

SOCIAL SECURITY FRAMEWORK FOR LABOUR FORCE IN INDIA



CA. Rajkumar S. Adukia
B.Com (Hons.), FCA, ACS, ACWA, LL.B,
DIPR, DLL & LP, MBA, IFRS(UK)
098200 61049/09323061049
email id: rajkumarradukia@caaa.in
Website: www.caaa.in

To download information on various subjects visit www.caaa.in

To receive regular updates kindly send test email to

rajkumarfca-subscribe@yahoogroups.com

rajkumarfca+subscribe@googlegroups.com

Meaning of Social Security

Social security may be defined as any programme of social protection established by legislation, or any other mandatory arrangement, that provides individuals with a degree of income security when faced with the contingencies of old age, survivorship, incapacity, disability, unemployment or rearing children. It may also offer access to curative or preventive medical care.

As defined by the International Social Security Association (an international institution to promote dynamic social security), social security can include social insurance programmes, social assistance programmes, universal programmes, mutual benefit schemes, national provident funds, and other arrangements including market-oriented approaches that, in accordance with national law or practice, form part of a country's social security system.

History of Social Security

The first social security programmes based on compulsory insurance were established in Europe in the late-19th century. It was during the 20th century, however, that national social security programmes developed more widely around the globe.

The development of social security has also been supported by various international conventions and instruments, and the recognition of social security as a basic human right was enshrined in the 1948 Universal Declaration of Human Rights. In a few countries, for example Germany and Brazil, social security is a right guaranteed by the Constitution.

Today, most countries have some type of social security system. Worldwide, the most common type of programme is for old-age, disability, and survivors' pensions, followed by programmes for benefits for work injuries and occupational diseases, sickness and maternity, family allowances and unemployment.

Social Security in India

Social Security is a government program that provides economic assistance to persons faced with unemployment, disability, or agedness, financed by assessment of employers and employees.

In the Indian context, Social Security is a comprehensive approach designed to prevent deprivation, assure the individual of a basic minimum income for himself and his dependents and to protect the individual from any uncertainties. The State bears the primary responsibility for developing appropriate system for providing protection and assistance to its workforce.

Matters relating to Social Security are listed in the Directive Principles of State Policy and the subjects in the Concurrent List of the Constitution of India.

The following social security issues are mentioned in the Concurrent List (List III in the Seventh Schedule of the Constitution of India) –

- Item No. 23: Social Security and insurance, employment and unemployment.
- Item No. 24: Welfare of Labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pension and maternity benefits.

Part IV Directive Principles of State Policy in the Constitution of India lays down the following:

Article 41 Right to work, to education and to public assistance in certain cases
The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Article 42 Provision for just and humane conditions of work and maternity relief
The State shall make provision for securing just and humane conditions of work and for maternity relief.

Organised and Unorganised Sector

The labour force in India can be divided into the organized and unorganized sectors.

The organized sector includes primarily those establishments which are covered by the Factories Act, 1948, the Shops and Commercial Establishments Acts of State Governments, the Industrial Employment Standing Orders Act, 1946 etc. This sector already has a structure through which social security benefits are extended to workers covered under these legislations.

The unorganized sector on the other hand, is characterized by the lack of labour law coverage, seasonal and temporary nature of occupations, high labour mobility, dispersed functioning of operations, casualization of labour, lack of organizational support, low bargaining power, etc. all of which make it vulnerable to socio-economic hardships. The nature of work in the unorganized sector varies between regions and also between the rural areas and the urban areas, which may include the remote rural areas as well as sometimes the most inhospitable urban concentrations. In the rural areas it comprises of landless agricultural labourers, small and marginal farmers, share croppers, persons engaged in animal husbandry, fishing, horticulture, bee-keeping, toddy tapping, forest workers, rural artisans, etc. where as in the urban areas, it comprises mainly of manual labourers in construction, carpentry, trade, transport, communication etc. and also includes street vendors, hawkers, head load workers, cobblers, tin smiths, garment makers, etc.

Social Security framework for Unorganised Workers

With a view to providing social security to unorganized workers, the Government enacted the Unorganised Workers' Social Security Act, 2008. The Act came into force w.e.f. 16.05.2009. The Act provides for registration of unorganized workers to help in formulating social security schemes for particular occupations. The Central Rules under the Act viz. Unorganised Workers' Social Security Rules, 2009 have been framed.

