



EY People and Regulations Insights

Newsletter

2 January 2024

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Revised Frequently Asked Questions on higher pension benefit under the Provident Fund law released by the Employees' Provident Fund Organisation

On 13 December 2023, the Employees' Provident Fund Organisation (EPFO) issued the revised Frequently Asked Questions (FAQs)¹ for implementation of the judgment of Hon'ble Supreme Court dated 4 November 2022 on higher pension benefit under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act). The FAQs clarify the following key aspects:

- ▶ **Higher pension application cannot be rejected where permission under Para 26(6) of the Employees Provident Funds Scheme, 1952 (Provident Fund Scheme) is not obtained** (i.e., permission required for making Provident Fund contributions to higher monthly pay) - Where such permission is not available, the EPFO field offices are required to verify other documents to determine member's eligibility for higher pension option, such as wage details submitted by the employer, salary slips, letter from employer. In such cases, it will be the duty of the Regional Provident Fund Commissioner (RPFC) to obtain required documents from the employer.
- ▶ **Pensionable salary to be considered for calculation of monthly pension** -
Where commencement of pension is before 1 September 2014 - average monthly pay for 12 months preceding the date of exit from membership.
Where commencement of pension is on or after 1 September 2014 - average monthly pay 60 months preceding the date of exit from membership.
- ▶ **Higher pension for a member retiring in the future** - to be calculated as per the Pension Scheme that will exist as on the date of commencement of pension.
- ▶ **No set-off of arrears of higher pension payout against higher contributions** - where an individual is eligible for higher monthly pension payout from the EPFO for the past period as arrears - such arrears of pension will be paid to the individual in accordance with the existing process. This will assist EPFO to comply with TDS requirement on such arrears pension payout. Such arrears will not be adjusted against dues if any from the individual for reallocation of funds required from the Provident Fund Scheme to the Pension Scheme where the individual has already claimed lump-sum withdrawal from the Provident Funds Scheme or funds in the Provident Fund Scheme are insufficient.

EY comment: Employers may be required to furnish additional information to the EPFO, for employees opting for a higher pension option, in order to validate past contributions made on higher salaries.

1. No. e-399180/2543

Standard Operating Procedure for surrender and cancellation of exemption granted to establishments managing private provident fund trusts

- The EPFO issued two circulars setting out the Standard Operating Procedures (SOPs) on surrender² and cancellation of exemption³ granted to establishments operating private provident fund trusts, vide circulars dated 30 October 2023.

The SOPs cover the following key aspects:

- Administrative procedures for surrender / cancellation of exemption, including:
 - Process for initiation and processing of proposals for surrender / cancellation of exemption
 - Roles and responsibilities of establishments, EPFO Regional Offices, Zonal Offices and Head Offices
 - Process to be followed under certain exceptional circumstances on cancellation of exemption
- Prescribe the documents, formats, channels and timelines for various scenarios of surrender / cancellation of exemptions
- Put in place a mechanism for monitoring, feedback, and stakeholder management

EY comment: Employers of exempted establishments who are operating private provident fund trusts may analyze the SOPs to assess the impact and understand the relevant procedural aspects of compliance.

2. SOP for cancellation of exemption - No. E-III/10/(167)/2021/SOPforcancellationofexemption/1613

3. SOP for surrender of exemption - No. E-III/10/(168)/2021/SOPforsurrenderofexemption/1612

Recent regulatory updates

Exemption manual – standardization of exemption procedures by the EPFO

On 4 December 2023, the EPFO published an Exemption Manual⁴, establishing a standardized procedure for managing exemption under the EPF Act. The following key aspects are covered in the manual:

- ▶ Process for grant of exemption - including documentation requirement, fees, processing timelines and decision-making process
- ▶ Regulation and management of exempted establishments
- ▶ Cancellation and surrender of exemption-covering the process flow, stakeholder roles and responsibilities, trigger points for cancellation of exemption, etc.
- ▶ Third party audit and compliance audit
- ▶ Governance structure, timelines and monitoring mechanism

EY comment: The EPFO Exemption Manual provides comprehensive and standardized guidelines for management of exemption under the EPF Act. Employers of exempted establishments who are operating private provident fund trusts or establishments who wish to seek exemption may review the manual to understand various procedural aspects and implications.

