

MEPL CLASSES

PF AND PAYMENT OF WAGES

WEBSITE – www.meplclasses.com

EMAIL-ID – d2hclasses@mohitsir.com

ADDRESS – 59, JATINDRA MOHAN AVENUE, SOVABAZAR, KOLKATA – 700005

Question 1.

What are the different kinds of deduction that can be made from wages under the Payment of Wages Act, 1936?

Answer to Question 1.

Section 7 of the Payment of Wages Act, 1936 deals with the details of deduction from wages. Section 7(2) provides that deductions from the wages of an employed person shall be made only in accordance with the provisions of this Act and may be of the following kinds only, viz.;

- fines;
- deductions for absence from duty;
- deductions for damage to or loss of goods expressly entrusted to the employed person for custody or for loss of money for which he is required to account where such damage or loss is directly attributable to his neglect or default;
- deductions for house-accommodation supplied by the employer or by government or any housing board set up under any law for the time being in force (whether the government or the board is the employer or not) or any other authority engaged in the business of subsidizing houseaccommodation which may be specified in this behalf by the State Government by notification in the Official Gazette;
- deductions for such amenities services supplied by the employer as the State Government or any officer specified by it in this behalf may by general or special order authorize;
- deductions for recovery of advances of whatever nature (including advances for travelling allowance or conveyance allowance) and the interest due in respect thereof or for adjustment of over-payments of wages;
- deductions for recovery of loans made from any fund constituted for the welfare of labour in accordance with the rules approved by the appropriate Government and the interest due in respect thereof;
- deductions for recovery of loans granted for house-building or other purposes approved by the appropriate Government and the interest due in respect thereof;
- deductions of income-tax payable by the employed person;

- deductions required to be made by order of a court or other authority competent to make such order;
- deductions for subscriptions to and for repayment of advances from any provident fund to which the Provident Funds Act, 1952 applies or any recognized provident funds as defined in section 2 (38) of the Indian Income Tax Act, 1961 or any provident fund approved in this behalf by the appropriate Government during the continuance of such approval;
- deductions for payments to co-operative societies approved by the appropriate Government or any officer specified by it in this behalf or to a scheme of insurance maintained by the Indian Post Office and
- deductions made with the written authorization of the person employed for payment of any premium on his life insurance policy to the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 or for the purchase of securities of the Government of India or of any State Government or for being deposited in any Post Office Saving Bank in furtherance of any savings scheme of any such government.
- deductions made with the written authorization of the employed person for the payment of his contribution to any fund constituted by the employer or a trade union registered under the Trade Unions Act, 1926 for the welfare of the employed persons or the members of their families or both and approved by the appropriate Government or any officer specified by it in this behalf during the continuance of such approval;
- deductions made with the written authorization of the employed person for payment of the fees payable by him for the membership of any trade union registered under the Trade Unions Act, 1926;
- deductions for payment of insurance premium on Fidelity Guarantee Bonds;
- deductions for recovery of losses sustained by a railway administration on account of acceptance by the employed person of counterfeit or base coins or mutilated or forged currency notes;
- deductions for recovery of losses sustained by a railway administration on account of the failure of the employed person to invoice to bill to collect or to account for the appropriate charges due to that administration, whether in respect of fares, freight, demurrage wharf age and crantage or in respect of sale of food in catering establishments or in respect of sale of commodities in grain shops or otherwise;
- deductions for recovery of losses sustained by a railway administration on account of any rebates or refunds incorrectly granted by the employed person where such loss is directly attributable to his neglect or default;
- deductions made with the written authorization of the employed person, for contribution to the Prime Minister's National Relief Fund or to such other Fund as the Central Government may, by notification in the Official Gazette specify;

- deductions for contributions to any insurance scheme framed by the Central Government for the benefit of its employees

Question 2.

Reconcile the time limit for payment of wages keeping in view the provision of The Code of Wages, 2019.

Answer to Question 2.