The 'Unorganised Workers' Social Security Act, 2008 also provides for constitution of National Social Security Board which shall recommend social security schemes viz life and disability cover, health and maternity benefits, old age protection and any other benefit as may be determined by the Government for unorganized workers. The National Social Security Board was constituted vide Notification no. S.O 2132 (E) dated 18.8.2009.

The important ingredients of the Act are as under:

- It provides for formulation of schemes by the Central Government for different sections of unorganised workers on matters relating to (a) life and disability cover; (b) health and maternity benefits; (c) old age protection (d) any other benefit as may be determined by the Central Government.
- It provides formulation of schemes relating to provident fund, employment injury benefits, housing, educational schemes for children, skill upgradation, funeral assistance and old age homes by the State Governments.
- Constitution of National Social Security Board under the chairmanship of Union Minister for Labour & Employment with Member Secretary and 34 nominated members representing Members of Parliament, unorganized workers, employers of unorganised workers, civil society, Central Ministries and State Governments.
- The functions of National Board, inter-alia, include: to recommend to the Central Government suitable schemes for different sections of unorganised workers; monitor the implementation of schemes and advise the Central Government on matters arising out of the administration of the Act.
- The Act also provides for constitution of similar Boards at the State level.
- Setting up of constitution of Workers' Facilitation Centre to (a) disseminate information on social security schemes available to them (ii) facilitate the workers to obtain registration from district administration and enrollment of unorganised workers.
- Eligibility criteria for registration as also the procedure for registration under the Act.

Social Security framework for Organised Workers

Social Security to the workers in the Organized Sector is provided through five Central Acts, namely,

- The Employees' Compensation Act, 1923 (earlier called "the Workmens' Compensation Act")
- The Employees' State Insurance Act, 1948 (ESI Act)
- The Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (EPF & MP Act)
- The Maternity Benefit Act, 1961
- The Payment of Gratuity Act, 1972

In addition, there are a large number of welfare funds for certain specified segments of workers such as beedi workers, cine workers, construction workers etc.

Social Security Schemes of Employees' Provident Fund Organization (EPFO) and Employees' State Insurance Corporation (ESIC) are also available for the workers.

THE EMPLOYEES' COMPENSATION ACT, 1923

The Employees' Compensation Act, 1923 (earlier called the Workmen's Compensation Act, 1923) requires payment of compensation to the workman or his family in cases of employment related injuries resulting in death or disability.

Important Provisions under the Act:

1. The Employees' Compensation Act (erstwhile Workmen's Compensation Act), aims to provide workmen and/or their dependents some relief in case of accidents arising out of and in the course of employment and causing either death or disablement of workmen.
2. The Workmen's Compensation Amendment Act, 2009 made the Act gender-neutral with the substitution of "workman" with "employee". Henceforth the Act came to be known as Employee's Compensation Act, 1923.
3. The Act does not apply where the employee is covered under the ESI Act - Since a workman is entitled to get compensation from Employees State Insurance Corporation, an employee covered under ESI Act is not entitled to get compensation under Employee's Compensation Act, as per section 53 of ESI Act, 1948.
4. Every employee (including those employed through a contractor but excluding casual employees), who is engaged for the purposes of employers business and who suffers an injury in any accident arising out of and in the course of his employment, shall be entitled for compensation under the Act.
5. The employer of any establishment covered under this Act, is required to compensate an employee:
 - a. Who has suffered an accident arising out of and in the course of his employment, resulting into (i) death, (ii) permanent total disablement,

- (iii) permanent partial disablement, or (iv) temporary disablement whether total or partial, or
- b. Who has contracted an occupational disease.

6. Employer Shall Not Be Liable:

- a. In respect of any injury which does not result in the total or partial disablement of the workmen for a period exceeding **three days**;
- b. In respect of any injury not resulting in death, caused by an accident which is directly attributable to-
 - i. the workmen having been at the time thereof under the influence or drugs, or
 - ii. the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or
 - iii. the wilful removal or disregard by the workmen of any safeguard or other device which he knew to have been provided for the purpose of securing the safety of workmen. The burden of proving intentional disobedience on the part of the employee shall lie upon the employer.
 - iv. when the employee has contracted a disease which is not directly attributable to a specific injury caused by the accident or to the occupation; or
 - v. when the employee has filed a suit for damages against the employer or any other person, in a Civil Court.

