.

Penalty: A punishment imposed for violating a law or agreement; money one will pay for breaking a law or violating part or all of the terms of a contract.

Wage Ceiling: Highest pay possible within a particular wage bracket and is agreed upon as the upper range of a wage bracket.

Wages: Monetary remuneration computed on hourly, daily, weekly, or piece work basis.

13.10 Review Questions

1. Define Employee.
2. Discuss the objective of ESIC.
3. Explain the applicability of ESIC Act.
4. Highlight the coverage of ESIC Act.
5. What are the benefits of ESIC Act?
6. Discuss the Powers and duties of the ESI Corporation.
7. Highlight the role of ESIC.
8. Describe the role of ESI Hospital.
9. Explain the initial equipments for ESI Hospitals.
10. Throw some light on the penalties and damages in this Act.

Answers: Self Assessment

- | | |
|------------------|--------------|
| 1. False | 2. False |
| 3. True | 4. ESI |
| 5. 19 April 1948 | 6. Directive |
| 7. True | 8. False |
| 9. True | 10. 40 |

Notes	11. Pension	12. ₹ 250
	13. Section 3	14. Regulations
	15. Central Government	16. False
	17. True	18. True
	19. False	20. False
	21. True	

13.11 Further Readings



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Unit 14: The Payment of Gratuity Act, 1972

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Objectives

After studying this unit, you will be able to:

- Explain the genesis of the Act
- Get an overview of the definitions under this Act
- Describe the rights and obligations of the employer
- Discuss benefit of this Act
- Get an overview of payment of gratuity

Introduction

In the previous unit, we dealt with the ESIC Act. The umbrella legislation relating to gratuity is the Payment of Gratuity Act, 1972. The Act was enacted to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments employing ten or more persons and for matters connected therewith or incidental thereto. The appropriate Government may, by notification, and subject to such conditions as may be specified in the notification, exempt any establishment to which

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this Act applies to any employee or class of employees employed therein, from the operation of the provisions of this Act, if in the opinion of the appropriate Government, the employees in such establishment are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. Gratuity is a voluntary Payment made by the employer to the employee in recognition of continuous, meritorious services and sincere efforts by the employee towards the organization. It is governed under the Payment of Gratuity Act 1972. It is an Act to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, Oilfields, plantations, ports, railway companies, and shops or other establishments. The purpose of this Unit is to enable the students to comprehend basic expressions. At the end of this unit you should be able to understand various concepts the Payment of Gratuity Act.

14.1 Genesis of the Act

Gratuity as an additional retirement benefit has been secured by labour in numerous instances, either by agreement or by awards. It was conceded as a provision for old age and a reward for good, efficient and faithful service for a considerable period. But in the early stages, gratuity was treated as a payment gratuitously made by an employer at his will and pleasure. In the course of time, gratuity came to be paid as a result of bilateral agreements or industrial adjudication. Even though the payment of gratuity was voluntary in character, it had led to several industrial disputes. The Supreme Court had laid down certain broad principles to serve as guidelines for the framing of the gratuity scheme. They were

1. The general financial stability of the concern;
2. Its profit-earning capacity;
3. Profits earned in the past;
4. Reserves and the possibility of replenishing the reserves; and
5. Return on capital, regard being had to the risk involved.

The first central legislation to regulate the payment of gratuity was the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955. The Government of Kerala enacted legislation in 1971, for payment of gratuity to workers employed in factories, plantations, shops and establishments. In 1971, the West Bengal Government promulgated an ordinance which was subsequently replaced by the West Bengal Employees' Payment of Compulsory Gratuity Act, 1971. After the enactment of these two Acts, some other state governments also voiced their intention of enacting similar measures in their respective states. It became necessary, therefore, to have a Central law on the subject so as -

- to ensure a uniform pattern of payment of gratuity to the employees throughout the country, and
- to avoid different treatment to the employees of establishment having branches in more than one state, when, under the conditions of their service, the employees were liable to transfer from one state to another.