Time limit for payment of wages Section 17 of the Code of Wages, 2019-

1. The employer shall pay or cause to be paid wages to the employees, engaged on:

- a) daily basis, at the end of the shift;
- b) weekly basis, on the last working day of the week, that is to say, before the weekly holiday;
- c) fortnightly basis, before the end of the second day after the end of the fortnight;
- d) monthly basis, before the expiry of the seventh day of the succeeding month.

2. Where an employee has been:

- a) removed or dismissed from service; or
- b) retrenched or has resigned from service, or became unemployed due to closure of the establishment, the wages payable to him shall be paid within two working days of his removal, dismissal, retrenchment or, as the case may be, his resignation.

3. Notwithstanding anything contained in sub-section (1) or sub-section (2), the appropriate Government may, provide any other time limit for payment of wages where it considers reasonable having regard to the circumstances under which the wages are to be paid

4. Nothing contained in sub-section (1) or sub-section (2) shall affect any time limit for payment of wages provided in any other law for the time being in force

Question 3.

State the procedure of payment of undisbursed wages in case of death of employed person under Payment of Wages Act , 1936

Answer to Question 3.

Section 25A of Payment of Wages Act, 1936 provides that subject to the other provisions of the Act all amounts payable to an employed person as wages shall if such amounts could not or cannot be paid on account of his death before payment or on account of his whereabouts not being known –

- a) be paid to the person nominated by him in this behalf in accordance with the rules made under this Act; or
- b) where no such nomination has been made or where for any reasons such amounts cannot be paid to the person so nominated, be deposited with the prescribed authority who shall deal with the amounts so deposited in such manner as may be prescribed. Where, in accordance with the provisions of sub-section (1), all amounts payable to an employed person as wages – a) are paid by the employer to the person nominated by the employed person; or b) are deposited by the employer with the prescribed authority, the employer shall be discharged of his liability to pay those wages.

Question 4.

A factory is having 400 employed persons and covered under the Payment of Wages Act, 1936. It wants to fix the wage period as one and half month and make the payment of wages within 10 days after the last day of the wage period. Is it permitted under the Payment of Wages Act, 1936?

Answer to Question 4.

As per Section 4 of the Payment of Wages Act, 1936, every person responsible for the payment of wages shall fix wage- periods in respect of which such wages shall be payable. No wage-period shall exceed one month.

Further, Section 5 specifies the time of payment of wages. The wages of every person employed upon or in any railway, factory or industrial or other establishment upon or in which less than one thousand persons are employed, shall be paid before the expiry of the seventh day after the last day of the wage period in respect of which the wages are payable.

As per above mentioned provisions, the factory cannot fix the wage period as one and half month as it cannot exceed one month and cannot pay the wages within 10 days after the last day of the wage period

Question 5.

State whether the following statement is true or false and give reason therefor with reference to the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

“Basic wages include the cash value of food concessions”

Answer to Question 5.

This statement is false because in terms of section 2 (b) clause (i) basic wages do not include the cash value of food concessions.

Section 2(b) of the EPF & Misc Provisions Act, 1952 defines basic wages as all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include among other things the cash value of food concessions.

While the non inclusion of cash value of food concessions in basic wages is included in the definition of basic wages, it may however, be pointed out that any subsidy or concession is a benefit of reducing the cost of a commodity to the employee and hence cannot be construed as having been paid in cash to him. Therefore, it is not part of basic wage even as per the specific definition (without even considering exceptions).

Question 6.

Define the term ‘Employer’ under the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952.

Answer to Question 6.

Section 2(e) read with Section 2(k) of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 defines employer as –

- (i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person has been named as a manager of the factory, the person so named; and
- (ii) in relation to any other establishment, the person who, or the authority which has ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a Manager, Managing Director, Managing Agent, such Manager, MD or Managing Agent shall be treated as employer.

It is interesting to note that employer does not mean the owner but the person in charge. Generally the term is often used in relation to an owner but it is not so.

Question 7.

Vimal is an employee in a Company. The following payments were made to him during the previous year:

- (i) Piece rate wages
- (ii) Productivity bonus
- (iii) Additional dearness allowance
- (iv) Value of Puja gift.

Examine as to which of the above payments form part of “Basic Wage” of Vimal under the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952.