FAQs on SOP for inspection of establishments by the EPFO

On 1 December 2023, the EPFO issued a circular⁵ to notify FAQs on the SOP issued earlier for inspection of establishments by the field offices⁶. For a summary of the inspection process as per the SOPs, please refer to our previous newsletter dated 01 November 2023 - [please click here](#)

The FAQs provide clarity on the following key aspects on inspection of establishments by the EPFO:

- ▶ Sequence of Periodic Desk Review (PDR) and targets for PDR
- ▶ Process / timeline / content of nudging communication to be sent by EPFO;
- ▶ Activities to be carried out during PDR
- ▶ Priority matrix, timelines, formats and frequency of inspections

The circular also provides guidelines regarding coverage of the establishments, and cases which are exempted from the Central Analysis Intelligence Unit (CAIU) permission.

EY comment: Employers may familiarize themselves with the scope and documentation requirements for potential PDR, ensure proactive compliance management and record-keeping and conduct a periodic review to ensure appropriate compliance for domestic workers and international workers

4. No. E-III/10(181)2022/51stEECATR/Misc-Part(1)/1862 dated 9 November 2023

5. No. CAIU/056/V-III/2023/2291

6. HO circular no. CAIU / SOP / 2022/ 40 dated 4 September 2023, HO letter no. CAIU / SOP / 2022/ 17206 dated 21 March 2023 and HO circular no. CAIU / SOP / 2022/ E-(47416) / 2818 dated 31 July 2023

Recent regulatory updates

SOP for freezing and de-freezing of Member IDs (MID) / Universal Account Numbers (UAN) / Establishments

On 22 December 2023, the EPFO issued SOP⁷ for freezing and de-freezing Member IDs (MIDs), Universal Account Numbers (UANs), and establishments. The SOP covers the following procedural aspects:

- ▶ **Identification protocol:** Process for identification of cases for freezing of MID / UAN / Establishment, where any suspicious activity or transaction is reported / detected.
- ▶ **Execution:** Process for execution of the freezing of MID / UAN / Establishment in the application software.
- ▶ **Notification system:** Process for intimation of freezing to be shared with the concerned member / employer.
- ▶ **Duration and extensions:** Prescribes maximum duration of freezing as 30 days and exceptions whereby such a period can be extended.
- ▶ **Verification measures:** Comprehensive verification process is put in place and the actions to be undertaken by authorities at different levels are prescribed.
- ▶ **Post-verification actions:** Depending on the outcome of the verification process, follow-up actions that may be undertaken are specified.

The SOP also specifies roles and responsibilities of the concerned officers / departments, monitoring mechanism, timeline matrix to be followed and relevant forms / templates to be used for the freezing and de-freezing process.

Option of phased withdrawal of the lumpsum benefits by the NPS subscribers

On 27 October 2023, the Pension Fund Regulatory and Development Authority (PFRDA) issued a circular⁸ introducing the facility of Systematic Lumpsum Withdrawal (SLW) for the subscribers of the National Pension Scheme (NPS).

As per the NPS exit regulations, on superannuation / attaining 60 years of age, subscribers are required to use at least 40% out of the accumulated pension wealth for purchase of annuity which provides periodic pension and the remaining 60% is paid to the subscriber as a lump sum amount.

It is now proposed to provide an option of phased withdrawal of such lump-sum amount (maximum 60%) through the SLW facility. Under this option, the subscribers can opt for withdrawal on a periodic basis until 75 years of age, with the flexibility to choose between monthly, quarterly, half-yearly, or annual withdrawals.

EY comment: The SLW facility enhances the choices available to NPS subscribers for managing their retirement funds. Employer may inform employees regarding the SLW facility which provides a flexible withdrawal option of NPS corpus till the age of 75 years.

7. No. FIA/11(22)/SOP/FreezingUAN/2022 (E-49005)/11

8. No. PFRDA/2023/30/SUP-CRA/10

Recent regulatory updates

Changes in the Aadhar seeding application by the ESIC

On 6 December 2023, the Employees' State Insurance Corporation (ESIC) issued a circular⁹, which sets out updates made to the process of Aadhaar seeding.

