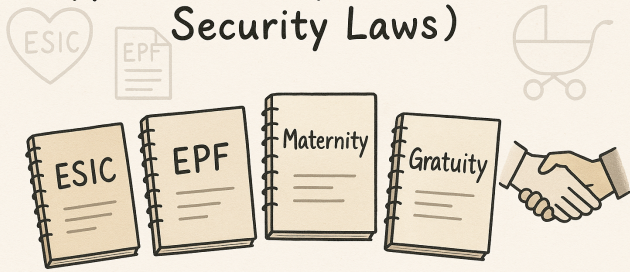


ESIC, EPF, Maternity, Gratuity, Apprenticeship Act (Social Security Laws)

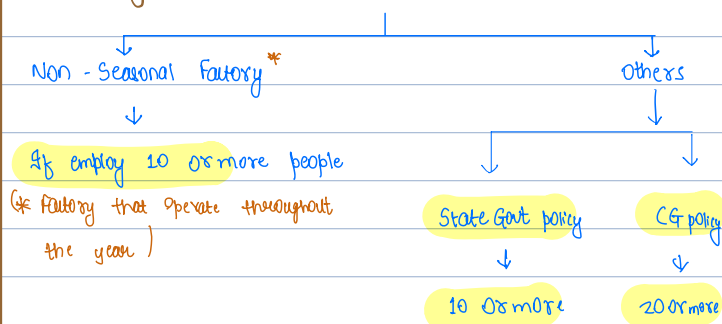


Unit 1- Employee State Insurance Act 1948



What: The Employee State Insurance Act 1948, is a social security law that provides medical, sickness, maternity, disability benefits to employees.

Applicability:



Wage limit

Employee covered under ESIC if gross monthly wage is upto ₹ 21000 (25000 for disabled person)

Once covered Always covered - If an establishment initially falls under the act, it will continue to remain covered, even if no. of employees falls below 10 or 20.

What do you mean by Employment Injury?

Means an **personal injury** caused by an **accident** or **arising** out of and **in course** of **employment** in an insurable job.

Injury includes physical injury as well as mental agony or emotional distress.

Administrative Body of ESI scheme

The **Employee State Insurance Corporation (ESIC)** is responsible for administering this scheme.

As per section 3, Central govt shall establish ESIC.

Power and Duties of ESIC

- ESIC is empowered to promote measures for improving health and welfare of insured person.
- ESIC can acquire, hold, sell both movable or immovable property.
- It can invest or reinvest surplus money.
- It may raise and repay loan.
- It may appoint necessary staff to discharge function.
- It can appoint Regional Board, Local Committee, Benefit Councils.

Wings of Corporation

To discharge its function, ESIC has two wings:

Standing Committee

Medical Benefit Council

- | | |
|---|---|
| <ul style="list-style-type: none"> • Set up & provides establishment of standing committee • Acts as Executive body for administration of ESIC • Responsible for managing affairs of the Corporation | <ul style="list-style-type: none"> • Set up to provides establishment of standing committee • Advises Corporation and standing committee on medical benefit, certification • Investigate complaint against medical practitioners • Carry out other prescribed function. |
|---|---|

Employee State Insurance fund

- All contribution made under this act along with any other money received shall be paid into ESI fund.
- This fund may also include gift, grant, or donation from CG, SG or local authority.
- Bank A/c in the name of ESI fund is opened with RBI.
- This account is administered by officers of Standing Committee.

Contribution under ESI Act 1948

It is a self financed scheme, meaning both employer and employee shall contribute.

Employer Contⁿ = 3.25% of wages

Employee Contⁿ = 0.75% of wages

- Contribution are paid on last day of wage period.
- Principal employer must pay both employer and employee's contribution for every employee. Although, employer can later recover employee's contribution by deducting it from wages.
- If employer doesn't pay contribution on due dates, they must pay simple interest @ 12% p.a.

Imp

Purposes for which this fund may be expended

- To pay benefit including medical treatment for insured person.
- For setting up and running hospitals, dispensaries for insured person.
- To pay fees, allowance, salary, gratuity for officer and staff.
- To cover cost and expenses of auditing.
- To provide cost for running E.I. Court.
- To cover legal expenses for defending suit.
- To pay contribution to any CG, SG, local authority.
- To pay sum due under any contract entered by corporation.
- For any other purpose with prior approval of government.