7. Accident Arising Out Of And In The Course Of Employment

An accident arising out of employment implies a casual connection between the injury and the accident and the work done in the course of employment. Employment should be the distinctive and the proximate cause of the injury. The three tests for determining whether an accident arose out of employment are:

- 1. At the time of injury workman must have been engaged in the business of the employer and must not be doing something for his personal benefit;
- 2. That accident occurred at the place where he was performing his duties; and
- 3. Injury must have resulted from some risk incidental to the duties of the service, or inherent in the nature condition of employment.

8. General principles of the Act

- There must be a casual connection between the injury and the accident and the work done in the course of employment;
- The onus is upon the applicant to show that it was the work and the resulting strain which contributed to or aggravated the injury;
- It is not necessary that the workman must be actually working at the time of his death or that death must occur while he was working or had just ceased to work; and
- Where the evidence is balanced, if the evidence shows a greater probability which satisfies a reasonable man that the work contributed to the causing of the personal injury it would be enough for the workman to succeed. But where the accident involved a risk common to all humanity and did not involve any peculiar or exceptional danger resulting from the nature of the employment or where the accident was the result of an added peril to which the workman by his own conduct exposed himself, which peril was not involved in the normal performance of the duties of his employment, then the employer will not be liable.

The Employees' Compensation Act, 1923 – Recent Amendments

- The Act has been amended to make it gender neutral.
- The Act will now be called 'the Employees' Compensation Act, 1923'
- The compensation under the Act has been enhanced from Rs.80,000/- to Rs.1,20,000/- in case of death, from Rs.90,000/- to Rs.1,40,000/- in case of disablement and from Rs.2,500/- to Rs.5,000/- towards funeral expenses
- The employee shall be reimbursed the actual medical expenditure incurred by him for treatment of injuries caused during the course of employment without any ceiling.
- A new Section 25A has been added for the Commissioner to dispose the matter relating to compensation under this Act within a period of three months from the date of reference.
- The wage ceiling limit for working out compensation has been increased from Rs.4,000/- to Rs.8,000/- per month .

THE EMPLOYEES' STATE INSURANCE ACT, 1948 (ESI Act)

The ESI Act applies to all the factories including Government factories (excluding seasonal factories). The act also applies to shops and establishments.

Generally, shops and establishments employing more than 20 employees are covered by the Act.

However, since Government has to provide for hospitals and medical facilities, the Act can be made applicable to different parts of State at different dates. Thus, if a factory is at a place where ESIC is unable to provide medical facilities, ESI Act may not be made applicable to that area. Government can exempt a factory or establishment or persons or class of persons from provisions of ESI Act, if the employees are getting better medical facilities/

The ESI Act has been passed to provide for certain benefits to employees in case of sickness, maternity and employment injury, monthly payments in case of death or disablement and to make provisions for related matters. As the name suggests, it is basically an 'insurance' scheme i.e. employee gets benefits if he is sick or disabled. The ESIC - Employees State Insurance Corporation (ESIC) has been formed to supervise the scheme under Section 3 of the Act. The Corporation supervises and controls the ESI scheme.

Important Provisions under the Act:

1. Section 73 of the Act provides that no employer shall dismiss, discharge or reduce or otherwise punish an employee during the period employee is in receipt of sickness benefit or maternity benefit and when he is in receipt of disablement benefit or is under medical treatment or is absent from work due to sickness.
2. Employer under ESI Act - 'Principal Employer' means * owner or occupier of factory * Head of department in case of Government department and * Person responsible for supervision and control, in case of any other establishment. [Section 2(17)]. - - Employees working through contractor are also covered. 'Contractor' is termed as 'Immediate Employer'. 'Immediate employer' means a person who has undertaken the execution, on the premises of factory or establishment to which this Act applies. He may do on his own or under the supervision of Principal Employer. The work should be part of work of factory or establishment of principal employer or is preliminary or incidental to the work of factory or establishment. [Section 2(13)]. Primary liability of ESI contribution is of Principal Employer. [Section 40(1)]. He can recover the contribution paid by him from the 'immediate employer' i.e. contractor. [Section 41].
3. Employee under ESI Act - 'Employee' means any person employed for wages in or in connection with work of a factory or establishment to which the ESI Act applies. Wage Ceiling Limit with effect from 1.5.2010 has been increased to 15000/- from 10000/-

