

## **An Essay on the Employees State Insurance Act, 1948**

**By: Pradipta Nath, Independent Researcher**

### **INTRODUCTION**

The ESI Scheme is a statutory scheme and is regulated by the ESIC Act, ESIC Rules and ESIC Regulations. It is managed by an organization called as the Employees' State Insurance Corporation (ESIC). The organization is comprised of people represented by Employers, Employees, the Central Government, State Government, Medical Profession and the Hon'ble Members of Parliament. The organization has a CEO. The Director General is the Chief Executive Officer. The ESIC scheme is financed by the contribution received from the employees, employers and the State Government who shares 1/8<sup>th</sup> of the cost of medical expenditure.

The Employees State Insurance Act, 1948 is welfare legislation. The objective of the act is to provide certain benefits to employees in case of sickness, maternity benefit and employment injury. Further the act also ensures to extend its beneficial provisions for other matters related to the employees. The act extends to whole of India. As per sub section 4 of section 1, the act applies to all the factories in the first instance irrespective that it is owned by the government or not. The act further extends the definition of factories in section 2(12). It states that 'factory' means any premises including the precincts where 10 or more persons are or were employed on any day of the preceding twelve months in part of the manufacturing process. This sub section exempts the mines operated under the Mines Act or a railway running shed. The Act also provides under the section 2(24) that any words or definitions which are not explicitly provided under the Act has to be referred with the Industrial Dispute Act, 1947 for having the interpretation. Employees earning less than Rs 21,000/- are covered under the ESIC Scheme.

### **SILENT FEATURES OF THE ACT**

1. The employees are issued permanent identity card by the ESIC office to ensure their identity and coverage under the ESIC Act.

2. In the same manner the family identity card is also issued by the ESIC office for their identification.

3. After registration of the factory or establishment under the ESIC Act, the employers are provided with a unique code number.

4. Under section 45 of the Act, a social security officer is appointed.

5. The contribution periods and the corresponding periods are expressed as under: -

i. Contribution period: 1<sup>st</sup> April to 30<sup>th</sup> September

Corresponding benefit period: 1<sup>st</sup> January of the following year to 30<sup>th</sup> June.

ii. Contribution period: 1<sup>st</sup> October to 31<sup>st</sup> March.

Corresponding benefit period: 1<sup>st</sup> July of the following year to 31<sup>st</sup> December.

6. A local committee is constituted under this Act. The duties of the local committee are to discuss the problems under the Employees' State Insurance Scheme and extend its advice to the regional board.

7. An Employer who fails to pay the contribution within the specified period is liable to pay simple interest at the rate of 12 per cent per annum in respect of each day of default or delay in payment of contribution.

8. The ESI Act is implemented by the Central Government through notification under section 1(3) or section 1(5) in an area where the factories, shop, hotels, restaurants, theatres, newspaper establishment, any other establishments defined under the Shops and Establishment Act employing 10 or more persons.

9. The ESI Act is also applicable in educational institutions where the same is run by proprietor or trust or societies or other type of ownership.

10. The ESI Act is also applicable in medical institutions which are run by proprietor or trust or societies or private ownership, nursing homes, diagnostic centre, pathological labs.

11. In some states, the criterion of 10 or more people is 20 or more people. Aside in few States, the State Governments have not extended the scheme in medical and educational institutions.

12. Any factory or establishment which has a sub-branch located in the same State or different State has also to get registered as a sub-unit. In that case the employer has to obtain the registration using his primary credentials and in lieu the ESIC allot a sub-code number.

13. The rule 'once member always a member' is followed in the ESIC scheme. This means once the ESIC made applicable in a particular factory or establishment, it will be applicable lifetime even if the minimum number of employees is reduced, and the scheme will be applicable.

14. The employer can get exemption from the implementation of the ESIC Scheme. The condition for exemption is that the employees are getting similar or superior medical benefit that the ESIC. The appropriate government may grant exemption. The appropriate government need to consult with the corporation before granting any exemption. It cannot grant exemption for a period more than one year. The employer has to apply for its renewal 3 months prior to the expiry of the one year.

15. If the employee has exceeded his threshold limit of Rs 21,000/-, notwithstanding this fact, the employer needs to deduct his monthly ESIC contribution and complete the contribution period. Thereafter completion of the contribution period, the employer needs not to deduct the contribution. [Rule-50 of the Employee's State Insurance (Central) Rule 1950]

16. If the wages of employees increased their threshold limit and is applicable with retrospective effect, the contribution has to be paid till the completion of the contribution period during which the employer has declared the enhancement of the wages. There is no need to contribute on the arrears. [Rule-50 of the Employee's State Insurance (Central) Rule 1950]

17. In order to motivate the employers to employ more especially abled people (PWD) in his establishment, the ESIC has provided for exempting the employer from paying his part of contribution for a period of 10 years. There is no wage ceiling limit for the especially abled persons with effect from 01.04.2016 for availing the ESIC benefits. The Ministry of Social

Justice & Empowerment, Government of India shall pay the employer's contribution to the ESIC.

