

E-NEWSLETTER

ALL ABOUT ESI WITH RECENT DEVELOPMENTS & ITS IMPACT ON NGOS

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BRIEF INTRODUCTION ABOUT THE ACT

The Employee State Insurance (ESI) Scheme is governed by the ESI Act, 1948 which is a social security legislation that provides for medical care and cash benefit in the contingencies of sickness, maternity, disablement and death due to employment injury to workers. **The intent of the law is to ensure that organizations extend healthcare benefits to the lower wage group employees and their dependents as they are economically vulnerable to health issues.** ESI is managed by an autonomous authority, Employee State Insurance Corporation (ESIC), which falls under the jurisdiction of the Ministry of Labour and Employment.

ESI can be understood as a self-financing scheme which is primarily built out of contributions from employers and employees payable monthly at a specified rate of the wage amount. The State Government concerned also contributes its share to meet the cost of medical benefit.

In the recent announcement of the second tranche of the Special Economic Package by our Honorable FM **on 14th May, 2020, the ESIC coverage have been extended pan-India to all districts and to all establishments employing 10 or more employees** as against those notified districts/areas only. So, the team NGOenabler have tried to compile all the relevant details related to ESI and its applicability in this newsletter.

APPLICABILITY OF ESI ACT

In the first instance, the Act applies to non-seasonal factories employing more than 10 or more persons. However, gradually the provisions of the Act are being extended to new class of establishments by the concerned State Governments, as the Act contains an enabling provision under which they are empowered to do so.

Section 1(5) of the ESI Act states that "The appropriate Government may, in consultation with the corporation and⁵ [where the appropriate Government is a State Government, with the approval of the Central Government], after giving⁶ [one month's] notice of its intention of so doing by notification in the Official Gazette, extend the provisions of this Act or any of them, to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise"

Under these provisions, most of the State Governments through various notifications in official gazette have extended the provisions of the Act to new class of establishments such as shops, hotels, restaurants, cinemas theatres, transport undertakings, newspaper establishments employing 20 or more coverable employees. **Since 2011, the Scheme has also been extended to Educational Institutions including private medical institutions employing more than 20 or more persons by most of the states.**

However, in our view, **according to the latest developments**, as mentioned in the introduction, the ESIC shall now cover all the establishments in the country including NGOs, employing more than 10 employees, irrespective of the fact whether it was covered in the earlier notifications by the respective state or not. Moreover, **the limit of 10 or more employees now applies even to already covered establishments as mentioned above.**

ELIGIBILITY CRITERIA FOR EMPLOYEES COVERED UNDER THE SCHEME



Only those **employees which falls within the definition** as given in Section 2(9) of the Act shall be covered under the Scheme and which is as under:

“Any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and-

- (i) **who is directly employed by the principal employer** on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment whether such work is done by the employee in the factory or establishment or elsewhere; or
- (ii) **who is employed by or through an immediate employer** on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or
- (iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom **the person whose services are so lent or let on hire has entered into a contract of service;**

Provisio to Section 2(9):

However, any **person so employed whose wages** (excluding overtime allowance) **exceeds** the limit prescribed by the Central Government which is presently **Rs. 21,000/-** , **have been excluded** from the definition of employee.

It is also pertinent to note that an employee whose wages exceeds the limit as above, at any time after (and not before) the beginning of the contribution period i.e. after the registration, shall continue to be an employee as defined above and eligible for contribution.

Interpreting the law and our view:

In our view, it can be interpreted that **not only permanent but even contractual employees have been covered under ESI**. Moreover, even if the wage limit for a particular employee exceeds the limit so specified, once the establishment is registered under the ESI Act, he will still be eligible for ESI contribution. Let us understand this point with an example for more clarification.

Example: Suppose Mr. A is an employee of XYZ Foundation and is earning Rs. 14,000 per month. XYZ Foundation took the registration under ESI after the latest announcement as it employs more than 10 persons. Mr. A shall be covered as he fulfils all the criteria as laid down in the definition of employee.

Now, suppose next year, after the increment, if Mr. A starts earning Rs. 16000, it does not mean he can stop the contribution towards ESI. He will continue to be an eligible employee as per the provisio to Section 2(9) of the ESI Act, explained above.

RATE OF CONTRIBUTION AND DATE OF DEPOSIT

With effect from 01.07.2019, the rate of **employee's contribution is 0.75%** and **employer's contribution is 3.25%** of the wage amount paid/payable in respect of the employee in every wage period.

