



APPLICABILITY OF THE EMPLOYEES PROVIDENT FUND & MISCELLANEOUS PROVISIONS ACT, 1952

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1. Scope and applicability of EPF & MP Act, 1952

¹The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 extends to the whole of India except the State of Jammu and Kashmir. ²Now, the Government has extended the provisions of the said Act to the establishments, employing ten or more persons and covered under the provisions of the erstwhile the Jammu and Kashmir Employees' Provident Funds and Miscellaneous Provisions Act, 1961 which was in force with effect from 1st June, 1961 (XV of 1961), as it stood before its repeal by the Jammu and Kashmir Reorganization Act, 2019 (34 of 2019), with effect from the 1st Day of January, 2020.

This Act provides for the institution of provident funds ²pension fund and ³deposit-linked insurance fund] for employees in factories and other establishments.

Initially the Act was applied to the factories/establishment employing fifty or more persons, completed 3 years of existence and falling within 6 Scheduled Industries. These Industries were (1) Cement, (2) Cigarettes, (3) Electrical Mechanical, or General Engineering Products, (4) Iron & Steel (5) Paper and (6) Textiles (made wholly or in part of cotton wool, jute or silk, whether natural or artificial). ⁵The Act was made applicable to the factories employing 20 or more persons by an Amendment in the Act w.e.f 31.12.1960.

Prior to ⁶amendment in August, 1988, the act was applicable only to those establishments having employed 20 or more persons but less than 50 persons and completed infancy period of five years. With effect from 01.08.1988 this provision has been amended to provide uniform infancy period of three years from the set up to all newly set up establishments irrespective of employment strength.. ⁷With effect from 22.9.1997 the

benefit of infancy period of three years to newly set up establishment was abolished applying the law from the date of its set up. Now the act is applicable to all the establishments from day one if they have engaged 20 persons. Thus the coverage has been made wider and more universal virtually covering almost all enterprises in private or joint sector employing 20 or more persons on any day.

⁸The Employees' Provident Fund & MP Act, 1952 was made applicable to newspaper establishment employing 20 more persons w.e.f. 31st December, 1956 and the cinema theatres employing five or more workers were brought under the purview of the Act w.e.f. 01.10.1984. The Act has been made applicable to new specified industries / class of establishment from time to time. Presently the number of specified industries /class of establishment has become 187.

1.2 ⁹Application of EPF Scheme, 1952-

The Employees' Provident Fund & M.P. Act 1952 (the Act) was enacted to extend the Social Security benefits to the working class of the country. The Employees Provident Fund Organisation is vested with the responsibility of administering the Scheme framed under the Act. The extension of the law to its beneficiaries is through the establishments only. Initially the establishment is covered from a particular date, which may either be prospective or retrospective date. Later the Employees working with the Establishment are covered depending their eligibility. Initially when the law was enacted the eligibility period was 240 days in a years employment, later it was reduced to 120 days in Six months period and then 60 days in three months period. Finally from 01-11-1990, an employee is entitled to become provident fund member from the day he takes up the employment with the establishment.

1.3 ¹⁰Employees Family Pension Scheme 1971

Initially the Act provided only for the Provident fund a sort of lump sum payment at the time of superannuation comprising of his own contribution, employers matching contribution and the interest. Later during the year 1971 Employees Family Pension Scheme was introduced to redress the hardship of the family consequent upon the death of the earning member of the family.

1.4 ¹¹Application of Employees' Deposit Linked Insurance Scheme, 1976:

To introduce the Insurance benefits and to promote the culture of the saving, the EDLI Scheme was introduced in the year 1976. The Scheme came into force with effect from 1st August, 1976 and is applicable to all factories/establishment to which the EPF & MP Act, 1952 applies. All the employees who are member of EPF Scheme are required to become

member of this scheme. The EDLI Scheme envisages a lump sum cash benefit proportionate to member's EPF balance and admissible to family members consequent upon the death of the Member during the service.

Major changes in the Act - The major changes in the Act were introduced first from November 1990 when the eligibility period to become a member was reduced to One Day, meaning thereby that every employee shall be a member irrespective of his days of working in an establishment. This change was introduced to curb the malpractices adopted by the employer by frequently manipulating the records of attendance of the workers with an intention to deprive them of Provident Fund Benefits and saving/evading the Employers contribution towards Provident Fund.

1.5 ¹²Employees Pension Scheme, 1995 –

Another landmark was the introduction of Employees Pension Scheme in the year 1995 replacing the Family Pension Scheme, 1971 This scheme provided for the pension to the employee consequent upon his retirement, disablement, and to the family members on the death of the member. Earlier scheme was providing benefits to the family only consequent upon the death of the member during the course of the employment. There was no pension for the Member at any time.