Hence the Government of India enacted legislation on gratuity. The Act came into force from September 16, 1972. The Payment of Gratuity Central Rules also came into force from September 16, 1972.



Did u know? The Act is administered by the Central Government in:- (i) establishments which are under its control; (ii) establishments having branches in more than one State; and (iii) major ports, mines, oil fields and the railways. While, in all other cases, it is administered by the State Governments and the Union Territory administrations. The appropriate Government may, by notification, appoint any officer to be a controlling authority, who

shall be responsible for the administration of this Act and different controlling authorities may be appointed for different areas.

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Besides, here is Central Industrial Relation Machinery (CIRM) in the Ministry of Labour which is responsible for enforcing this Act. It is also known as the Chief Labour Commissioner (Central) [CLC(C)] Organisation. It is headed by the Chief Labour Commissioner (Central).

14.1.1 Main Provision

The main provisions of the Act are:-

1. Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years:- (i) on his superannuation; or (ii) on his retirement or resignation; or (iii) on his death or disablement due to accident or disease, provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement.
2. The employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned for every completed year of service or part thereof in excess of six months.



Example: In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen. While, in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account.

3. The amount of gratuity payable to an employee shall not exceed three lakhs and fifty thousand rupees.
4. For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the reduced wages.
5. The gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.



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The gratuity payable to an employee may be wholly or partially forfeited:- (i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part; or (ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

6. If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon at such rate as the Central Government may, by notification, specify, from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto.

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7. Whoever, for the purpose of avoiding any payment to be made by himself under this Act or of enabling any other person to avoid such payment, knowingly makes or causes to be made any false statement or false representation, shall be punishable with imprisonment or with fine or with both. Also, if an employer contravenes or makes default in complying with any of the provisions of this Act or any rule or order made thereunder, shall be punishable with imprisonment or with fine or with both.

14.1.2 Objective of this Act

The main objective of this Act is to provide for a Scheme for the payment of Gratuity to employees engaged in factories, mines, oil fields plantations, ports, railway companies, shops or other establishments and for matter related thereof.

The objects of the Payment of Gratuity Act, 1972 are mentioned below-

- (i) To provide for a Scheme for the payment of Gratuity to employees.
- (ii) To provide for matters connected with or incidental to the Scheme for payment of Gratuity.
- (iii) To provide retiring benefits to employees who have rendered continuous services to his employer and thereby contributed to his prosperity.
- (iv) To define the principles of payment of gratuity according to the prescribed formula.
- (v) To provide machinery for the employment of liability for payment of gratuity.

14.1.3 Applicability and Coverage of this Act

Application and Coverage of the Act to an employed person depends on two factors.

Firstly, he should be employed in an establishment to which the Act applies.

Secondly, he should be an “employee” as defined in Section 2(e).

The Act is applicable and covers the following aspects:

- 1. Every factory, mine, oilfield, plantation, port and Railway Company;
- 2. Every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a state; in which 10 or more , persons are employed or were employed on any day of the preceding 12 months;
- 3. To every motor transport undertaking in which 10 or more persons are employed or were employed on any day of the preceding 12 months;
- 4. Such other establishments or class of establishments in which 10 or more employees are employed or were employed on any day of the preceding 12 months, as the Central Government may, by notification, specify in this behalf.

A shop or establishment once covered shall continue to be covered notwithstanding that the number of persons employed therein at any time falls below 10.



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In exercise of the powers conferred by clause (c), the Central Government has specified Motor transport undertakings, Clubs, Chambers of Commerce and Industry, Inland Water Transport establishments, Solicitors offices, Local bodies, Educational Institutions, Societies, Trusts and Circus industry, in which 10 or more persons are employed or were employed on any day of the preceding 12 months, as classes of establishments to which the Act shall apply.