Benefits under ESI Act

Under section 46 of ESI Act insured person or their dependents are entitled to following benefits:

- periodical payment in case of sickness certified by medical practitioner.
- periodical payment to insured workman in case of confinement, miscarriage or sickness.
- periodical payment to insured workman suffering from disablement.
- periodical payment to dependent of insured.
- Medical treatment of insured person.
- Payment of funeral expenses on death.

Employee Insurance Court (E.I. Court)

As per section 74, SG shall establish E.I. Court for every local area by notification in official gazette.

Court shall consist of such number of judges as may be prescribed.

Matters to be decided by E.I. Court

- Whether any person is employee or not within meaning of this act.
- Whether employer liable to pay contribution or not.
- Rate of wages or daily wages of employee.
- Rate of contribution payable by employer.
- Who is principal employer for employee.
- Right of insured person under this act.
- Claim for recovery of contribution from employer.
- Any other matter as may be presumed.

Unit 2- Employee Provident fund and miscellaneous Provision Act, 1952



What: This act was enacted to provide **social security** benefit to employees in factories. It ensures Post Retirement Benefit, family protection and insurance coverage in case of death.

It includes three schemes:

- Employee Provident Fund Scheme (EPF)
- Employee Pension Scheme (EPS)
- Employee Deposit Linked Insurance Scheme (EDLI)

Applicability of the act

Applies to every establishment having 20 or more person.
Once covered always covered.

G.G. may exempt any class of establishment.

Contribution under the act

It is a self financed scheme, meaning both employer and employee shall contribute.

$$\begin{aligned} \text{Employer Cont}^n &= 12\% \text{ of wages [Basic + DA +} \\ \text{Employee Cont}^n &= 12\% \text{ of wages [Retirement Allowance} \end{aligned}$$

1. Employee Provident fund scheme (EPF)

- A saving scheme where both employer and employee contribute, to create retirement corpus for employees.
- This fund is managed by **Central Board**.
- Total contribution invested by Board in the manner prescribed.
- Employees whose **pay exceed ₹ 15000/month** and apprentice are **excluded** from this act.

Withdrawal: upon Retirement, Permanent Disability, Death

Advances (Early withdrawal): Yes, allowed but only for ↓

- Paying life insurance premium
- Purchasing or constructing house
- Medical emergencies (injury, illness, disease)
- Marriage expenses or post matriculation education
- Loss of electricity supply
- Natural calamity like flood, earthquake, etc.
- Purchase of equipment for physically handicapped member.
- Closure of factory for more than 15 days
- Non receipt of wage for more than 2 months
- Not employed for period of 2 months or more.
- **Withdrawal for payment of personal loan is NOT Allowed.**

2. Employees Pension Scheme, 1995

A pension benefit scheme that provides **monthly pension** after retirement (58 years) or to family in case of death.

- Payable on attaining age of 58 years or at 60 years on a discounted rate.
- Minimum 10 years of **Contributory service** is required.
- From the **employer's share of 12% + 8.33%** is contributed towards EPS.
- Scheme provides payment of **monthly pension** in following contingencies:
 - Superannuation at 58 years
 - Permanent Disability
 - Death during service
 - Death after retirement
 - Childless Pension
 - Orphan Pension

3 Employee Deposit linked Insurance Scheme (EDLI)

- A life insurance cover linked to PF account, given to employee family in case of death during service.
- All the employees who are covered under PF become member of this scheme.
- This scheme is financed by employer, 0.5% p.m of the employee wages.
- Currently the maximum amount payable under EDLI is ₹7lakh.

Other points

- PF Commissioner shall has power to determine the amount due.
- In case of default, it shall be recovered in same manner like assets of land revenue.
- Section 11 provided in case of insolvency, PF dues ranks higher than other debt.
- Employer shall not reduce wages of employees by reason of his liability for payment to fund.
- PF amount is exempt from being attached under any court decree or order.

Unit 3 - Maternity Benefit Act 1961



MATERNITY BENEFIT ACT, 1961

What: Maternity Benefit Act 1961 is a law that provides paid maternity leave and job protection to women employees during pregnancy and childbirth.