4. Contribution to ESIC Fund - Both employee and employer have to make contribution to ESIC. The employer has to deduct contribution from wages of employee and pay to ESIC both the employer's contribution as well as employees' contribution. [Section 39(1)].
5. Contribution period and Benefit period - Contribution period is (a) 1st September to 31st March (b) 1st April to 30th September. The corresponding benefit period is (a) following 1st July to 31st December (b) following 1st January to 30th June. Thus, 'benefit period' starts three months after the 'contribution period' is over. The relevance of this definition is that sickness benefit and maternity benefit is available only during 'benefit period'. Thus, an employee gets these benefits only after 9 months after joining employment and paying contribution. However, other benefits are available during contribution period also.
6. Benefits to employees covered under ESI Act - An employee is entitled to get benefits which are medical benefits as well as cash benefits. He also can get disablement benefit.

Employees' State Insurance Act, 1948 – Recent Amendments

- Wage Ceiling Limit (vide the amendment in the Employees State Insurance (Central) Rules 1950 vide notification no. G.S.R 394(E) dated 20th April 2010 effective from 1.5.2010 – the wage ceiling limit increased to 15000/- from 10000/-
- Other Beneficiaries Scheme, 2010 – The Other Beneficiaries and Members of their Families Medical Facilities Scheme 2010 vide Notification No. G.S.R 654(E) dated 4.8.2010 and in supersession of The Other Beneficiaries and Members of their Families Medical Facilities Scheme 2008.
- ESI (Amendment) Act, 2010 - The ESI Amendment Act 2010 has been notified and it has come in to effect w.e.f. 01-06-2010.

EMPLOYEES' STATE INSURANCE (AMENDMENT) ACT 2010

The ESI Amendment Act 2010 has come in to effect w.e.f. 01-06-2010. The Employees' State Insurance Act, 1948 has been amended to improve the quality of service under the scheme and also to enable ESI infrastructure to be used to provide health care to workers in the unorganized sector. Following are the important amendments and its implications:-

- (i) The age limit of the dependents has been increased from 18 years to 25 years for the purpose of dependants' benefit. It will benefit large number of workers.
- (ii) A qualification has been attached to the "dependent parents" of the Insured Person to avail the medical benefits etc under the Act, which was not in the Act earlier.
- (iii) New members has been introduced to the words "Family" - " in case the insured person is unmarried and his or her parents are not alive, a minor brother or sister wholly dependant upon the earnings of the insured person" shall also form part of family of the Insured Person.
- (iv) The definition of "Factory" has been amended to facilitate coverage of smaller factories and cover all factories which employ 10 or more persons whether these are run by power or without power. The definition of the "Factory" has been amended to bring the small units within the ambit of the Act. Earlier the ESI Act was applicable to units employing 10 or more persons manufacturing with aid of "POWER"- Now the word POWER has been omitted. Thus, every unit manufacturing and employing 10 or more persons has been brought under the ambit of the ESI Act.
- (v) Director General of Employee State Insurance Corporation is being made Chairman of Medical Benefit Council to improve quality of medical benefits.
- (vi) The post of Insurance Inspector is re-designated as Social Security Officer to give them the role of facilitator rather than to act as mere inspectors.
- (vii) The procedure for determination of contribution has been streamlined to avoid harassment of employers as the Inspectors can now no more inspect the books of accounts of the establishment beyond five years as under present system of unlimited period.
- (viii) It has added the benefit for workers for the accidents happening while commuting to the place of work and vice versa.
- (ix) State Governments are allowed to set up autonomous organisations to give ESI Scheme benefits.
- (x) It extended medical treatment to those who retire under Voluntary Retirement Scheme or take premature retirement.
- (xi) A new Chapter V-A has been added to enable provision for extending medical care to non insured persons against payment of user charges to facilitate providing of medical care to the Below Poverty Line families and other unorganised sector workers covered under the Rashtriya Swasthya Bima Yojana (RSBY)
- (xii) The system of Test inspection or Re-inspection has been introduced in the Act. This system was though prevalent in practice but did not have any statutory force behind it.