Caselet

Karnataka State Road Transport Corporation, Bangalore Rural Division, Bangalore Vs. The Deputy Labour Commissioner and the Appellate Authority

The 3rd Respondent an employee of the Petitioner- Road Transport Corporation on attaining the age of superannuation on 30.4.2005, was entitled to gratuity by computing the quantum either in terms of the KSRTC Servants Gratuity Regulations, for short Regulations or the Payment of Gratuity Act, 1972, for short Act, whichever is beneficial. Petitioner reckoned 27 years and 6 months as the period of continuous service, by excluding 7 years, 3 months and 22 days from out of 34 years, 9 months and 29 days, alleging absence, leave without salary, suspension and others and accordingly, computed ₹ 1,70,500 as gratuity, in terms of the Regulations, from out of which was deducted ₹ 54,350 on the premise that the 3rd Respondent was liable to pay towards discharge of a loan extended by the State Bank of Mysore, HSR Layout, while in service. The 3rd Respondent aggrieved by the exclusion of the period of service and the deduction towards discharge of loan, filed an application under Rule 10 of the Payment of Gratuity (Central) Rules, 1972, before the 2nd Respondent- Controlling Authority. In the appeal, the Petitioner contended that 7 years, 3 months and 22 days being the break in service and not 'continuous service' within the definition of the said term under Section 2(A) of the Act deserves exclusion for computation of gratuity, since the 3rd Respondent was absent, suffered orders of leave without salary, suspension and others while in service. It is next contended that the 3rd Respondent having not discharged the debt due to State Bank of Mysore, hence the deduction of ₹ 54,350. The Court observed that the requirement of Section 2A of the Act in order to establish interrupted service so as to treat it as break in service is the orders passed in that regard treating the period of absence as break in service, in accordance with the standing orders, rules or regulations governing the employees of the establishment. In the instant case, there is no evidence to establish orders passed by the Authorities treating as break-in-service the period of suspension, leave without salary, absence from service and others, since mere absence, per se, is not break-in service, breach falling within the definition of the term 'continuity of service' under the Act. In that view of the matter, no exception can be taken to the reasons, findings and conclusions arrived by the Controlling Authority and Appellate Authority under the Act, declining to accept the plea to treat that period as break in service, and deny a computation of gratuity by including the said period as 'continuous service'. The Court further held that the last contention over justification to deduct and discharge the loan with the State Bank of Mysore, HSR Layout, is frivolous. Sub-Sections (1) and (6) of Section 4 of the Act when read, in conjunction, the only irresistible conclusion is deduction by way of forfeiture to the extent of damage or loss caused by the employee during his service, from the gratuity of that employee, whose service is terminated for any act, willful omission or negligence causing any damage or loss or destruction of property belonging to the employer; and the gratuity payable to an employee may be wholly or partially forfeited; if the service of such employee is terminated for his riotous disorderly conduct or any other act of violence on his part; or if the service of such employee is terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment. The Court held that in the instant case the service of the 3rd Respondent was not terminated for any of the aforesaid reasons, so as to withhold gratuity on the wholly or partially so as to fall within the Sub-Section (6) of Section 4 of the Act. That being the factual position, deduction of ₹ 54,350 allegedly towards discharge of the loan extended to the 3rd Respondent by the State Bank of Mysore, HSR Layout cannot but be held to be an illegal. The Court held that the right to gratuity is a statutory right and cannot be withheld under any circumstances, but

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Notes

for the exception enumerated in Sub-Section (6) of Section 4 of the Act. It is elsewhere said that "Gratuity" as the term itself suggests is a gratuitous payment extended to an employee on retirement or discharge, in addition to other retiral benefits payable to the employee. The Court held that indisputably the Petitioner-Corporation illegally deducted the amount from out of the gratuity payable to the 3rd Respondent, which did not have the permission under the Act much less the Regulation, since no provision under the Regulation is shown to invest such a power in the Petitioner.

Source: <http://www.chadha-co.com/pdfs/C&Co-Labour-Law-Update-April-May-2012.pdf>

Self Assessment

State whether the following statements are true or false:

1. Gratuity as an additional retirement benefit has been secured by labour in numerous instances, either by agreement or by awards.
2. The Government of India enacted legislation on gratuity.
3. If the amount of gratuity payable under this Act is paid by the employer, within the prescribed time, to the person entitled thereto.

