

No.S-35012/5/2017-SS-II
Government of India
Ministry of Labour and Employment

Shram Shakti Bhawan, New Delhi
Dated the 23rd August, 2019.

Subject: Amendment in the Employees' Provident Funds & Miscellaneous Provisions (EPF and MP) Act, 1952 - regarding.

The Ministry of Labour and Employment proposes to amend the Employees' Provident Funds & Miscellaneous Provisions (EPF and MP) Act, 1952. A copy of the Preliminary Draft of THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS (AMENDMENT) BILL, 2019 along with a Brief on the said Bill is attached.

2. As a part of the pre-legislative consultative process, the suggestions/comments/inputs of all concerned stakeholders/other members of the public are invited on the preliminary Draft of THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS (AMENDMENT) BILL, 2019 for consideration in the Ministry.

3. In order to facilitate proper consideration, the comments/suggestions on the draft amendment Bill must be in the following format:

Section/Sub-section/Clause/ Proviso of the draft Amendment Bill	Issue/Problem identified in the Section/Sub-section/Clause/Proviso of the draft Amendment Bill	Proposed Change/ Correction that is suggested	Reason(s) for the Proposed Change/ Correction	Remarks, if any
(1)	(2)	(3)	(4)	(5)

4. It is requested that the suggestions/comments/inputs must be submitted, within one month time from the date of issuance or latest by 22nd September, 2019, by post to Shri Rahul Bhagat, Director, Ministry of Labour and Employment, Room No.302, Shram Shakti Bhawan, New Delhi or through email at rahul.bhagat@ips.gov.in or samir.kumar70@nic.in.



(S K Das)

Under Secretary to the Government of India
Tel. No. 2347 3325

Encl.: (1) Preliminary Draft of THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS (AMENDMENT) BILL, 2019.
(2) Brief on the draft Bill.

	THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS (AMENDMENT) BILL, 2019	
	A	
	BILL	
	further to amend the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.	
	BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:-	
	1. (1) This Act may be called the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Act, 2019.	Short title and commencement.
	(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.	
	2. In the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the principal Act), in section 2,-	Amendment of section 2.
	(a) clause (b) shall be omitted;	
	(b) after clause (j), the following clause shall be inserted, namely:- '(ja) "National Pension System" shall have the same meaning as assigned to it in clause (i) of sub-section (1) of section 2 of the Pension Fund Regulatory and Development Authority Act, 2013;'	23 of 2013
	(c) after clause (m), the following clause shall be inserted, namely:- '(n) "wages" means all remuneration whether by way of salary, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes, - (i) basic pay; (ii) dearness allowance; and (iii) retaining allowance, if any; but does not include— (a) any bonus payable under any law for the time being in force, which does not form part of the remuneration	

payable under the terms of employment;

- (b) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government;
- (c) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
- (d) any conveyance allowance or the value of any travelling concession;
- (e) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment;
- (f) house rent allowance;
- (g) remuneration payable under any award or settlement between the parties or order of a court or Tribunal;
- (h) any overtime allowance
- (i) any commission payable to the employee;
- (j) any gratuity payable on the termination of employment;
- (k) any retrenchment compensation or other retirement benefit payable to the employee or any *ex gratia* payment made to him on the termination of employment;

Provided that, for calculating the wages under this clause, if payments made by the employer to the employee under clauses (a) to (i) exceeds one half, or such other per cent. as may be notified in the Official Gazette by the Central Government, of the all remuneration calculated under this clause, the amount which exceeds such one-half, or the per cent. so notified, shall be deemed as remuneration and shall be accordingly added in wages under this clause.

Explanation 1.— Where an employee is given in lieu of the whole or part of the wages payable to him, any remuneration in kind by his employer, the value of such remuneration in kind which does not exceed fifteen per cent. of the total wages payable to him, shall be deemed to form part of the wages of such employee.

	<p><i>Explanation II.</i>— For the purposes of this clause, "retaining allowance" means allowance payable for the time being to an employee of any factory or other establishment during any period in which the establishment is not working, for retaining his services.'</p>	
	<p>3. In the principal Act,- (a) for the words and brackets "basic wages, dearness allowance and retaining allowance (if any)" wherever they occur, the word "wages" shall be substituted; (b) in section 6A, in sub-section (2), in clause (a), for the words "basic wages, dearness allowance and retaining allowance, if any", the word "wages" shall be substituted;</p>	
	<p>4. For section 6 of the principal Act, the following section shall be substituted, namely:—</p>	<p>Substitution of new section for section 6.</p>
	<p>"6. The contribution which shall be paid by the employer to the Fund shall be twelve per cent. of the wages for the time being payable to each of the employees (whether employed by him directly or by or through a contractor) and the employee's contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires, be an amount exceeding twelve per cent. of his wage, subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this sub-section:</p> <p>Provided that in its application to the establishments or class of establishments which the Central Government, after making such inquiry as it deems fit, may, by notification in the Official Gazette, specify, this section shall be subject to the modification that for the words "twelve per cent." at both the places where they occur, the words "ten per cent." shall be substituted:</p> <p>Provided further that the Central Government, after making such inquiry as it deems fit, may, by notification in Official Gazette, specify rates of contributions and the period for which such rates shall apply for any class of employee.</p> <p>Provided also that where the amount of any contribution payable under this Act involves a fraction of a rupee, the Scheme may provide for rounding off of such fraction to the nearest rupee, half of a rupee, or quarter of a rupee."</p>	
	<p>5. In section 7A of the principal Act,-</p>	<p>Amendment of</p>