Prohibited work during certain period

Post Delivery Restriction

No employer shall knowingly employ a woman or allow her to work during six (6) weeks,

- Immediately after -
- Delivery
 - Miscarriage
 - Medical termination

Pre Delivery Restriction

If pregnant woman request, she should not be assigned the work that is hard, involve long hours of standing, or something that is likely to cause miscarriage

↓

during the one month immediately preceding delivery.

Imp: Benefits Under Act

- Every women is entitled to receive maternity benefit based on her average daily wage for actual period of absence from work. (Avg. from last 3 months)
 - A women shall be entitled to maternity benefit if she has worked atleast 80 days in preceding 12 months from expected date of delivery.
 - Maximum Benefit duration
 - For first or second child, maximum 26 weeks of which maximum 8 weeks before delivery
 - For women who already has 2 child, maximum 12 weeks of which maximum 6 weeks before delivery.
 - A women who legally adopts a child below age of 3 months or is commissioning mother (mother through surrogacy), shall receive 12 weeks benefit.
 - If a women work allows her to work from home, her employer may permit this arrangement on mutually agreed conditions.
- ## Notice requirement to claim benefit under act
- Every women eligible for maternity benefit must give a written notice to her employer.
 - Notice should state amount of benefit to be paid and also confirm she will not work during that period.
 - If the women is pregnant, notice must mention the date from which she will stop working, the date can't be earlier than six weeks before delivery date.
 - If women didnot gave notice during pregnancy, she can give notice as soon as possible after delivery.
 - Upon receiving notice, employer must allow women to absent money from work.
 - Employer must also pay maternity benefit in advance and remaining amount after 48 hours of delivery.

Nursing Break

Every women who returned to duty post delivery, is entitled to **Two (2) nursing break** (To breastfeed the baby) during her workday.

These breaks are **in addition to her regular rest period** and continue **until child reaches 15 months.**

Creche Facility

Every establishment with **50 or more employees** must provide **creche facility** (childcare room).

Employer must allow woman upto **four (4) visits** per day to the creche, which count as her rest period.

This can be a separate creche or common facility.

Other points

- An abstract of provision of Maternity Act must be displayed by employer in establishment.
- Non compliance of this act by employer will attract
Imprisonment - 3 months (minimum), 1 year (maximum)
fine ₹ 2000 (minimum), ₹ 5000 (maximum)

Unit 4 - Payment of Gratuity Act, 1972



What: Payment of Gratuity Act, 1972 (POGA) is a law that makes it mandatory for employers to pay **Gratuity** to employees as a lump sum monetary benefit.

Gratuity का क्या है?

A reward as a mark for appreciation for their long service when they retire or leave their employment.

When is Gratuity payable?

Gratuity is payable when an employee's service is terminated after **at least 5 years of continuous service**.

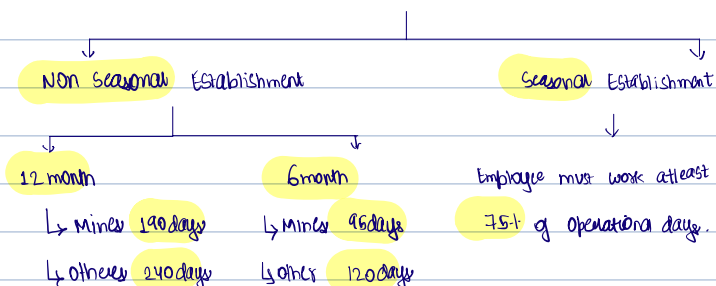
- It applies on -
- Superannuation (Retirement)
 - Resignation
 - Death or Disability*

* For **Death or Disability**, requirement of 5 years is waived off, means they will get benefit even for less than 5 yrs.

What does Continuous Service means?

Continuous service means **uninterrupted work**, with permitted break like sickness, accident, leave, strike, lockout.

To determine Continuous Service



Imp

Amount of Gratuity

Calculated on the basis of continuous service for every **completed year** (or part exceeding six months) at the rate of **15 days wages**.