14.2 Definitions

In this Act, unless the context otherwise requires, -

1. **Completed Year of Service:** The term 'completed year of service' means continuous service for one year. An employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order imposing a punishment or penalty or treating the absence as break in service has been passed in accordance with the standing orders, rules or regulation governing the employees of the establishment), lay-off, strike or a lockout or cessation of work not due to any fault of the employees, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act.
 - (i) Where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of the above clause for any period of one year or six months, he shall be deemed to be in continuous service under the employer if he has actually worked for 190 days during the preceding 12 months in an establishment which works less than 6 days a week and 240 days in any other case;
 - (ii) Further, for determining the continuous period of six months, an employee should have completed 95 days in an establishment which works for not less than 6 days in a week and 120 days in any other case.
2. **Employee:** An employee is a person (other than apprentice) employed on wages (no wage ceiling) in any establishment, factory, mine, oilfield, plantation, railway company or shop, to do any - skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work, where the terms of such employment are express or implied, and includes any such person, who is employed in a managerial or administrative capacity, but does not include any person who holds a civil post under the Central Government or a State Government, or who is subject to the Air Force Act, 1950, the Army Act, 1950, or the Navy Act, 1957.



Notes

The family consists of:

- (i) In the case of a male employee, himself, his wife, his children, whether married or unmarried, his dependant-parents and the widow and children of his predeceased son, if any.
- (ii) In the case of female employee, herself, her husband, her children, whether married or unmarried, her dependant parents, and the dependant parents of her husband, and the widow and children of her predeceased son, if any.

Notes

A female employee can exclude her husband from her family by a notice in writing to the controlling authority. In such event, her husband and his dependent parents will not be deemed to be included in her family unless the said notice is subsequently withdrawn.

3. **Wages:** The term 'wages' under the Act means all emoluments, which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance, overtime wages and any other allowance.
4. **Retirement:** The term "retirement" has been defined under the Act as the termination of the service of an employee otherwise than on superannuation. Superannuation means the attainment of such age by the employee is fixed in the contract or conditions of service as the age on the attainment of which he has to leave the employment where there is no such provision, then attainment of the age of 58 years by the employee.

Self Assessment

Fill in the blanks:

4. The term 'completed year of service' means continuous service for year.
5. A employee can exclude her husband from her family by a notice in writing to the controlling authority.
6. The term has been defined under the Act as the termination of the service of an employee otherwise than on superannuation.

14.3 Rights, Obligations and Benefit of the Employer

Following are the Rights and Obligations of the Employer:

1. Employers Duty to Determine and Pay Gratuity

Section 7(2) lays down that as soon as gratuity becomes payable the employer shall, whether the application has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the Controlling Authority, specifying the amount of gratuity so determined.

Section 7(3) of the Act says that the employer shall arrange to pay the amount of gratuity within thirty days from the date of its becoming payable to the person to whom it is payable.

Section 7(3A): If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at the rate of 10 per cent per annum:

Notes

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.

2. Dispute as to the Amount of Gratuity or Admissibility of the Claim

If the claim for gratuity is not found admissible, the employer shall issue a notice in the prescribed form to the applicant employee, nominee or legal heir, as the case may be, specifying reasons why the claim for gratuity is not considered admissible. A copy of the notice shall be endorsed to the Controlling Authority.

If the disputes relates as to the amount of gratuity payable, the employer shall deposit with the Controlling Authority such amount as he admits to be payable by him. According to Section 7(4) (e), the Controlling Authority shall pay the amount of deposit as soon as may be after a deposit is made:

- (i) to the applicant where he is the employee; or
- (ii) where the applicant is not the employee, to the nominee or heir of the employee if the Controlling Authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

Self Assessment

State whether the following statements are true or false:

- 7. Section 7(3A) lays down that as soon as gratuity becomes payable the employer shall, whether the application has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the Controlling Authority, specifying the amount of gratuity so determined.
- 8. If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at the rate of 12 per cent per annum.
- 9. A copy of the notice shall be endorsed to the Controlling Authority.