		section 7A.
	(a) in sub-section (1), the following proviso shall be inserted, namely:-	
	"Provided that no inquiry under this sub-section shall be initiated after the expiry of the period of five years from the date on which the dispute referred to in clause (a) is alleged to have been arisen or, as the case may be, the amount referred to in clause (b) alleged to have been due from an employer.	
	(b) after sub-section (1), the following sub-section shall be inserted, namely:-	
	"1(A) Notwithstanding anything contained in the Code of Civil Procedure, 1908, the inquiry in sub-section (1), as far as practicable, shall be held on day-to-day basis and endeavour shall be made to ensure that the inquiry is concluded within a period of two years: Provided that where the inquiry is not concluded within the said period of two year, the officer conducting such inquiry shall record the reasons for not having concluded so and submit the reasons so recorded to the Central Provident Fund Commissioner, or such other officer authorised by him on this behalf."	
	6. In section 11 of the principal Act, the following section shall be substituted, namely:-	Amendment of section 11
	"11. Priority of payment of contribution over other debts. - Notwithstanding anything contained in any other law for the time being in force, any amount due under this Act shall be the first charge on the assets of the establishment and shall be paid in priority to all other debts."	
	7. In section 14 of the principal Act,-	Amendment of section 14
	(a) in sub-section (1), for the words "five thousand rupees", the words " fifty thousand rupees" shall be substituted;	
	(b) in clause (a) of sub-section (1A), for the words "ten thousand rupees", the words " one lakh rupees" shall be substituted;	
	(c) in clause (b) of sub-section (1A), for the words "five thousand rupees", the words "fifty thousand rupees" shall be substituted;	
	(d) in sub-section (1B), for the words "five thousand rupees", the words "fifty thousand rupees" shall be substituted;	
	(e) in sub-section (2), for the words "four thousand rupees", the words "fourty thousand rupees" shall be substituted; and	
	(f) in sub-section (2A), for the words "five thousand rupees",	

	the words "fifty thousand rupees" shall be substituted.	
	8. In section 14AA of the principal Act, for the words "twenty-five thousand rupees", the words "two lakh and fifty thousand rupees" shall be substituted.	Amendment of section 14AA
	9. After section 14AC of the principal Act, the following section shall be inserted, namely:-	Insertion of new section 14AD
	"14AD. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences except those specified in sub-section (1), sub-section (1A) and sub-section (1B) of section 14 may, either before or after institutions of prosecution, be compounded by such officer or authorities and for such amount and in such manner as the Central Government may, by notification in the Official Gazette, specify in this behalf."	Composition of Certain Offences
	10. After section 16A of the principal Act, the following sections shall be inserted, namely:-	Insertion of new sections 16B and 16C.
	"16B. (1) The Central Provident Fund Commissioner or any other officer authorised by him in this behalf may, upon receipt of an application, in such form as may be prescribed, and after conducting such inquiry as may be necessary, allow any employee in the establishment to which this Act applies, to exercise the option to join the National Pension System: Provided that the application under this sub-section shall be deemed to have been allowed from the date of submission of application if no order is passed within a period of sixty days from the date of submission of such application.	Option for National Pension System.
	(2) The Central Government may, by notification in the Official Gazette, specify conditions including the limit of wages, subject to which option under sub-section (1) may be exercised and the manner in which the contributions of employees exercising such option shall be made to the National Pension System.	
	(3) On joining the National Pension System opted under sub-section (1), the employee shall be deemed to have exited from the Pension Scheme on and from the date of his joining referred to in sub-section (1).	
	16C. (1) An employee working in an establishment to which this Act applies and who is a member of the National Pension System shall have the option to join back the Pension Scheme subject to such conditions specified in the	Option to return to Pension Scheme.

	Pension Scheme.	
	(2) The manner and method to exercise the option referred to in sub-section (1) and the transfer of accumulation from National Pension System to the Pension Scheme shall be such as may be prescribed by the Central Government.	
	(3) On joining back the Pension Scheme opted under sub-section (1), benefit and entitlement under the Pension Scheme shall be such as may be provided therein for such purpose."	
	11. In section 17 of the principal Act,—	Amendment of section 17.
	(i) in sub-section (1), after the words, "The appropriate Government", the words, ",subject to provisions of section 17(1D)," shall be inserted;	
	(ii) after sub-section (1C), the following sub-sections shall be inserted, namely:-	
	"(1D) No exemption from the operation of the Scheme shall be granted by the appropriate Government under this section unless the applicant establishment, makes the application for grant of exemption and fulfils the conditions as may be specified in the Scheme for such purpose."	
	12. In section 21 of the principal Act, -	Amendment of section 21.
	(a) in sub-section (1), after the words "Official Gazette", the words "and subject to previous publication" shall be inserted;	
	(b) in sub-section (2), -	
	(i) in clause (c), the word "and" shall be omitted.	
	(ii) after clause (c), the following clause shall be inserted, namely:-	
	"(ca) the form of application under sub-section (1) of section 16B;	
	(cb) the manner and method to exercise the option and the transfer of accumulation from National Pension System to the Pension Scheme under sub-section (2) of section 16C; and".	

