

ECONOMIC AND LABOUR LAWS

PART B – LABOUR LAWS

STUDY XIX - EMPLOYEES' STATE INSURANCE ACT, 1948

LEARNING OBJECTIVES

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.

At the end of the study lesson, you should be able to understand:

- Application of the Act
- Important definitions
- Employees' State Insurance
- Employees' State Insurance Scheme
- Administration ESI Corporation
- Benefits
- ESI Court
- Exemption and compliances

INTRODUCTION

The Employees' State Insurance Act, 1948 provides for certain benefits to employees in case of sickness, maternity and employment injury and also makes provisions for certain other matters in relation thereto. The Act extends to the whole of India. The Central Government is empowered to enforce the provisions of the Act by notification in the Official Gazette, to enforce different provisions of the Act on different dates and for different States or for different parts thereof [Section 1(3)]. The Act applies in the first instance to all factories (including factories belonging to the Government) other than seasonal factories [Section 1(4)]. According to the proviso to Section 1(4) of the Act, nothing contained in sub-section (4) of Section 1 shall apply to a factory or establishment belonging to or under the control of the Government whose employees are otherwise in receipt of benefits substantially similar or superior to the benefits provided under the Act. Section 1(5) of the Act empowers the appropriate Government to extend any of the provisions of the Act to any other establishment or

class of establishments, industrial, commercial, agricultural or otherwise. However, this can be done by the appropriate Government, only in consultation with the Employees' State Insurance Corporation set up under the Act and, where the appropriate Government is a State Government, it can extend the provisions of the Act with the approval of the Central Government.

Under these enacting provisions, the Act has been extended by many State Governments to shops, hotels, restaurants, cinemas, including preview theatres, newspaper establishments, road transport undertakings, etc., employing 20 or more persons. **It is not sufficient that 20 persons are employed in the shop. They should be employee as per Section 2(9) of the Act, getting the wages prescribed therein (ESIC v. MM Suri & Associates Pvt. Ltd., 1999 LAB IC SC 956).** According to the proviso to sub-section (5) of Section 1 where the provisions of the Act have been brought into force in any part of a State, the said provisions shall stand extended to any such establishment or class of establishment within that part, if the provisions have already been extended to similar establishment or class of establishments in another part of that State.

It may be noted that a factory or an establishment to which the Act applies shall continue to be governed by this Act even if the number of persons employed therein at any time falls below the limit specified by or under the Act or the manufacturing process therein ceases to be carried on with the aid of power. [Section 1(6)]

The coverage under the Act is at present restricted to employees drawing wages not exceeding Rs. 10,000 per month.

IMPORTANT DEFINITIONS

i. Appropriate Government

“Appropriate Government” means in respect of establishments under the control of the Central Government or a railway administration or a major port or a mine or oil-field; the Central Government, and in all other cases, the State Government. [Section 2(1)]

ii. Confinement

“Confinement” means labour resulting in the issue of a living child or labour after 26 weeks of pregnancy resulting in the issue of child whether alive or dead. [Section 2(3)]

iii. Contribution

“Contribution” means the sum of money payable to the Corporation by the principal employer in respect of an employees and includes any amount payable by or on behalf of the employee in accordance with the provisions of this Act. [Section 2(4)]

iv. *Dependent*

“Dependent” under Section 2(6A) of the Act means any of the following relatives of a deceased insured person namely:

- i. a widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter,
- (ia) a widowed mother,
- ii. if wholly dependent on the earnings of the insured person at the time of his death, a legitimate or adopted son or daughter who has attained the age of 18 years and is infirm;
- iii. if wholly or in part dependent on the earnings of the insured person at the time his death:
 - a. a parent other than a widowed mother,
 - b. a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and minor or if widowed and a minor,
 - c. a minor brother or an unmarried sister or a widowed sister if a minor,
 - d. a widowed daughter-in-law,
 - e. a minor child of a pre-deceased son,
 - f. a minor child of a pre-deceased daughter where no parent of the child is alive or,
 - g. a paternal grand parent if no parent of the insured person is alive.