14.4 Benefit of this Act

Following are the benefits of this Act:

- 1. The quantum of gratuity is to be computed at the rate of 15 days wages (7 days wages in case of seasonal establishments) based on rate of wages last drawn by the employee concerned for every completed year of service or a part thereof exceeding 6 months.
- 2. The total amount of gratuity payable shall not exceed the prescribed limit.
- 3. In case where higher benefit of gratuity is available under any gratuity scheme of the Co., the employee will be entitled to higher benefit

Self Assessment

Fill in the blanks:

- 10. The quantum of gratuity is to be computed at the rate of days wages.
- 11. The total amount of payable shall not exceed the prescribed limit.
- 12. In case where higher benefit of gratuity is available under any gratuity scheme of the Co., the employee will be entitled to benefit.

14.5 Payment of Gratuity

Notes

Section 3 authorises the appropriate government to appoint any officer as a controlling authority for the administration of the Act. In Maharashtra, the labour courts in different localities are notified as controlling authorities and the President, Industrial Court; is an appellate authority under the Act.

Gratuity is payable to an employee on the termination of his employment after he has rendered continuous service for not less than 5 years - on his superannuation; or on his retirement or resignation; or on his death or disablement due to accident or disease. However, the completion of 5 years of continuous service for earning gratuity is not necessary if the termination of the employment of any employee is due to death or disablement. In case of death of the employee gratuity is payable to his nominee or to the guardian of such nominee.



Caution For every completed year of service or part, thereof its excess of six months, the employer has to pay gratuity to an employee at the rate of 15 days wages based on the rate of wages last drawn by the concerned employee. In the case of Piece-rated employee, daily wages are computed on the average of the total wages received by him for a period of 3 months immediately preceding the termination of his employment. For this purpose, the wages paid for any overtime work will not be taken into account. In the case of an employee employed in a seasonal establishment, and who is not so employed throughout the year, the employer shall pay gratuity at the rate of 7 days wages for each season. The amount of gratuity payable to an employee is not to exceed rupees three lakhs and fifty thousand.

The right of employees to receive better terms of gratuity under any award or agreement or contract with the employer is not taken away by this Act.

14.5.1 Forfeiture

If the services of an employee have been terminated for any act of willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, his gratuity can be forfeited to the extent of the damage or loss so caused to the employer. The gratuity payable to an employee can be wholly forfeited, if the services of such employee have been terminated for his riotous or disorderly conduct - or any other act of violence or an offence involving moral turpitude committed by him in the, course of his employment.

14.5.2 Exemption

The Act provides for the grant of exemption from the operation of the Act to any person or class of persons if they are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under the Act.



Did u know? Gratuity has been exempted from attachment in execution of any decree or order of any Civil, Revenue or Criminal Court. This relief is aimed at providing payment of gratuity to the person or persons entitled there to without being affected by any order of attachment by a decree of any Court.

Notes

14.5.3 Nomination

An employee who has completed one year of service has to name his/her nominee in the prescribed form. An employee in his nomination can distribute the amount of gratuity amongst more than one nominee. If an employee has a family at the time of making the nomination, it has to be made in favour of one or more members of the family. If nomination is made in favour of a person who is not a member of his family, the same is void. However, if the employee has no family at the time of making a nomination, he can make the nomination in favour of any person. But if such employee acquires a family subsequently, then such nomination becomes invalid forthwith, and thereafter the employee has to make a fresh nomination in favour of one or more members of his family: Nomination once made can be modified after giving due notice to the employer, If a nominee predeceases the employee, a fresh nomination is required to be made:

*Notes*

A person who is entitled to gratuity has to apply himself/herself or, through an authorised person to the employer for gratuity within the prescribed time. Even if the application is made after the prescribed time, the employer has to consider the same. Similarly, the employer has to give notice to the person entitled to gratuity and to the controlling authority immediately after it became payable, specifying the amount of gratuity, and thereafter make arrangements for its payment.