These amendments will ensure coverage of more workers under the ESI Scheme in the organised sector and will also enable the ESI Corporation to participate in schemes such as RSBY that may be framed for the workers in the unorganised sector. The amendments are also aimed at improving service delivery to the existing members of ESI Scheme as well as bringing the provisions of the Act in tune with the changing circumstances.

THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952 (EPF & MP Act)

The EPF & MP Act applies to specific scheduled factories and establishments employing 20 or more employees and ensures terminal benefits to provident fund, superannuation pension, and family pension in case of death during service.

Important Provisions under the Act:

1. To make provisions for the future of the industrial worker after he retires or for his dependents in the case of his early death
2. As per Preamble to the Act, the EPF Act is enacted to provide for the institution of provident funds, pension fund and deposit linked insurance fund for employees in factories and other establishments.
3. Schemes framed under the Act are –
 - The Employees' Provident Funds Schemes, 1952;
 - The Employees' Pension Scheme, 1995 and
 - The Employees' Deposit Linked Insurance Scheme, 1976
4. Benefits
 - Apart from terminal disbursement of non-refundable withdrawals for Life Insurance Policies
 - House building
 - Medical treatment
 - Marriage
 - Higher education
 - Family pension
 - Retirement-cum-withdrawal benefits
 - Deposit linked insurance Amount
5. Coverage of Act - The Act applies to the whole of India except Jammu & Kashmir.

The Act applies to:

- Every establishment which is engaged in any one or more of the industries specified in Schedule I of the Act or any activity notified by Central Government in the Official Gazette. (List of Industries/Establishments)
- Employing 20 or more persons (The establishment to which this Act applies shall continue to be governed by this Act , even if the number of employees falls below 20 at a later date)
- Cinema Theatres employing 5 or more persons.

The Act does not apply to:

- The co-operative societies employing less than 50 persons and working without the aid of power (section
- Establishments under the control of state/central Govt.& employees who are getting benefits in the nature of contributory P.F. or old age pension as per rules framed by the Govt.
- Establishment set up under any central, provincial or state act and the employees who are getting benefits in the nature of contributory P.F. or old age pension as per rules.

Voluntary Coverage - If any of the establishment is not satisfying the above conditions for coverage and if the employer and majority of the employees are willing , the Act may be applicable to such establishment (voluntary coverage under section 1(4))

6. Employees Provident Fund Scheme, 1952 - This is the main scheme under the Act. Both employer and employee have to pay contribution to Provident Fund. The employer has to deduct contribution of employee from the salary of employee and has to pay both employees' contribution as well as employer's contribution by a challan in prescribed form. The amount has to be paid in approved bank.

7. Employees' Pension Scheme, 1995 - This scheme has been introduced w.e.f. 16th November, 1995. The Scheme is applicable to all subscribers of Employers' Provident Fund. It is also compulsory to persons who were subscribers as on 16.11.95.

8. Employees Deposit Linked Insurance Scheme, 1976 - The purpose of the scheme is to provide life insurance benefits to employees who are already covered under PF/FPF. The Central Government with the motive of providing additional Social Security in the form of Life Insurance to the family of the

deceased member of the Provident Fund, introduced the Employees Deposit Linked Insurance Scheme with effect from 1-8-1976 as provided under Section 6(C) of the Employees' Provident Fund & MP Act, 1952. The benefit under the Scheme is so devised that it acts as an incentive to the members to save more in their Provident Fund Account. As the name of the Scheme says, the benefit is linked to the amount of accumulation in the Provident Fund Account of the member.