v. *Employment Injury*

It means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India. [Section 2(8)]

It is well settled that an employment injury need not necessarily be confined to any injury sustained by a person within the premises or the concern where a person works. Whether in a particular case the theory of notional extension of employment would

take in the time and place of accident so as to bring it within an employment injury, will have to depend on the assessment of several factors. There should be a nexus between the circumstances of the accident and the employment. On facts no case could be an authority for another case, since there would necessarily be some differences between the two cases. Therefore, each case has to be decided on its own facts. It is sufficient if it is proved, that the injury to the employee was caused by an accident arising out of and in the course of employment no matter when and where it occurred. There is not even a geographical limitation. **The accident may occur within or outside the territorial limits of India. However, there should be a nexus or casual connection between the accident and employment. The place or time of accident should not be totally unrelated to the employment** (*Regional Director, E.S.I. Corpn. v. L. Ranga Rao*, 1982 I-L.L.J. 29). Where an employee who is on his way to factory meets with an accident, one K.M. from the place of employment, the Court held that the injury cannot be said to be caused by accident arising out of and in the course of his employment. Mere road accident on a public road while employee was on his way to place of employment cannot be said to have its origin in his employment in the factory (*Regional Director ESI v. Francis de Costa*, 1997 LLJ I 34 SC).

In *E.S.I. Corpn. Indore v. Babulal*, 1982 Lab. I.C. 468, the M.P. High Court held that injury arose out of employment where a workman attending duty in spite of threats by persons giving call for strike and was assaulted by them while returning after his duty was over. A worker was injured while knocking the belt of the moving pulley, though the injury caused was to his negligence, yet such an injury amounts to an employment injury (*Jayanthilal Dhanji Co. v. E.S.I.C.*, AIR AP 210).

The word injury does not mean only visible injury in the form of some wound. Such a narrow interpretation would be inconsistent with the purposes of the Act which provides certain benefits in case of sickness, maternity and employment injury (*Shyam Devi v. E.S.I.C.*, AIR 1964 All. 42).

vi. *Employee*

“Employee” according to Section 2(9) means any person employed for wages 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 employee in the factory or establishment; or elsewhere, or
- ii. who is employed by or through a 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;

and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof, or with the purchase of raw materials of, or the distribution or sale of the product of the factory or establishment; or any person engaged as an apprentice, not being an apprentice engaged under Apprentices Act, 1961, or under the standing orders of the establishment; but does not include:

- a. any member of the Indian Naval, Military or Air Forces; or
- b. any person so employed whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government.

Provided that an employee whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government at any time after (and not before) the beginning of the contribution period shall continue to be an employee until the end of that period. The Central Government has since prescribed by a Notification under Rule 50 of the E.S.I. Rules, 1950 the wage limit for coverage of an employee under Section 2(9) of the Act as Rs. 10,000 per month. Further, it is provided that an employee whose wages (excluding remuneration for overtime work) exceed Rs. 10,000 a month at any time after and not before the beginning of the contribution period, shall continue to be an employee until the end of the period.

In the case of *Royal Talkies Hyderabad v. E.S.I.C.*, AIR 1978 SC 1476, there was a canteen and cycle stand run by private contractors in a theatre premises. On the question of whether the theatre owner will be liable as principal employer for the payment of E.S.I. contributions, the Supreme Court held that the two operations namely keeping a cycle stand and running a canteen are incidental or adjuncts to the primary purpose of the theatre and the workers engaged therein are covered by the definition of employee as given in E.S.I. Act. The Supreme Court observed that the reach and range of Section 2(9) is apparently wide and deliberately transcends pure contractual relationship.