14.5.4 Settlement of Claims

The employee and the employer or any other person raising the dispute regarding the amount of gratuity may make an application to the controlling authority to decide the dispute. No appeal by and employer shall be admitted unless the employer produces a certificate of the controlling authority to the effect that he has deposited with the controlling authority an amount equal to the amount of gratuity required to be deposited or deposits with the appellate authority such amount.



Did u know? Section 8 stipulates that an aggrieved employee can file an application to the controlling authority for recovery of the amount of gratuity.

The controlling, authority will issue a certificate to the collector for recovery of that amount. The collector shall recover the amount, together with compound interest, at the rate of nine per cent per annum from the date of expiry of the prescribed time as arrears of land revenue, and pay the same to the person entitled to it.

14.5.5 Penalties

Whoever, for the purpose of avoiding any payment to be made by himself under this Act or of enabling any other person to avoid such payment, knowingly makes or causes to be made any false statement or false representation shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees or with both.

An employer who contravenes, or makes default in complying with, any of the provisions of this Act or any rule or order made thereunder shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year, or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees, or with both:

Provided that where the offence relates to non-payment of any gratuity payable under this Act, the employer shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years unless the court trying the offence, for reasons to be recorded by it in writing, is of opinion that a lesser term of imprisonment or the imposition of a fine would meet the ends of justice.

Notes



Notes

The Gratuity limit has been raised from 3.5 lakhs to 10 lakhs

There has been amendment in the Payment of Gratuity Act 1972, following proposal of Labor and Employment Ministry, demands from trade unions and others to remove the ceiling or increase the maximum payable amount, which was fixed in 1997. It shall come into force on 24 May 2010 as per the Notification in the Official Gazette.

Maximum Limit: The Gratuity limit as per Section 4(3) has been raised from 3.5 lakhs to 10 lakhs. This will give advantage to both private and public sector employees. According to this new amendment, the maximum gratuity exemption as per IT Act also increases to ₹ 10,00,000.

Determination of Gratuity Amount

For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned.

The Gratuity calculation is done as per the last average remuneration drawn and time in years served by an employee.

The amount of gratuity payable to an employee shall not exceed ₹ 10,00,000 (increased from ₹ 3,50,000).

In order to compute the gratuity payable in case of employees employed in seasonal establishments, daily wages, or piece rated employees. Computation will be as per the provision of the Act.

It can be formulated as follows: $\text{Basic} + \text{DA} (\text{Wages Last drawn}) * 15 \text{ days} * 126 * \text{number of years of continuous service}$ (six months or less to be ignored and more than six months to be counted as full year)



Task

E was an employee of Tea Estate Ltd. The whole of the undertaking of Tea Estate Ltd. was taken over by a new company - Asia Tea Estate Ltd. The services of E remained continuous in new company. After serving for one year E met with an accident and became permanently disabled. E applied to the new company for the payment of gratuity. The company refused to pay gratuity on the ground that E has served only for a year in the company. Examine the validity of the refusal of the directors in the light of the provisions of the Payment of Gratuity Act, 1972.

Self Assessment

State whether the following statements are true or false:

- Section 3 authorises the appropriate- government to appoint any officer as a controlling authority for the administration of the Act.

Notes

14. Section 9 stipulates that an aggrieved employee can file an application to the controlling authority for recovery of the amount of gratuity.
15. The employee and' the employer or any other person raising the dispute regarding the amount of gratuity may make an application to the controlling authority to decide the dispute.



Case Study **Marc Amaranth**

Today is 18th October 2008. Marc Amaranth, aged 38 years, life expectancy 70 years, is semi-literate. His father ran a grocery shop in which Amaranth helped him from his teen age. As Amaranth grew up, he explored various business opportunities with the help of his two young brothers Marc Sumer and Marc Shalem. Today, Amaranth is an established businessman in Mumbai. He is running two Guest Houses and two Restaurants in Mumbai; and operating a fleet of 20 taxies. Additionally, he has three shops which he has rented on profit sharing basis. The details of his family members are:

Name	Relationship with Amaranth	Age
1. Sylvester Kedhar	Father	60 Years
2. Faria	Mother	56 Years
3. Ameya	Sister	22 Years
4. Marc Sumer	Brother	29 Years
5. Marc Shalem	Brother	23 Years
6. Benzeer	Wife	31 Years
7. Joyce	Daughter	14 Years
8. Kylie	Daughter	12 Years
9. Zayed	Son	8 Years
10. Nazer	Son	7 Years
11. Freyas	Daughter	3 Years

His father Sylvester Kedhar takes care of his both the restaurants while his both brothers Sumer and Shalem look after his Guest Houses and Taxi Fleet. Legal ownership of all properties/investments is with Amaranth and his wife. His father and brothers do not have any legal rights in his business and properties. Amaranth's brother Sumer is engaged and his marriage is fixed after 6 months from now. Ameya's marriage is tentatively after one year from Sumer's marriage and Shalem's marriage is tentatively after one year from Ameya's marriage. Hearing from one of his tenants, he has contacted you, a practicing Certified Financial Planner for creating and implementing a Financial Plan for him. He has submitted the following information to you:

Sources of Income

1. Daily Rental Income from his Guest Houses
2. Daily collection from his taxies fleet
3. Daily collection from his restaurants
4. Monthly rent and profit share from his shops
5. Interest from the private money lending business

Expenditures per Month

1. Household expenses: ₹ 58,000
2. Personal expenses: ₹ 15,000

Contd...

3. Fuel and maintenance - Personal Cars and vehicles: ₹ 15,000

4. Fix payment to his father and both brothers: ₹ 30,000 **

**Debited to Amaranth's capital account as his personal withdrawals

5. Children's education expenses: ₹ 28,000

Notes

Current Assets	Current Market Value
1. 2 Guest Houses	₹ 350 lakh
2. 20 Taxies	₹ 35 lakh
3. 2 Restaurants	₹ 115 lakh
4. 3 Shops	₹ 75 lakh
5. Residential House	₹ 200 lakh
6. Private Cars/Vehicles	₹ 15 lakh
7. Cash money rotating in his private money lending business	₹ 50 lakh
8. Misc. Savings/Insurance Policies/Investments	₹ 50 lakh

Amaranth's Goals and Aspirations

1. To create an independent income source for his parents
2. To go for Holy Land pilgrimage with his entire family
3. To provide a guaranteed education fund for his children
4. To provide a separate marriage fund for his children
5. To plan for a guaranteed cash flow for his living without any physical work
6. To diversify his business interests
7. To buy a lavish Bungalow in Dubai
8. To get his siblings married in the next three years
9. To purchase 2 separate flats for his both brothers on or before their marriage

Current Economic Scenario

1. Risk free interest rate: 10%
2. Inflation: 11%

Historical Mutual Funds schemes' return (5-year period)	Scheme CAGR (% p.a.)
Income schemes	6%
Balanced schemes_1 (70:30 equity-debt)	12%
Balanced schemes_2 (40:60 equity-debt)	8%
Equity Diversified schemes	16%
Fixed Maturity Plans (Annual) #	9%

The track record for Fixed maturity Plans is only for three years.

Questions:

1. As Amaranth is a semi-literate person, he doesn't comprehend a structured communications in written English or written Hindi. He can read only Konkani though he understands Hindi in verbal communication. According to you what

Contd...

Notes

- would be the most suitable method of recording his consent at all required instances during construction/implementation of his Financial Plan in this situation?
2. Critically analyse the above case.