Maximum amount of gratuity is ₹ 20 lakhs.

$$\text{Gratuity} = \frac{\text{Last drawn Salary} \times \text{Completed Year} \times \frac{15}{26}}{\text{of service}}$$

Q1 - Mr. Gogo

$$\begin{aligned} \text{Last drawn salary} &= 40,000 \\ \text{Completed years} &= 26 \\ \text{Gratuity} &= 40,000 \times 26 \times \frac{15}{26} \\ &= 6,00,000 \end{aligned}$$

Q. Mr. Baburao

$$\begin{aligned} \text{Last drawn salary} &= 20,000 \\ \text{Completed years} &= 12 \text{ yr } 7 \text{ m} = 13 \\ \text{Gratuity} &= 20,000 \times 13 \times \frac{15}{26} \\ &= 1,50,000 \end{aligned}$$

Q. Mr. Bhusha

$$\begin{aligned} \text{Last drawn salary} &= 15,600 \\ \text{Completed years} &= 9 \text{ yr } 4 \text{ m} = 9 \\ \text{Gratuity} &= 15,600 \times 9 \times \frac{15}{26} \\ &= 81,000 \end{aligned}$$

Q. Dagg

$$\begin{aligned} \text{Last drawn salary} &= 18,000 \\ \text{Completed years} &= 3 \text{ yr } 2 \text{ m} \\ \text{Gratuity} &= \quad \times \frac{15}{26} \\ &= 0 \text{ (5 yr not completed)} \end{aligned}$$

Q. Mr. Jettu (Died)

$$\begin{aligned} \text{Last drawn salary} &= 26,000 \\ \text{Completed years} &= 2 \text{ yr } 9 \text{ m} = 3 \\ \text{Gratuity} &= 26,000 \times 3 \times \frac{15}{26} \\ &= 45,000 \end{aligned}$$

Q. Mr. Bilauta

$$\begin{aligned} \text{Last drawn salary} &= 40,000 \\ \text{Completed years} &= 38 \text{ yr } 7 \text{ m} = 39 \\ \text{Gratuity} &= 40,000 \times 39 \times \frac{15}{26} \\ &= 2,02,500 \end{aligned}$$

But maximum is ₹ 20 lakh.

Determination and Payment of Gratuity

As soon as gratuity becomes payable, **employer must determine amount of gratuity**.

Gratuity shall be **paid within 30 days** from day it becomes payable.

If gratuity **not paid** on time, **simple interest @ 10% p.a.** will be charged on employer.

To whom gratuity is payable ?

Normally to employee himself.

To nominee in case of death.

Other Points

- If an employee is terminated for negligence, gratuity may be forfeited to the extent of damage.
- If there is any dispute regarding payment of gratuity, same shall be referred to Controlling Authority.
- Gratuity amount is exempt from being attached under any court decree or order.

Unit 5- Apprentices Act 1961



What: Apprentices Act 1961 is a law that regulates training of apprentices in industries.

It ensures young people (student trainees) get practical training in factories/companies to become skilled workmen.

This act creates legal system for skill training.

Qualification (Eligibility) for being intern

- Must be of **at least 14 years** (18 in case of Hazardous)
- Must satisfy prescribed educational standard.

Types of Trainee / Apprentice

1. **Trade Apprentice:** A person who undertakes practical training **without any formal education** like ITI
eg: Welder, electrician, Carpenter, etc.
2. **Graduate / Technical Apprentice:** A person who already has **theoretical education** such as B.E, B.Tech and now wants to learn practical implementation of same.

Imp:

Contract of Apprenticeship

- An apprentice must **enter into an contract** of apprenticeship **with employer** before starting training.
- **Training** is considered to **commence from contract date**.
- Contract may **include any term** mutually decided, but **no term shall conflict** with act.
- Employer must **send 5 copies** of draft contract **within 30 days** to **Apprenticeship Advisor** ↓
If there is objection, advisor must communicate within 15 days and register contract in 30 days.

Imp:

Novation of Contract of Apprenticeship (Section 5)

NOVATION means **replacement of one contract with another**, where employer with whom a contract of Apprenticeship is entered into **is unable to fulfil his obligation**, with approval from advisors ↓