2 ¹³Conditions for Application of the EPF & MP Act, 1952: For the purpose of application of the act, the establishment should fulfill the following conditions:-

(i) The provisions of the Act applies to any factory engaged in any industry specified in Schedule I of the Act or the establishment should fall under the class of establishment as notified by the Central Government under Section 1(3) of the Act.

(ii) The factory / establishment should have twenty or more persons except cinema theatres where the requisite employment strength is five.

(iii) It should also be ensured that the provisions of Section 16 of the Act don't apply to such establishment.

In the area of application of the Act, Section 1(3) and Section 16 of the Act are of utmost importance but in different directions i.e. Section 1(3) is about application while Section 16 talks of exclusion of the establishments from the ambit of the Act.

3. Modes of applicability

- a) ¹⁴Compulsory Coverage (Su moto):** As per Section 1(3) of the Act, the Act applies to an establishment on its own force. This does not depend upon the vigilance of the department or will of the employer to make the workmen as

members of the scheme. The application of the Act does not require any attention or initiation of the authorities but it applies by its own force. There are inbuilt provisions which provide a mechanism to apply the Act to an establishment as soon as the conditions laid down in this Section are satisfied. The employer of the establishment is required to implement the Act to his establishment. The employer of the establishment is required to examine the tests and decide the date from which the Act is to be applied.

Though, the Act applies by its own force and the authorities are simply to ensure compliance by the employer and ensuring compliance by self by the authorities by completing the accounts of the PF members. However, only the Inspector is empowered to enforce the Act by virtue of the provisions of section 13 (2) which, inter-alia provides for invoking powers mention in section 94 of the Criminal Procedure Code. To determine the applicability of the Act to an establishment, there is no geographical barrier.

Therefore, the authorities i.e. Inspectors appointed under section 13 have powers to enter into investigations anywhere in the country where an establishment is found to exist, to ascertain whether the provisions of the Act are applicable or not to that establishment.

- b)** ¹⁵Voluntarily Coverage – If the majority of the employees of the establishment and employer are jointly agree that the provisions of the Act should be applicable to the establishment from the date of such agreement or from any subsequent date mentioned in the agreement, the Central P F Commissioner may apply the provisions of the Act to such establishment provided the establishment is not coverable either under section 1(3)(a) or under section 1(3)(b) of the Act.
- c)** ¹⁶Inclusion of new industries/Class of establishment - Provided that the Central Government may, after giving not less than two months" notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than 6[twenty] as may be specified in the notification.]
- d)** ¹⁷Clubbing of branches and department of an establishment should be done for the purpose of deterring the employment strength [Section 2A] - In accordance with Section 2A of the Act where an establishment consists of different departments of has branches, whether situate in the same place or different

places, all such departments/branches should be treated as part and parcel of the main establishment for the purpose of application of the provisions of the Act.

- e) ¹⁸Exclusion – Section 16 of the Act is basically an exclusion clause for the factories / establishments and fall under the category of excluded establishments as mentioned in Section 16 of the EPF & MP Act, 1952.

4. ¹⁹Continuity of Applicability

If an establishment is brought under the purview of the EPF & MP Act 1952 it shall continue to be governed by this Act even if the number of persons employed in the establishment falls below 20. It is clear under section 1(5) of the Act. Once covered, the fluctuating employment strength cannot determine the coverage later.

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1. Substituted by the Act 99 of 1976
 2. Notification S.O. 3926(E) dated 31.10.2019
 3. Substituted by the Act 25 of 1996, for Employees family Pension Scheme, 1971
 4. Inserted by Act 99 of 1976
 5. Substituted by Act 46 of 1960, S.2, for “fifty” (w.e.f 31-12-1960)
 6. Substituted by the Act 33 of 1988
 7. Substituted by the Act 10 of 1998,S.5(w.e.f 22-9-1997)
 8. Substituted by the Act 94 of 1956
 9. Vide SRO 1509, Dated 2-9-1952
 10. Inserted by Act 16 of 1971
 11. Inserted by Act 99 of 1976
 12. Substituted by the Act 25 of 1996, for Employees family Pension Scheme,1971
 13. Section 1(3) of the Act
 14. Section 1(3) of the Act
 15. Section 1(4) of the Act
 16. Proviso Section 1(3) of the Act
 17. Section 2-A of the Act
 18. Section 16 of the Act
 19. Section 1(5) of the Act