Source: <http://www.fpsb.co.in/Upload/CFPSampleQPaper/Case%20Studies7.pdf>

14.6 Summary

- Gratuity is a sort of retiring benefit to the workmen who have rendered long and unblemished service to the employer.
- The main object of this Act is to provide for a scheme for the payment of gratuity to employees engaged in different prescribed establishments.
- The Act is applicable to every factory, shop or an establishment, in which ten or more persons are employed, or were employed on any day of the proceeding twelve months.
- Different provisions of the Act covers payment of gratuity, reduction and forfeiture of gratuity, recovery of gratuity, compulsory insurance, nomination, inspectors and his power, appropriate Government power.
- Moreover under Section 7(4) (a) disputes regarding gratuity under section 7 “Procedure of Determination of Gratuity” and under Sections 4 and 7 “Payment of Gratuity are provided”.
- The meaning of gratuity is a sort of retiring benefit to the workmen who have rendered long and unblemished service to the employer.
- The Payment of Gratuity Act 1972 was passed as Act No. 30 of 1972 and received the assent of the President of India on August 21, 1972. It was enforced with effect from September 16, 1972.
- This Act extends to the whole of India. Of course so far as this Act relates to plantation or port, it shall not extend to the State of Jammu and Kashmir.
- A shop or establishment to which the Act has become applicable shall continue to be governed by the Act even if the number of persons employed falls below 10 at any subsequent stage.
- Each employee is required to nominate one or more member of his family, as defined in the Act, who will receive the gratuity in the event of the death of the employee.

14.7 Keywords

Authority: Institutionalized and legal power inherent in a particular job, function, or position that is meant to enable its holder to successfully carry out his or her responsibilities.

Completed Year of Service: The term ‘completed year of service’ means continuous service for one year.

Employer: A legal entity that controls and directs a servant or worker under an express or implied contract of employment and pays (or is obligated to pay) him or her salary or wages in compensation.

Establishment: The Establishment is a term used to refer to a visible dominant group or elite holds power or authority that in the nation or organization.

Gratuity: Gratuity is a part of salary that is received by an employee from his/her employer in gratitude for the services offered by the employee in the company.

Profits: The surplus remaining after all costs are deducted from overall revenue, and the basis on which tax is computed and dividend is paid.

Retirement: The period of a person's Life during which he/she is no longer working, or the commencement of that period.

Superannuation: Superannuation means the attainment of such age by the employee is fixed in the contract or conditions of service as the age on the attainment of which he has to leave the employment where there is no such provision, then attainment of the age of 58 years by the employee.

Wages: A wage is remuneration paid by an employer to an employee. It may be calculated as a fixed task based amount, or at an hourly rate, or based on an easily measured quantity of work done.

14.8 Review Questions

1. What is the object of the Payment of Gratuity Act, 1972?
2. Which are the establishments covered under the Act?
3. Who is an employee under the Act?
4. What are the benefits payable under the Act?
5. Discuss the various provisions relating to the Payment of Gratuity Act.
6. Mr. X was an employee of Mutual Developers Limited. He retired from the company after completing 30 years of continuous service. He applied to the company for the payment of gratuity within the prescribed time. The company refused to pay the gratuity and contended that due to stringent financial condition the company is unable to pay the gratuity. Mr. X applied to the appropriate authority for the recovery of the amount of gratuity. Examine the validity of the contention of the company and also state the provisions of law to recover the gratuity under the Payment of Gratuity Act, 1972.
7. Define Forfeiture.
8. What is settlement of claims?
9. Write brief note on penalties in Payment of Gratuity Act.
10. "An employee who has completed one year of service has to name his/her nominee in the prescribed form." Elucidate.

Answers: Self Assessment

- | | |
|--------------|---------------|
| 1. True | 2. True |
| 3. False | 4. One |
| 5. Female | 6. Retirement |
| 7. False | 8. False |
| 9. True | 10. 15 |
| 11. Gratuity | 12. Higher |
| 13. True | 14. False |
| 15. True | |

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978-93-90164-51-6



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Notes

14.9 Further Readings



Books

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- Rao, VSP (2008). *Industrial Relations & Labour Laws*. Excel Books.
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Online links

- <http://www.citehr.com/20170-payment-gratuity-act.html>
- http://business.gov.in/legal_aspects/gratuity.php
- <http://on-lyne.info/legal8.htm>
- <http://taxguru.in/income-tax/all-about-payment-of-payment-of-gratuity-act-1972-in-brief-including-the-recent-amendments.html>
- http://220.227.161.86/18723comp_suggans_pcc_lec_ch5.pdf