Section 2(9) contains two substantive parts. Unless the person employed qualifies under both, he is not an employee. First, he must be employed in or in connection with the work of an establishment. The expression in connection with the work of an

establishment ropes in a wide variety of workmen who may not be employed in the establishment but may be engaged only in connection with the work of establishment. Some nexus must exist between the establishment and the work of employee but it may be a loose connection. The test of payment of salary or wages is not a relevant consideration. It is enough if the employee does some work which is ancillary, incidental or has relevance to or link with the object of the establishment.

The word employee would include not only persons employed in a factory but also persons connected with the work of the factory. It is not possible to accept the restricted interpretation of the words “employees in factories”. The persons employed in zonal offices and branch offices of a factory and concerned with the administrative work or the work of canvassing sale would be covered by the provisions of the Act, even though the offices are located in different towns (Hyderabad Asbestos Cement Products, etc. v. ESIC, AIR 1978 S.C. 356). The Act is a beneficial piece of legislation to protect interest of the workers. The employer cannot be allowed to circumvent the Act in the disguise of ambiguous designations such as `trainees, `apprentices etc. who are paid regular wages, basic wages plus allowances. Such workers also fall under the Act (LLJ-II-1996 389 AP). Managing director could be an employee of the company. There could be dual capacity i.e. as managing director as well as a servant of the company (ESIC v. Apex Engg. Pvt. Ltd., Scale (1997) 6 652).

vii. *Exempted Employee*

“Exempted Employee” means an employee who is not liable under this Act to pay the employees contribution. [Section 2(10)]

viii. *Principal Employer*

“Principal Employer” means the following:

- i. in a factory, owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person has been named as the manager of the factory under the Factories Act, 1948, the person so named;
- ii. in any establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf or where no authority is so appointed the head of the Department.
- iii. in any other establishment, any person responsible for the supervision and control of the establishment. [Section 2(17)]

ix. *Family*

“Family” means all or any of the following relatives of an insured person, namely:

- i. a spouse;
- ii. a minor legitimate or adopted child dependent upon the insured person;
- iii. a child who is wholly dependent on the earnings of the insured person and who is:
 - a. receiving education, till he or she attains the age of twenty-one years,
 - b. an unmarried daughter;
- iv. a child who is infirm by reason of any physical or mental abnormality or injury and is wholly dependent on the earnings of the insured person, so long as the infirmity continues.
- v. dependent parents. [Section 2(11)]

x. *Factory*

“Factory” means any premises including the precincts thereof:

- a. whereon ten or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on, or
- b. whereon twenty or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power or is ordinarily so carried on,

but does not include a mine subject to the operation of the Mines Act, 1952 or a railway running shed.

It may be noted that the terms manufacturing process, occupier and power, shall have the meaning assigned to them in the Factories Act, 1948. [Section 2(12)]

xi. *Immediate Employer*

“Immediate Employer” means a person, in relation to employees employed by or through him, who has undertaken the execution on the premises of a factory or an establishment to which this Act applies or under the supervision of principal employer

or his agent, of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on, in or incidental to the purpose of any such factory or establishment, and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent or let on hire to the principal employer and includes a contractor. [Section 2(13A)] It would not be necessary that the work undertaken by immediate employer should be in the premises where the factory of principal employer is situated (1997-II LLJ 31 Pat.).

xii. *Insurable Employment*

It means an employment in factory or establishment to which the Act applies. [Section 2(13A)]

xiii. *Insured person*

It means a person who is or was an employee in respect of whom contributions are, or were payable under the Act and who is by reason thereof entitled to any of the benefits provided under the Act. [Section 2(14)]

xiv. *Permanent Partial Disablement*

It means such disablement of a permanent nature, as reduced the earning capacity of an employee in every employment which he was capable of undertaking at the time of the accident resulting in the disablement:

Provided that every injury specified in Part II of the Second Schedule to the Act shall be deemed to result in permanent partial disablement. [Section 2(15A)]

xv. *Permanent Total Disablement*

It means such disablement of a permanent nature as incapacitates an employee for all work which he was capable of performing at the time of the accident resulting in such disablement:

Provided that permanent total disablement shall be deemed to result from every injury specified in Part-I of the Second Schedule to the Act or from any combination of injuries specified in Part-II thereof, where the aggregate percentage of the loss of earning capacity, as specified in the said Part-II against those injuries, amounts to one hundred per cent or more. [Section 2(15B)]

xvi. *Seasonal Factory*

It means a factory which is exclusively engaged in one or more of the following manufacturing processes namely, cotton ginning, cotton or jute pressing, decortication of groundnuts, the manufacture of coffee, indigo, lac, rubber, sugar (including gur) or tea or any manufacturing process which is incidental to or connected with any of the aforesaid processes and includes a factory which is engaged for a period not exceeding seven months in a year:

- a. in any process of blending, packing or repacking of tea or coffee; or
- b. in such other manufacturing process as the Central Government may by notification in the Official Gazette, specify. [Section 2(19A)]

xvii. *Sickness*

It means a condition which requires medical treatment and attendance and necessitates, abstention from work on medical grounds. [Section 2(20)]

xviii. *Temporary Disablement*

It means a condition resulting from an employment injury which requires medical treatment and renders an employee as a result of such injury, temporarily incapable of doing the work which he was doing prior to or at the time of injury. [Section 2(21)]

(xix) *Wages*

xix. *Wages*

“Wages” means 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. [Section 2(22)]

Wages include other additional remuneration paid at intervals not exceeding two months wages. It is question of fact in each case whether sales commission and incentive are payable at intervals not exceeding two months (*Handloom House Ernakulam v. Reg. Director, ESIC*, 1999 CLA 34 SC 10). Travelling allowance paid

to employees is to defray special expenses entitled on him by nature of his employment. It does not form part of wages as defined under Section 2(22) of the E.S.I. Act. Therefore, employer is not liable to pay contribution on travelling allowance. [*S. Ganesan v. The Regional Director, ESI Corporation, Madras*, 2004 Lab.I.C 1147]

REGISTRATION OF FACTORIES AND ESTABLISHMENTS UNDER THIS ACT

Section 2A of the Act lays down that every factory or establishment to which this Act applies shall be registered within such time and in such manner as may be specified in the regulations made in this behalf.

EMPLOYEES' STATE INSURANCE

Section 38 of the Act makes compulsory that subject to the provisions of the Act all the employees in factories or establishments to which this Act applies shall be insured in the manner provided by this Act. Such insured persons shall pay contributions towards Insurance Fund through their employers who will also pay their own contribution. Such insured persons are entitled to get certain benefits from that fund which shall be administered by the Corporation. Any dispute will be settled by the Employees' Insurance Court.

ADMINISTRATION OF EMPLOYEES' STATE INSURANCE SCHEME

For the administration of the scheme of Employees' State Insurance in accordance with the provisions of this Act, the Employees' State Insurance Corporation Standing Committee and Medical Benefit Council have been constituted. Further, ESI Fund has been created which is held and administered by ESI Corporation through its executive committee called Standing Committee with the assistance, advice and expertise of Medical Council, etc. and Regional and Local Boards and Committees.

EMPLOYEES' STATE INSURANCE 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.

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.

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.*

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.

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)

WINGS OF THE CORPORATION

The Corporation to discharge its functions efficiently, has been provided with two wings:

Standing Committee

The Act provides for the constitution of a Standing Committee under Section 8 from amongst its members.