The ESIC online portal has been updated allowing users to select the date and month of birth when seeding Aadhaar details based on available documentary evidence, where only the year of birth was available on record through the Unique Identification Authority of India (UIDAI).

Additionally, the ESIC has deleted all unresolved Aadhaar mismatch cases from the past 15 days and instructed field offices to approach affected individuals again for Aadhaar seeding.

EY comment: Employers may guide employees to correctly seed Aadhaar details on the ESIC portal, especially when only the year of birth is available through UIDAI.

Directions on settlement of death claims under Employees Deposit Linked Insurance (EDLI) Scheme

On 25 November 2023, the EPFO issued a circular¹⁰ providing guidance to the Regional Provident Fund offices on managing death claims under the EDLI Scheme. The EPFO observed that in several instances, the beneficiaries were receiving an inadequate amount on settlement of EDLI claims. While analyzing the data for such cases, the EPFO also observed that the deceased members had multiple PF accounts linked to the UAN.

The circular clarifies that the verification of previous membership of a deceased member is a prerequisite before settlement of death claims. The process of transferring accounts of deceased members, including provident fund, pension, and EDLI accounts, is also clarified.

The Regional Offices are directed to ensure that the services rendered by the member under different Provident Fund member IDs are considered for calculation of EDLI benefit payable, so that the family of the deceased member is not deprived of eligible EDLI benefits.

9. No. P-11014/3/2022-Bft-II (Part-I)

10. No. Pension/EDLI Matters/2023/2168

Rationalization of Regional Offices of Bandra and Thane zones by EPFO

- The EPFO issued an office order¹¹ dated 24 November 2023, notifying that the competent authority has approved reorganization of Bandra and Thane zones in Maharashtra for ensuring equitable and manageable distribution of workload.

The reorganization was approved by applying the principle of one Regional Office having not more than 7.5 lakh members and that it would require at least 11 Regional Offices considering the contributory members in the two zones (currently there are 9 Regional Offices in the two zones). Thus, the reorganization is being done by opening two new Regional Offices (Mumbai-Fort and Mumbai-Mulund) and two new district offices (Palghar and Raigad) and reallocating the workload among 11 Regional Offices.

This reorganization aims to increase efficiency of service delivery to members in these areas and to address the interests and aspirations of the stakeholders.

11. No. HRD/33/RationalisationofBigOffices/916

Recent regulatory updates

Amendment to the Maharashtra BOCW Rules: detailing the financial assistance to the building and construction workers

On 30 November 2023, the Government of Maharashtra amended¹² the Maharashtra Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2007 to provide for various types of financial assistance to the beneficiaries, including financial assistance for:

- Construction of house
- Education of children
- Marriage of beneficiary or daughter of beneficiary
- Supply of safety kit / essentials kit / health kit / utensils

The amendment also limits the benefit to a person who has availed the benefit under any scheme implemented by the Central or State Government, to avoid duplication of benefits.

Amendment to the Jammu and Kashmir BOCW Rules: increasing the financial assistance for education and marriage

On 7 November 2023, the Government of Jammu and Kashmir amended¹³ the Jammu and Kashmir Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2006 increasing the limit of financial assistance to beneficiaries for marriage of self or his / her dependent children and for education of children.

The documents required for availing the assistance for marriage are also specified and the beneficiary is required to submit a certificate of dependent, NOC from Social Welfare department and other additional proofs.

12. No. EBAKA0523/CR 76/Lab-7

13. No. LE-LAB/45/2023-11-L&E

Key judicial precedents

Supreme Court expands provident fund coverage to include mixed manufacturing and trading enterprises

On 7 November 2023, in the case of Thankamma Baby versus Regional Provident Fund Commissioner, Kochi¹⁴, the Supreme Court examined whether Appellant's business of manufacturing, assembling, and selling umbrellas could be categorized as 'trading and commercial establishments' as notified for coverage under the EPF Act vide notification dated 7 March 1962.