18. Beside section 85 of the ESI Act, the non-compliance of the ESI statutory compliance are also offence to be tried under section Bharatiya Nyaya Sanhita, 2023, Section 316 and 316(2). [Earlier section 406 and 409 of the Indian Penal Code, 1860]

Section 39(5)(a) of the ESI Act, states that if contribution is not remitted to the ESIC within the due date, the employer is liable to pay a simple interest at the rate of 12% per annum or at such higher rate as may be specified under the ESIC provisions. This section also has a proviso which states that the levying interest of the ESIC shall not be exceeding the lending interest of bank. The word used in section 39(5)(a) is 'shall'. Therefore, the interest payable at the rate of 12 per cent is statutory liability which the employer is ought to pay and there is no exemption either to waive or to reduce the interest. This has been held in The Regional Director/Recovery Officer & Anr. Vs. Nitinbhai Vallabhbai Panchasara in Special Leave Petition (c) No. 16380/2022 in the Supreme Court of India, Civil Appellate Jurisdiction dated November 17, 2022.

8. The ESI Scheme is based on the principle of 'minimum cost maximum benefit', wherein the health and medical benefits are extended to the employees and their family members through the Government, Employer and Employees.

## **CONTRIBUTION**

E.S.I. Scheme being contributory in nature, all the employees and the employers need to make monthly contribution to the scheme as per the provisions. The rates of contributions are revised from time to time. Currently, the employee's contribution rate (w.e.f. 01.07.2019) is 0.75% of the monthly wages and that of employer's is 3.25% of the monthly wages. Employees in receipt of a daily average wage upto Rs.176/- are exempted from payment of contribution. However, the Employers are not exempted like the daily wage earners and will have to contribute as usual.

## **COLLECTION OF CONTRIBUTION**

It is duty of the employer to deduct the monthly contribution of the employees and pay the same in the ESIC scheme. The monthly ESIC contribution has to be paid within 15<sup>th</sup> day of every month of calendar month in which the contribution is due. The Corporation has also authorized designated branches of the State Bank of India and some other banks to receive the payments on its behalf.

## **DIGITIZATION OF PROCEDURES RELATED TO ESI**

The Government is striving towards making digital India. The new code on Social Security (Central) Rules, 2020 provides for registration of establishments and employees, updating of their information through the 'Shram Suvidha Portal'. This digitization process will bring the ESIC under one roof which will ensure proper regulating the scheme and monitoring the compliance. Further this will also ease the statutory compliance for the Employers.

## **BENEFITS UNDER ESIC**

The section 46 of the Act envisages following six social security benefits: -

### **(1) Medical Benefit**

An insured person and his dependants are provided with full medical care of his or her medical expenses. From the day one an insured person and his dependants are entered into the ESIC Scheme are provided with the medical care. There is no maximum ceiling limit in the medical expenditure incurred by the insured person or his dependants. The ultimate goal of the scheme is to get 100% cure of the insured person. In case the insured is retired from his service or any permanent disabled person, the medical benefit is also extended to him subjected to an annual premium which may varies as per the notification by the Government. This medical benefit also covers the reimbursement facility too which the insured person can only avail if he or she has been referred by the doctors of the ESIC only to any other specialized hospital or doctors.

### **(2) Sickness Benefit (SB)**

The sickness benefit is extended in the form of monetary compensation to the insured person at the rate of 70 per cent of wages. The sickness has to be certified by the ESIC doctors and is

payable to insured person during the periods of his certified sickness for a maximum period of 91 days in a year. The insured person can be eligible for this monetary benefit only if he has contributed to the ESIC scheme for at least 78 days in a contribution period of six months.

1. Extended Sickness Benefit (ESB): SB extendable upto two years in the case of 34 malignant and long-term diseases as notified by ESIC at an enhanced rate of 80 per cent of wages.

2. Enhanced Sickness Benefit: Enhanced Sickness Benefit equal to full wage is payable to insured persons undergoing sterilization for family planning upto 7 days/14 days for Vasectomy and Tubectomy respectively.

Every claim for a benefit payable under the Act shall be made in writing, in accordance with these regulations, to the appropriate Branch Office on the form appropriate for the purpose of the benefit for which the claim is made, or in such other manner as the appropriate office may, subject to its being in writing, accept as sufficient in the circumstances of any particular case or class of cases. Provided, that in case of permanent disablement benefit and dependants' benefit, claim shall be required to be made only for the first payment and no claim shall be required for subsequent periodical payments.

### **(3) Maternity Benefit (MB)**

Maternity Benefit is paid to the female insured workwoman for a period of 26 weeks. During this period the female workwoman is paid as per her full monthly wages. In order to be eligible for this benefit, the insured workwoman must have made contribution in the ESIC Scheme for at least 70 days in the preceding two contribution periods. The insured workwoman needs to give notice of her pregnancy before confinement in Form 17 to the appropriate branch office by post or otherwise.