Power of the Standing Committee

The Standing Committee has to administer affairs of the Corporation and may exercise any of the powers and perform any of the functions of the Corporation subject to the general superintendence and control of the Corporation. The standing Committee acts as an executive body for administration of Employees State Insurance Corporation. Medical Benefit Council

Section 10 empowers the Central Government to constitute a Medical Benefit Council. Section 22 determines the duties of the Medical Benefit Council stating that the Council shall:

- a. advise the Corporation and the Standing Committee on matters relating to administration of medical benefit, the certification for purposes of the grant of benefit and other connected matters;
- b. have such powers and duties of investigation as may be prescribed in relation to complaints against medical practitioners in connection with medical treatment and attendance; and
- c. perform such other duties in connection with medical treatment and attendance as may be specified in the regulations.

EMPLOYEES' STATE INSURANCE FUND

Creation of Fund

Section 26 of the Act provides that all contributions paid under this Act and all other moneys received on behalf of the Corporation shall be paid into a Fund called the Employees' State Insurance Fund which shall be held and administered by the Corporation for the purposes of this Act. The Corporation may accept grants, gifts, donations from the Central or State Governments, local authority, or any individual or body whether incorporated or not, for all, or any of the purposes of this Act. A Bank account in the name of Employees' State Insurance Fund shall be opened with the Reserve Bank of India or any other Bank approved by the Central Government. Such account shall be operated on by such officers who are authorised by the Standing Committee with the approval of the Corporation.

Purposes for which the Fund may be expended

Section 28 provides that Fund shall be expended only for the following purposes:

- i. payment of benefits and provisions of medical treatment and attendance to insured persons and, where the medical benefit is extended to their families, in accordance with the provisions of this Act and defraying the charge, and costs in connection therewith;

- ii. payment of fees and allowances to members of the Corporation, the Standing Committee and Medical Benefit Council, the Regional Boards, Local Committees and Regional and Local Medical Benefit Councils;
- iii. payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund of officers and servants of the Corporation and meeting the expenditure in respect of officers and other services set up for the purpose of giving effect to the provisions of this Act;
- iv. establishment and maintenance of hospitals, dispensaries and other institutions and the provisions of medical and other ancillary services for the benefit of insured persons and where the medical benefit is extended to their families, their families;
- v. payment of contribution to any State Government, local authority or any private body or individual towards the cost of medical treatment and attendance provided to insured persons and where the medical benefit is extended to their families, their families including the cost of any building and equipment, in accordance with any agreement entered into by the Corporation;
- vi. defraying the cost (including all expenses) of auditing the accounts of the Corporation and of the valuation of the assets and liabilities;
- vii. defraying the cost (including all expenses) of Employees Insurance Courts set up under this Act;
- viii. payment of any sums under any contract entered into for the purposes of this Act by the Corporation or the Standing Committee or by any officer duly authorised by the Corporation or the Standing Committee in that behalf;
- ix. payment of sums under any decree, order or award, of any court or tribunal against the Corporation or any of its officers or servants for any act done in execution of his duty or under a compromise or settlement of any suit or any other legal proceedings or claims instituted or made against the Corporation;
- x. defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Act;
- xi. defraying expenditure within the limits prescribed, on measure 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
- xii. such other purposes as may be authorised by the Corporation with the previous approval of the Central Government.

CONTRIBUTIONS

The contributions have to be paid at such rates as may be prescribed by the Central Government. The present rates of contribution are 4.75 percent and 1.75 percent of

workers wages by employers and employees respectively. The wage period in relation to an employee shall be the unit in respect of which all contributions shall be payable. The contributions payable in respect of each wage period shall ordinarily fall due on the last day of the wage period and where an employee is employed for part of the wage period, or is employed under two or more employers during the same wage period, the contributions shall fall due on such days as may be specified in the regulations.

Principal employer to pay contributions in the first instance

According to Section 40 of the Act, it is incumbent upon the principal employer to pay in respect of every employee whether directly employed by him or by or through an immediate employer, both the employers contributions and the employees contribution. However, he can recover from the employee (not being an exempted employee) the employees contribution by deduction from his wages and not otherwise. Further Section 40 provides that the principal employer has to bear the expenses of remitting the contributions to that Corporation.