The Employees' Provident Funds & Miscellaneous Provisions Act, 1952 – Recent Amendments:

- Enhancement of EDLI benefits – Amendment to the Employees Deposit Linked Insurance Scheme 1976 vide the Employees Deposit Linked Insurance (Amendment) Scheme 2011 vide Notification No. G.S.R 9(E) dated 8.1.2011 – Enhancement of EDLI benefit to Rs. 1,30,000, equivalent to 20 times of salary ceiling limit of Rs. 6500.
- Coverage of Establishments – vide Notification No. S.O 30(E) dated 8.1.2011, the Central Government specifies the following establishments employing 20 or more persons as the class of establishments to which the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 shall apply – Municipal Councils and Municipal Corporations constituted under Article 243Q of the Constitution of India

THE MATERNITY BENEFIT ACT, 1961 (M.B Act)

The object of the Maternity Benefit Act, 1961 (M.B. Act) is to regulate the employment of women in certain establishments for certain periods before and after childbirth and to provide for maternity benefits and certain other benefits.

Important Provisions under the Act:

1. This act applies to women who work in factories, mines, plantations, circus industry, shops and establishment with more than 10 employees. It does not apply to employees covered by the Employees State Insurance Act, 1948. It can be extended to other establishments by the State Government with the approval of the Central Government.

2. "Establishment" under this Act 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. (Section 3(e))

3. Under the Act, women employees are entitled to maternity benefit at the rate of average daily wage for the period of their actual absence up to 12 weeks due to the delivery. In cases of illness arising due to pregnancy, etc., they are entitled to additional leave with wages for a period of one month. They are also entitled to six weeks maternity benefit in case of miscarriage. The Act also makes certain other provisions to safeguard the interest of pregnant women workers.

4. The average daily wage is calculated on the basis of the amount 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 has absented herself on account of maternity, or one rupee a day, whichever is higher.

5. To be eligible for maternity benefit, a woman should have worked in an establishment for not less than 80 days in the twelve months immediately prior to the date of her expected delivery.

6. The maximum period for which any woman can be entitled to maternity benefit is twelve weeks. This includes six weeks up to and including the day of her delivery and six weeks immediately following that day. If a woman dies during this period, the maternity benefit will be payable only for the days up to and including the day of her death. However, if she delivers a child and dies during the delivery or during the period of six weeks following the delivery, the employer will be liable for the maternity benefits of the entire period of six weeks immediately following the day of her delivery. If the child dies during this period, the liability will be only up to and including the day of the death of the child.

In case the woman dies before receiving the benefit, the amount must be paid to her nominee or legal representative.

7. In the event of a miscarriage, the woman must produce relevant proof that she has suffered a miscarriage. This will entitle her to receive leave with wages at the

rate of the maternity benefit, for a period of six weeks immediately following the date of the miscarriage.

8. Women who are ill on account of pregnancy, delivery, premature birth of a child or a miscarriage are also entitled to a period of absence or to leave with wages at the rate of maternity benefit for a maximum period of one month. However, they must submit proof of their illness.

9. A pregnant woman is required to give her employer a notice in writing, stating that the maternity benefit that she is entitled to should be given to her or any person nominated by her and that she will not be working during the period in which she receives the benefit. This notice should start from the date when she was absent from work, provided that date is not earlier than six weeks from the date of her expected delivery. This notice can also be given soon after the delivery.

On receiving the notice, the employer is bound to permit the woman to absent herself from work until the expiry of six weeks after the delivery. In case a woman fails to give notice, this does not disentitle her from claiming maternity benefit. The employer is still liable to pay her the amount due to her.

10. When a woman absents herself from work on account of illness during pregnancy, she may not be discharged or dismissed by her employer or issued notice for dismissal. It is equally unlawful for the employer to alter any of the conditions of her service to her disadvantage.

If she is discharged or dismissed from service, she should still be entitled to receiving maternity benefit or medical bonus. She cannot be deprived of these. The woman can be dismissed only if she is guilty of gross misconduct. In this case, the employer is well within his rights to deprive her of the maternity benefit or medical bonus.

11. Every woman entitled to maternity benefit shall also be entitled to receive from her employer a medical bonus of 2500/-, if no pre-natal confinement and post-natal care is provided for by the employer free of charge.