An employer is liable to pay his contribution alongwith that deducted from the employees to ESIC within 15 days from the end of the month in which the contribution falls due. If the employer fails to **pay such contribution within 15th of the following month**, interest @12% p.a. in repsect of each day of default shall be levied.

DISCUSSION ON WAGES AND ITS COMPONENTS

WHAT IS WAGES AS PER THE ACT?

The wages has been defined u/s 2(22) of the ESI Act as under:

“all remuneration paid or payable, in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or lay -off and other additional remuneration, if any, paid at intervals not exceeding two months, but does not include-

- (a) any contribution paid by the employer to any pension fund or provident fund, or under this Act;
- (b) any travelling allowance or the value of any travelling concession;
- (c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or
- (d) any gratuity payable on discharge.

Interpretation of law and our view

From the definition, **it can be interpreted that for the purpose of ESIC, gross salary paid to the employee must be considered except certain specific exclusions** such as travelling allowance, Employer PF Contribution, Gratuity and any reimbursement of expenses. However, we have compiled a table below for more detailed clarification regarding the components of wages that shall be included or excluded with explanation thereof.

COMPONENTS OF WAGES

In our view, apart from the basic pay the following allowances should be considered as part of wages for the purpose of calculation of ESI:

Sl. No.	Nature of Allowance or Payment	Included/ Excluded	Explanation
1.	House Rent Allowance	Included	Where the employee is being paid HRA, the same will be included. In cases where the staff quarters have been allotted, no notional HRA is to be presumed.
2.	Conveyance Allowance	Included	Fixed Conveyance Allowance paid as per the contract of employment should be treated as wages. However, reimbursement of actual cost for office work or payment towards maintenance of vehicle as per the cadre of the employee, shall not be considered.
3.	Education Allowance	Included	Where such allowance is paid on monthly basis as part of the employment terms, it shall be included. However, if monthly fees is reimbursed, it shall not be considered
4.	Medical Allowance	Included	Where such allowance is being paid monthly by the employer in lieu of the medical benefit/reimbursement, it shall be treated as wages.
5.	Wages paid during lay off/strike	Included	It is specifically covered by the definition and also because such wages are paid by way of remuneration to employees for remaining attached to the establishment.
6.	Overtime Allowance	Included	The overtime work can be considered as an implied contract between the employer and the employee as both agrees upon the latter continuing the work after working hours.

COMPONENTS OF WAGES (Contd.....)

Sl. No.	Nature of Allowance or Payment	Included/ Excluded	Explanation
7.	Annual or Production or Incentive Bonus	Excluded	As per various Supreme Court orders and instructions issued by the department in this regards, additional remuneration to become wages has to be paid at regular intervals, not exceeding two months. Since such bonuses are paid once or twice a year, they cannot be form part of the wages for the purpose of ESI contribution.
8.	Night Shift, Gas, Heat or Dust Allowance	Included	It is an additional remuneration paid for performing duty at night and since it as per the settled employment terms, it should be considered as part of the wages.
9.	Ex-gratia Payment	Excluded	It is a reward for the services rendered by him for which he/she was not under any obligation to render under the contract of service, both expressed and implied. Even if such reward has been introduced as per the term & conditions of the employment, it shall not be considered as wages and shall be included only if the employer has no right to withdraw the same.
10.	Annual Commission and Leave Encashment	Excluded	Since it can be considered as an additional remuneration and is usually paid either once or at intervals which normally exceed 2 month period, it cannot be treated as wages.

OTHER COMPLIANCES

RECORDS TO BE MAINTAINED FOR THE PURPOSE OF ESI

For ESI Compliance the employer has to maintain the following records:

- Payroll and Attendance Register with wage particulars and books of accounts.
- Accident Register in new Form 11
- An Inspection Book
- In a sub-contracting or staffing situation, an Employee Register has to maintained in order to disclose the locations of their deployment.

ESI REGISTRATION

The registration under ESI can be done online by filling up the relevant details of the establishment and employment. After the approval, **an ESIC Allotment letter is issued which cotains a 17-digit unique identification number** allotted to the establishment.

Should the organization have more than one office or place of work, **it is required to register each** of the such places **as a sub-code**. This is also a unique identification number allotted to a sub-unit, branch office, or any other place of work of a covered establishment in a different state. The employer can register for such sub-code through ESIC Portal using his credentials and his unique primary registration code number.