According to Section 39(5) of the Act, if any contribution payable is not paid by the principal employer on the date on which such contribution has become due, he shall be liable to pay simple interest at the rate of 12 per cent per annum or at such higher rate as may be specified in the regulations, till the date of its actual payment. However, according to proviso to sub-section (5) of Section 39, higher interest specified in the regulations should not exceed the lending rate of interest charged by any scheduled bank. It may be noted that any interest recoverable as stated above may be recovered as an arrear of land revenue or under newly introduced Sections 45-C to 45-I of the Act.

Recovery of contribution from immediate employer

According to Section 41, principal employer who has paid contribution in respect of an employee employed by or through an immediate employer is entitled to recover the amount of contribution so paid (both employers and employees contribution) from the immediate employer either by deduction from any amount payable to him by the principal employer under any contract or as a debt payable by the immediate employer. However the immediate employer is entitled to recover the employees contribution from the employee employed by or through him by deduction from wages and not otherwise. The immediate employer is required to maintain a register of employees employed by or through him as provided in the Regulations and submit the same to the principal employer before the settlement of any amount payable. He is not required to have separate account with ESI (LAB IC 1999 Kar 1369).

Method of payment of contribution

Section 43 provides for the Corporation to make regulations for payment and collection of contribution payable under this Act and such regulations may provide for:

- a. the manner and time for payment of contribution;
- b. the payment of contributions by means of adhesive or other stamps affixed to or impressed upon books, cards or otherwise and regulating the manner, times and conditions in, at and under which, such stamps are to be affixed or impressed;
- c. the date by which evidence of contributions having been paid is to be received by the Corporation;
- d. the entry in or upon books or cards or particulars of contribution paid and benefits distributed in the case of the insured persons to whom such books or card relate; and
- e. the issue, sale, custody, production, inspection and delivery of books or cards and the replacement of books or cards which have been, lost, destroyed or defaced.

BENEFITS

Under Section 46 of the Act, the insured persons, their dependants are entitled to the following benefits on prescribed scale:

- a. periodical payments in case of sickness certified by medical practitioner;
- b. periodical payments to an insured workman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement;
- c. periodical payment to an insured person suffering from disablement as a result of employment injury;
- d. periodical payment to dependants of insured person;
- e. medical treatment and attendance on insured person;
- f. payment of funeral expenses on the death of insured person at the prescribed rate of Rs. 1,500/-.

General provisions relating to Benefits

Right to receive benefits is not transferable or assignable. When a person receives benefits under this Act, he is not entitled to receive benefits under any other enactment.

An insured person is not entitled to receive for the same period more than one benefit, e.g. benefit of sickness cannot be combined with benefit of maternity or disablement, etc.

EMPLOYEES' INSURANCE COURT (E.I. COURT)

Constitution

Section 74 of the Act provides that the State Government shall by notification in the Official Gazette constitute an Employees' Insurance Court for such local area as may be specified in the notification. The Court shall consist of such number of judges as the State Government may think fit. Any person who is or has been judicial officer or is a legal practitioner of 5 years standing shall be qualified to be a judge of E.I. Court. The State Government may appoint the same Court for two or more local areas or two or more Courts for the same local area and may regulate the distribution of business between them.

Matters to be decided by E.I. Court

i. Adjudication of disputes

The Employees' Insurance Court has jurisdiction to adjudicate disputes, namely, whether any person is an employee under the Act, rate of wages/contribution, as to who is or was the principal employer, right of a person to any benefit under the Act.

ii. Adjudication of claims

The EI Court also has jurisdiction to decide claims for recovery of contribution from principal employer or immediate employer, action for failure or negligence to pay contribution, claim for recovery of any benefit admissible under the Act.

Proceedings in both the above cases can be initiated by filing application in the prescribed form by the employee or his dependent or employer or the corporation depending who has cause of action.