The Maternity Benefit Act, 1961 – Recent Amendments

- The Maternity Benefit (Amendment) Act, 2008 provides for
(i) enhancing Medical Bonus from Rs. 250/- to Rs. 1,000/- if no prenatal confinement and post-natal care is provided by the employer free of charge; and

- (ii) Granting powers to the Central Government to revise Medical Bonus before three years subject to a maximum of Rs. 20,000/-
- The Act received the assent of the President on 1st April, 2008 and was published in the Gazette of India on 2nd April, 2008.
- Vide notification S.O 2016(E) dated 11.8.2008, the amount of medical bonus has been further increased to 2500/- from 1000/-.

THE PAYMENT OF GRATUITY ACT, 1972

The Payment of Gratuity Act, 1972 (P.G. Act), provides for a scheme for the payment of gratuity to employees engaged in:

- (a) every factory, mine, oilfield, plantation, port and railway company.
- (b) Every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishment in a State, in which 10 or more persons are or were employed on any day in the preceding 12 months.
- (c) Such other establishments or class of establishment, in which 10 or more employees are or were employed on any day in the preceding 12 months, as the Central Government may notify in this behalf.

Important Provisions under the Act:

1. Gratuity shall be paid to an employee on the termination of his employment after he has rendered continuous service of not less than 5 years i.e. on superannuation, retirement, resignation, death or disablement due to accident or disease (Sec 4).

The period of 5 years is not necessary if the termination of the employee is because of death or disablement. In the case of death the amount is paid to the legal heirs.

“Continuous Service” means uninterrupted service which may be interrupted on account of sickness, accident, leave, absence from duty without (not being treated as break in service), lay-off, strike, lock-out or cessation of work not due to the fault of the employee. (Sec 2A).

2. Gratuity is calculated at 15 days wages based on last the rate of wages drawn by the employee for each completed year of service or part thereof in excess of six months.

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.

Gratuity = Monthly salary x 15 days x No. of years of service

26

3. The maximum amount of gratuity payable to an employee under the Act shall not exceed Rs. 10Lkhs. (earlier Rs. 3.5 lkhs)

4. Gratuity can be forfeited where an employee has been terminated:

- (i) for any act, willful omission or negligence causing any damage or loss to or destruction of any property belonging to the employer, to the extent of such loss or damage.
- (ii) for riotous or disorderly conduct or any act of violence on his part.
- (iii) For any act which constitutes an offence involving moral turpitude, provided the offence has been committed by him in the course of his employment.

The Payment of Gratuity Act, 1972 – recent Amendments

- Definition of Employee has been enlarged
- Enhancement of Ceiling Limit – Payment if Gratuity (Amendment) Act 2010

The Payment of Gratuity Act, 1972 has been amended first to cover teachers in educational institutions and again to enhance the ceiling on gratuity from Rs.3.5 lakh to Rs.10 lakh.

THE MAHATMA GANDHI NATIONAL RURAL EMPLOYMENT GUARANTEE ACT, 2005 (MNREGA)

Introduced as National Rural Employment Guarantee Act (NREGA) in 2005, the Act was renamed as the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) on 2nd OCT 2009 after Mahatma Gandhi and has proved to be a grand success across the country.

MGNREGA aims at enhancing the livelihood security of people in rural areas by guaranteeing hundred days of wage-employment in a financial year to a rural household whose adult members volunteer to do unskilled manual work.

The Mahatma Gandhi National Rural Employment Guarantee Act (MNREGA) is a law whereby any adult who applies for employment in rural areas has to be given work on local public works within 15 days. If employment is not given, an unemployment allowance has to be paid. The employment guarantee is subject to a limit of 100 days per household per year.

About the Author

Rajkumar S. Adukia

B. Com (Hons.), FCA, ACS, AICWA, LL.B, M.B.A, Dip IFRS (UK), Dip LL & LW

Senior Partner, Adukia & Associates, Chartered Accountants

Meridien Apts, Bldg 1, Office no. 3 to 6

Veera Desai Road, Andheri (West)

Mumbai 400 058

Mobile 098200 61049/093230 61049

Fax 26765579

Email rajkumarfca@gmail.com

Mr. Rajkumar S Adukia is an eminent business consultant, academician, writer, and speaker. A senior partner of Adukia & Associates he has authored more than 34 books on a wide range of subjects. His books on IFRS namely, "Encyclopedia on IFRS (3000 pages) and The Handbook on IFRS (1000 pages) has served number of professionals who are on the lookout for a practical guidance on IFRS. The book on "Professional Opportunities for Chartered Accountants" is a handy tool and ready referencer to all Chartered Accountants.