Brief Note on Preliminary Draft of THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS (AMENDMENT) BILL, 2019

The Employees' Provident Funds & Miscellaneous Provisions (EPF and MP) Act, 1952 is applicable to every establishment, employing 20 or more persons, which is either a factory engaged in any industry specified in Schedule-I of the Act or an establishment to which the Act has been made applicable by the Central Government by notification in the Official Gazette.

2. With the change in the industrial and economic scenario of the country leading to increased mobility of labour and outsourcing of services, need has been felt for introducing some amendments in the provisions of the Act.

3. The following are the details of the major amendment proposals:-

(a) Introduction of definition of 'wages' in conformity with the Code on Wages, 2019, passed by Parliament and assented to by the Hon'ble President, in place of existing definition of 'basic wage'. In the present form the computational basis for determining provident fund contribution is basic wage, DA and retaining allowance. The amendment seeks to fix computational basis at 'wage' with the further stipulation that allowances paid above 50% or as notified percentage, of all remuneration will be included in wage.

(b) The budget -2015-16 (Para 62), included an announcement that for employees below a certain threshold of monthly income, contribution to Employees Provident Fund (EPF) should be optional, without affecting or reducing the employer's contribution. Therefore, flexibility has been proposed to introduce in the Act to prescribe different rates of contribution for such period for any class of employee. This flexibility will enable, through notification, modification of the rates of contribution depending on various factors like age, income, gender etc. No change in employers' contribution has been proposed.

(c) Section 7A of the Act does not provide any limitation for initiation of inquiries (i) to decide applicability of the Act to an establishment and (ii) to determine the amount due from any employer under any provision of the Act and the Schemes framed thereunder. Such a provision is susceptible to misuse and against a predictable policy for an employer / establishment. Various representations have been received to bring in limitation for scrutiny of the past cases. In case of the Employees' State Insurance (ESI) Act, 1948 and Income Tax Act, the limitation period of five years and seven years has been prescribed respectively. Introducing limitation for inquiries under section 7A has been included as one of the items of reform. Therefore, it is now proposed to amend sub-section (1) of section 7A to introduce a limitation period of 5 years to initiate inquiry. Further, in order to instil discipline in the working of assessing officers, a time period of two years, as far as practicable, has been provided to conclude the inquiry with further stipulation of submission of reasons for not concluding the inquiry within the stipulated period to the CPFC.

(d) Section 11 of the Act provides for priority of payment of contribution over other debts. The section mentions Presidency Towns Insolvency Act, 1909 and Provincial Insolvency Act 1920, both of which have been repealed vide the Insolvency and Bankruptcy Code, 2016. There is, therefore, requirement of rewording of the section by omitting references to the repealed statutes. The amendment proposes substitution of the existing section 11.

(e) The provisions relating to penalties were last revised in the year 1988 and effective from 01.08.1988. Therefore, it is proposed to enhance the quantum of fines (in pecuniary terms) by ten times.

(f) Insertion of new section 14AD to provide for composition of certain offences under the Act except those specified in sub-section(1), sub-section(1A) and sub-section (1B) of section 14 of the Act. This will provide a mutually agreeable disposition of minor offences without the need of conducting a complete trial in the Court. Small defaults in making compliance with the provisions of the Act could be resolved by paying up the compounding amounts at the specified rates without the need of a criminal trial.

(g) The budget -2015-16 (Para 62), also included an announcement that the employees covered under the EPF & MP Act should be provided option for New Pension Scheme. It is proposed to insert new sections viz. sections 16B and 16C in the Act to give option to EPFO subscribers to opt for National Pension System (NPS), etc. in order to implement the Budget announcement(2015-16). The amended provisions will provide option to the EPF subscriber to opt for NPS in lieu of benefits under EPF & MP Act. The option to revert back to mechanism under EPF & MP Act is also being proposed. Further the definition of "National Pension System" under clause (ja) in section 2 of the Act.

(h) The present Act does not stipulate any pre condition for grant of exemption. The Standing Committee on Labour in its 26th report on "Exempted Organisations / Trusts / Establishments from EPFO: Performance, Issues and Challenges" presented to Lok Sabha on 07.04.2017, had, inter-alia, recommended that proper strong guidelines may be prepared with regard to past performance, net worth, group performance etc. as well as minimum strength of workers, collections, contributions, corpus of the companies establishments, to grant exemption.