No Civil Court has power to decide the matters falling within the purview/ jurisdiction of E.I. Court.

EXEMPTIONS

The appropriate Government may exempt any factory/establishment from the purview of this Act, as well as any person or class of persons employed in any

factory/establishment, provided the employees employed therein are in receipt of benefits superior to the benefits under the Act. Such exemption is initially given for one year and may be extended from time to time. The applicant has to submit application justifying exemption with full details and satisfy the concerned Government.

COMPLIANCES UNDER THE ACT

The establishment must ensure following compliances under the Act. These compliances are not exhaustive but illustrative.

1. The factory/establishment is covered by the provisions of this Act with effect from
2. During the year under review, the provisions of this Act continued to have effect notwithstanding any reduction in the employees below the Statutory Minimum.
3. The factory/establishment had made an application to the regional office within 15 days from the date on which this Act became applicable and the Employer's code number is
4. The factory/establishment/class of factory/class of establishment is exempted from complying with the provisions of the Act/any specified area from the operation of this Act vide notification issued by the appropriate government in the official gazette, during the financial year.
5. The factory/establishment has number of employees as defined under section 2 (9) of the Act during the said financial year.
6. All the employees in the factory/establishment to which this Act applies have been insured in the manner provided by the Act.
7. The total contribution (both employer and employee share) at the rates prescribed by the central government was deposited in with the designated branches of..... Bank on or before 21st of the month following the calendar month in which the wages fall due during the financial year.
8. There was no prosecution initiated against or show cause notices received by the Company and no fines or penalties or any other punishment was imposed on the Company during the financial year, for offences under the Act.

LESSON ROUND-UP

- The law relating to employees' State Insurance is governed by the Employees' State Insurance Act, 1948.
- The objective of the act is to provide for certain benefits to employees in case of sickness, maternity and employment injury and to provide for certain other matters

in relation there to.

- The Act is applicable to all factories including factories belonging to the Government other than seasonal factories. The appropriate Government may after giving a notice of not less than six months and by notification in the official Gazette, extend the application of the Act or any of them, to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise. Once the Act becomes applicable, the Act shall continue to apply irrespective of the reduction in number of employees or cessation of manufacturing process with the aid of power.
- Every factory or establishment to which this Act applies has to be registered within the specified time and the regulations made in this behalf.
- All the employees in factories or establishments to which this Act applies shall be insured in prescribed manner. Such insured persons shall pay contributions towards Insurance Fund through their employers who will also pay their own contribution.
- The ESI Act authorises Central Government to establish Employees State Insurance Corporation for administration of the Employees State Insurance Scheme. Such Corporation shall be body corporate having perpetual succession and a common seal and shall sue and be sued by the said name.
- All contributions paid under this Act and all other moneys received on behalf of the Corporation shall be paid into a Fund called the Employees State Insurance Fund which shall be held and administered by the Corporation for the purposes of this Act
- The insured persons, their dependants are entitled to various benefits on prescribed scale. Right to receive benefits is not transferable or assignable. When a person receives benefits under this Act, he is not entitled to receive benefits under any other enactment.
- The Act empowers State Government to constitute an Employees Insurance Court. The Employees Insurance Court has jurisdiction to adjudicate disputes, namely, whether any person is an employee under the Act, rate of wages/contribution, as to who is or was the principal employer, right of a person to any benefit under the Act.
- The EI Court also has jurisdiction to decide claims for recovery of contribution from principal employer or immediate employer, action for failure or negligence to pay contribution, claim for recovery of any benefit admissible under the Act.

FOOTNOTES

* The Employees State Insurance Corporation has enhanced the wage ceiling for the purpose of coverage of employees under the ESI Scheme from Rs. 7,500 to Rs. 10,000 per month. The new wage ceiling came into force from 1st October, 2006, The enhancement of wage ceiling follows the notification dated 22nd September, 2006 by the Central Government.