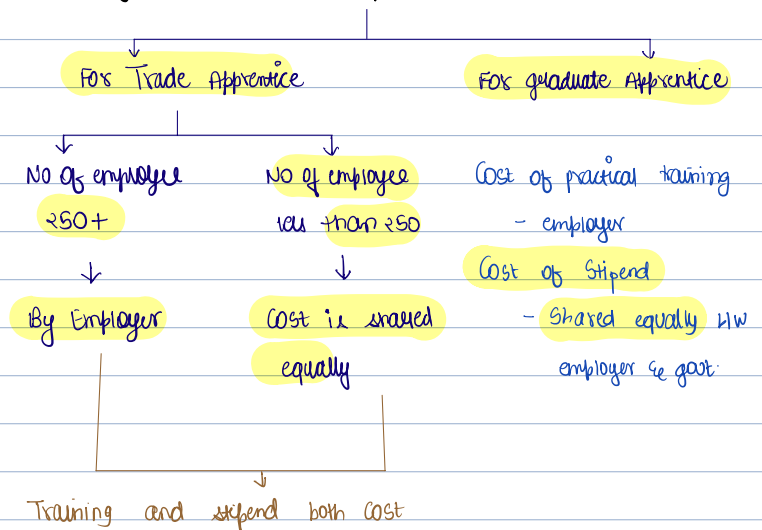
A **novation agreement** can be made **with new employer** for the remaining training period.

upon registration of this new agreement, the **old contract terminates** and no further obligation remain under that contract.

Period of Apprenticeship

- Training period is defined in apprenticeship contract.
- But **shorter period** specified in contract shall not be more than period prescribed in rules.

Cost of Apprenticeship & Stipend

**Imp:**

Obligation of Employer

- Provide the **training** as per the act and rules
- If not qualified, ensure qualified person is in charge of training.
- Offer adequate **institutional staff** with qualification.
- Fulfill all **contractual obligation** as per contract.

Obligation of Employees

- Learn the trade diligently to become skilled craftsmen.
- Attend both practical and theory classes regularly.
- Follow all lawful orders from superiors.
- Fulfill the terms of contract of apprenticeship.
- Carry out all the obligations under contract.

Settlement of Disputes

In case of any dispute between employer and apprentice, it shall be referred to Apprenticeship Advisor.

↓

Appeal against order of advisor can be filed in 30 days with Apprenticeship Council.

Certification after Training

For Trade Apprentice, they have to appear for test, and upon passing test, they receive certificate of proficiency.

For Graduate Apprentice, their progress is assessed periodically, and upon satisfactory completion, a certificate is granted.

Other points

- Employers are allowed to engage apprentice from other states.
- C.G. to prescribe maximum no. of apprentice that can be attached to single employer.
- It is the responsibility of employer to arrange course of practical training.
- Training programme (syllabus) must follow approved programme to ensure quality learning.
- For Trade apprentice who haven't undergone training must complete basic training first.
- Apprentices are considered to be trainee not employee, hence labour law do not apply to them.

- Every employer shall maintain record of training.
- Employer must develop policy for recruiting apprentice who have completed their training.
- In case of non compliance of this law, penalty of ₹ 500/month may be levied, ₹ 1000 after three months.

Imp:

Unit 6: Simplification of Procedure for furnishing Return Act, 1988



What: This act aims to simplify the compliance process by exempting small and very small establishment from furnishing extensive returns and registers.

What is Small Establishment?

An establishment employing not less than 10 (at least 10) and not more than 40 (maximum 40) person on any day in preceding 12 months.

What is Very Small Establishment?

An establishment employing not more than 9 (maximum 9) person on any day in preceding 12 months.

Exemption from furnishing Return and Maintaining Registers

Employer in small and very small establishment do not need to furnish the full returns or maintain the detailed register as required under Scheduled Acts.

↓

Instead they have to file just one Return
i.e. Annual Return in Form I (both small and v. small)

↓

And Register - Small establishment → Form II and Form III
Very small → only Form III

FYI → Form II - Register of no. of person employed

Form III - Muster Roll a.k.a attendance register

Scheduled Acts

1. Payment of Wages Act 1936
2. Weekly Holiday Act 1942
3. Minimum Wages Act 1948
4. Factories Act 1948
5. Payment of Bonus Act 1965
6. Equal Remuneration Act 1976
7. Child Labour Act 1986
8. Praramon Labour Act 1951
9. Motor Transport Worker Act 1961
10. Contract Labour Act 1970
11. Sales Promotion Employee Act 1976
12. Dock Worker Act 1986
13. Beedi and Cigar Worker Act 1966
14. Inter State Migrant Workmen Act 1979
15. Building and other Construction Worker Act 1996
16. Working Journalist and other employee act 1955

Other points

• Employer can maintain and filed the details in physical form or electronic media.

• Penalty → for first time → ₹5000

Second / subsequent → ₹10000 to ₹25000

1 month to 6 month, or

Both