In addition to being a Chartered Accountant, Company Secretary, Cost Accountant, MBA, Dip IFR (UK), Mr. Adukia also holds a Degree in Law and Diploma in Labor Laws. He has been involved in the activities of the Institute of Chartered Accountants of India (ICAI) since 1984 as a convenor of Kalbadevi CPE study circle. He was the Chairman of the Western Region of Institute of Chartered Accountants of India in 1997 and has been actively involved in various committees of ICAI. He became a member of the Central Council in 1998 and ever since he has worked tirelessly towards knowledge sharing, professional development and enhancing professional opportunities for members. He is a regular contributor to the various committees of the ICAI. He is currently the Chairman of Committee for Members in Industry and Internal Audit Standard Board of ICAI.

Mr. Adukia is a rank holder from Bombay University. He did his graduation from Sydenham College of Commerce & Economics. He received a Gold Medal for highest marks in Accountancy & Auditing in the Examination. He passed the Chartered Accountancy with 1st Rank in Inter CA & 6th Rank in Final CA, and 3rd Rank in Final Cost Accountancy Course in 1983. He started his practice as a Chartered Accountant on 1st July 1983, in the three decades following which he left no stone unturned, be it academic expertise or professional development. His level of knowledge, source of information, professional expertise spread across a wide range of subjects has made him a strong and sought after professional in every form of professional assignment.

He has been coordinating with various professional institutions, associations' universities, University Grants Commission and other educational institutions. Besides he has actively participated with accountability and standards-setting organizations in India and at the international level. He was a member of J.J. Irani committee which drafted Companies Bill 2008. He is also member of Secretarial Standards Board of ICSI. He represented ASSOCHAM as member of Cost Accounting Standards Board of ICWAI. He was a member of working group of Competition Commission of India, National Housing Bank, NABARD, RBI, CBI etc.

He has served on the Board of Directors in the capacity of independent director at BOI Asset management Co. Ltd, Bharat Sanchar Nigam Limited and SBI Mutual Funds Management Pvt Ltd. He was also a member of the London Fraud Investigation Team.

Mr. Rajkumar Adukia specializes in IFRS, Enterprise Risk Management, Internal Audit, Business Advisory and Planning, Commercial Law Compliance, XBRL, Labor Laws, Real Estate, Foreign Exchange Management, Insurance, Project Work, Carbon Credit, Taxation and Trusts. His clientele include large corporations, owner-managed companies, small manufacturers, service businesses, property management and construction, exporters and importers, and professionals. He has undertaken specific assignments on fraud investigation and reporting in the corporate sector and has developed background material on the same.

Based on his rich experience, he has written numerous articles on critical aspects of finance-accounting, auditing, taxation, valuation, public finance. His authoritative articles appear regularly in financial papers like Business India, Financial Express, Economic Times and other professional / business magazines. He has authored several accounting and auditing manuals. He has authored books on vast range of topics including IFRS, Internal Audit, Bank Audit, Green Audit, SEZ, CARO, PMLA, Antidumping, Income Tax Search, Survey and Seizure, Real Estate etc. His books are known for their practicality and for their proactive approaches to meeting practice needs.

Mr. Rajkumar is a frequent speaker on trade and finance at seminars and conferences organized by the Institute of Chartered Accountants of India, various Chambers of Commerce, Income Tax Offices and other Professional Associations. He has also lectured

at the S.P. Jain Institute of Management, Intensive Coaching Classes for Inter & Final CA students and Direct Taxes Regional Training Institute of CBDT. He also develops and delivers short courses, seminars and workshops on changes and opportunities in trade and finance. He has extensive experience as a speaker, moderator and panelist at workshops and conferences held for both students and professionals both nationally and internationally.. Mr. Adukia has delivered lectures abroad at forums of International Federation of Accountants and has travelled across countries for professional work.

Professional Association: *Mr. Rajkumar S Adukia with his well chartered approach towards professional assignments has explored every possible opportunity in the fields of business and profession. Interested professionals are welcome to share their thoughts in this regard.*