The Appellant argued that the business did not fall within the purview of 'trading and commercial establishments' under the EPF Act. However, the Supreme Court agreed with the contention of the respondents and held that since the Appellant's business involved assembling umbrellas and selling them through her own outlet, it cannot be denied that the business of the appellant will fall in the category of 'trading and commercial establishments'.

EY comment: The judgment extends the definition of 'trading and commercial establishments' to include businesses involved in both manufacturing and selling, broadening employee provident fund coverage for employers in such mixed business models.

14. Civil Appeal No. 4619 of 2010

Key judicial precedents

Supreme Court upholds applicability and precedence of specific employment rules over general service rules for workmen in disciplinary cases

- On 29 November 2023, in the case of Union of India and others versus K. Suri Babu¹⁵, the Supreme Court examined the applicability and precedence of provisions of disciplinary proceedings for workmen. The issue for consideration was whether disciplinary proceedings against workmen would be governed by the general service rules under the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (CCA Rules) or specific rules as per Standing Orders issued under the Industrial Employment (Standing Orders) Act, 1946.

The Supreme Court observed that Standing Order has a statutory mandate and covers a whole range of activities related to workmen. Even though the appointment letters clearly specified that disciplinary proceedings would be governed as per the CCA Rules, the court held that 'Standing Orders' being in the nature of special rules will override any other general rule, including the CCA Rules. Only in cases where the special rules fail to lay down provisions for certain subjects can the general rules be pressed into service. The Supreme Court also clarified that 'an appointment order cannot lay down terms of service which are against what is provided in the Standing Orders'.

EY comment: This ruling emphasizes on the importance of Standing Orders that govern provisions relating to various service conditions for working people. Considering the interpretation that the Standing Orders would override any other general rule or terms of service specified in the appointment letter, employers may analyze the Standing Orders applicability for their organization to ensure compliance.

15. Civil Appeal No. 1320 of 2010

Gig workers to be regulated by Tamil Nadu Manual Workers Act

On 30 November 2023, the Government of Tamil Nadu amended¹⁶ the Tamil Nadu Manual Workers (Regulations of Employment and Conditions of Work) Act, 1982 to include the employment in platform-based gig works under the purview of the Act. The Act provides for conditions and security of employment of manual workers and includes the coverage of such employees under the Employees' Compensation Act, 1923, the Minimum Wages Act, 1948, etc. The amendment, however, does not define the term "gig work" or "gig workers". Tamil Nadu has become the second state after Rajasthan to regularise the employment of platform-based gig workers. Rajasthan introduced the Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023 to provide social security and other benefits to platform-based gig workers in line with the Code on Social Security, 2020.

The formalization of gig work under the Act offers significant positives, such as recognition and protection for the gig workforce, ensuring access to minimum wages, overtime pay, leave benefits, and social security schemes like the Employees' Compensation Act and Minimum Wages Act. Furthermore, the Act's regulations on employment and security of work promise improvements in working conditions, including better working hours, rest periods, safety measures, and grievance redressal mechanisms for gig workers. Additionally, bringing platform-based work under the Act fosters a more level playing field, aligning the rights and benefits of traditional and gig workers.

EY comment: While the inclusion of platform-based gig work in the Tamil Nadu Manual Workers Act is a positive step towards providing statutory benefits to gig workers, a more robust framework with a clear definition and effective enforcement mechanisms may be needed to fully address the challenges in this evolving sector. The experiences of Tamil Nadu and Rajasthan can contribute to shaping a national framework that balances worker protection with flexibility and innovation in the gig economy.

16. No. II(2)/LWSD/1025(a)/2023

People and Regulations – Insights

Our new quarterly webinar series

Insights on key regulatory updates and judiciary precedents covering various employees related regulations and the impact of such updates for employers



First webinar

18 January 2024 from 4:00 p.m. to 5:00 p.m. (IST)

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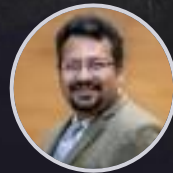
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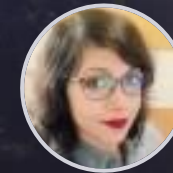
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