Answer to Question 7.

Basic Wages: As per Section 2(b) of the Employees’ Provident Funds and Miscellaneous Provision Act, 1952, “Basic Wages” mean all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include:

- (i) the cash value of any food concessions;
- (ii) any dearness allowance (that is to say all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living), house rent allowance, overtime allowance, bonus commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment; or
- (iii) any presents made by the employer.

The key characteristics of basic wages are:

- (a) All emoluments (of whatever nature) earned during duty or during paid leave or during paid holidays;
- (b) The above emoluments are in accordance with the terms of employment of the employee;
- (c) The above emoluments are paid or payable in cash.

Therefore, emoluments or benefits of a non cash nature or any payment not in accordance with the terms of employment shall not form part of basic wage. Thus if an employer pays any amount as a reward to the employee out of his own will without being under the obligation to do so under the terms of employment of the employee, such payment shall not be basic wage under this Act.

Applying the above provisions of this Act to the given problem, the Basic wages of Vimal will include only piece rate wages but will exclude the Productivity bonus, additional dearness

allowance and value of puja gift.

Question 8

An employee of a limited company filed a claim for provident fund settlement with the Provident Fund Commissioner. However, he did not get any settlement from the authority even after six months. Referring to the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 what course of action an authority should have taken in this respect.

Answer to Question 8.

The Provident Fund "claims" complete in all respects submitted along with the requisite documents are required to be settled and the benefit amount paid to the beneficiaries within 30 days from the date of its receipt of the complete "claims" by the Commissioner.

If there is any deficiency in the claim, the same shall be recorded in writing and communicated to the applicant within 30 days from the date of receipt of such application.

In case the Commissioner fails without sufficient cause to settle a claim complete in all respects within 30 days, the Commissioner shall be liable for the delay beyond the said period and penal interest at the rate of 12% per annum may be charged on the benefit amount and the same may be deducted from the salary of the Commissioner.

Question 9.

Mr. Suresh, an employee working in an establishment covered by the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, leaves his employment and takes up employment in another establishment. State in this connection:

(i) How shall the amount accumulated to his P.F. Account be transferred?

(ii) What steps shall be taken if the establishment in which he has joined is not covered by the Act?

(iii) What would be your answer if the establishment in which he was previously working is not covered by the Act?

Answer to Question 9.

Transfer of accumulated amount to the credit of Employees' Provident Funds on change of employment

Section 17 A (1) provides that where an employee employed in an establishment to which this Act applies leaves his employment and obtains re-employment in another

establishment to which this Act does not apply, the amount of accumulations to the credit of such employee in the provident fund of the establishment left by him shall be transferred,

within such time as may be specified by the Central Government in this behalf, to the credit of his account in the provident fund of the establishment in which he is re-employed, if the employee so desires and the rules in relation to that provident fund permit such transfer.

Similarly under sub section (2) where an employee employed in an establishment to which this Act does not apply leaves his employment and obtains re-employment in another establishment to which this Act applies, the amount of accumulations to the credit of such employee in the provident fund of the establishment left by him may, if the employee so desires and the rules in relation to such provident fund permit, be transferred to the credit of his account in the Fund or as the case may be, in the provident fund of the establishment in which he is re-employed.

Question 10.

Satinder retired from the services of PQR Limited, on 31st March, 2016. He had a sum of ₹ 5 lac in his Provident Fund Account. It has become due for payment to Satinder on 30th April, 2016 but the company made the payment of the said amount after one year. Satinder claimed for the payment of interest on due amount at the rate of 15 percent per annum for one year. Decide, whether the claim of Satinder is tenable under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

Answer to Question 10.

According to Section 7Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 the employer shall be liable to pay simple interest @ of 12% per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment:

Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank.

As per above provision, Satinder can claim for the payment of interest on due amount @ 12 percent per annum or at the rate specified in the Scheme, whichever is higher, for one year. Here, in the absence of specified rate, Satinder can claim only 12 percent per annum interest on the due amount.

Hence, claim of Satinder for interest rate of 15% is not tenable.