To claim maternity benefit before the confinement from ESIC, the insured women will have to submit the following documents to the appropriate branch office by post or otherwise: -

(i) A certificate of expected confinement in Form 18 given in accordance with these regulations, not earlier than fifty days before the expected date of confinement;

(ii) A claim for maternity benefit in Form 19 stating therein the date on which she ceased or will cease to work for remuneration; and

(iii) Within thirty days of the date on which her confinement takes place, a certificate of confinement in Form 18 given in accordance with these regulations.

#### **(4) Disablement Benefit**

Temporary disablement benefit (TDB): From day one of entering insurable employment & irrespective of having paid any contribution in case of employment injury. Temporary Disablement Benefit at the rate of 90% of wage is payable so long as disability continues.

Permanent disablement benefit (PDB): The benefit is paid at the rate of 90% of wage in the form of monthly payment depending upon the extent of loss of earning capacity as certified by a Medical Board

#### **(5) Dependants Benefit (DB)**

DB paid at the rate of 90% of wage in the form of monthly payment to the dependants of a deceased Insured person in cases where death occurs due to employment injury or occupational hazards.

#### **(6) Other Benefits**

Funeral Expenses: An amount of Rs.15,000/- is payable to the dependents or to the person who performs last rites from day one of entering insurable employment.

Confinement Expenses: An Insured Women or an I.P.in respect of his wife in case confinement occurs at a place where necessary medical facilities under ESI Scheme are not available.

In addition, the scheme also provides some other need based benefits to insured workers.

Vocational Rehabilitation: To permanently disabled Insured Person for undergoing VR Training at VRS.

Physical Rehabilitation: In case of physical disablement due to employment injury.

Rajiv Gandhi Shramik Kalyan Yojana: This scheme of Unemployment allowance was introduced w.e.f. 01-04-2005. An Insured Person who become unemployed after being insured two or more years, due to closure of factory/establishment, retrenchment or permanent invalidity not less than 40% arising out of non-employment injury are entitled to :-

Unemployment Allowance equal to 50% of wage for a maximum period of upto Two Years during the life time.

Medical care for self and family from ESI Hospitals/Dispensaries during the period IP receives unemployment allowance.

Vocational Training provided for upgrading skills - Expenditure on fee/travelling allowance borne by ESIC.

Atal Beemit Vyakti Kalyan Yojana (ABVKY): This scheme is a welfare measure for employees covered under Section 2(9) of ESI Act, 1948, in the form of relief payment upto 90 days, once in a lifetime. The Scheme was introduced w.e.f. 01-07-2018 on pilot basis for a period of two years initially. The scheme has now been extended upto 30 June 2022. It has also been decided to enhance the rate of unemployment relief under the scheme to 50% of wages from earlier rate of 25% along with relaxation in eligibility conditions, provided the Insured Person should have been in insurable employment for a minimum period of one year immediately before her/his unemployment and should have contributed for not less than 78 days in the completed contribution period in 12 months immediately prior to unemployment. In a significant relaxation, relief shall become due for payment after 30 days from date of unemployment and claim can be submitted directly to the designated ESIC Branch Office by the worker. Claims to get the relief can be made online at website [www.esic.in](http://www.esic.in) along with submission of the physical claim with an affidavit, photocopy of Aadhaar Card and Bank Account details to the designated ESIC Branch Office by post or in person.

Incentive to employers in the Private Sector for providing regular employment to the persons with disability: Minimum wage limit for Physically Disabled Persons for availing ESIC Benefits is 25,000/-.

Employers' contribution is paid by the Central Government for 3 years.

Benefits & Contributory Conditions: An interesting feature of the ESI Scheme is that the contributions are related to the paying capacity as a fixed percentage of the worker's wages, whereas they are provided social security benefits according to individual needs without distinction.

Cash Benefits are disbursed by the Corporation through its Branch Offices (BOs) / Pay Offices (POs), subject to certain contributory conditions.

### **MEDICAL COLLEGES OF EMPLOYEES STATE INSURANCE ACT 1948**

Employees' state insurance corporation even have now advanced its infrastructure. Now the ESIC can produce its own MBBS Doctors. The ESIC regulates eight colleges throughout the country. The colleges conduct MBBS and MD degree programmes. The course fees are comparatively affordable for the parents. The different branches of this college are located in different parts of the country like Karnataka (Bengaluru), Tamil Nadu (Chennai), West Bengal (Kolkata), Haryana (Faridabad), and Telangana (Hyderabad), Karnataka (Gulbarga), Rajasthan (Jaipur). The list of colleges can be further referred at <https://www.esic.gov.in/medical-institution/>

### **COMPLIANCE UNDER ESI ACT**

1. Registration of the establishment or factory within 15 days of the applicability of the ESIC. [Under Section 2 –A of the Act read with Regulation 10-B]
2. Registration of the employees in the ESIC portal. The employer will have to generate 'Temporary Identity Card' TAC for the employee. This TAC is valid for only 30 days. But if the aadhar is seeded in the TAC it will become permanent pehchan certificate.
3. Amendment of address or residence of the employee to be done by the employer using his ESIC credentials.
4. Maintenance of records:
  - i. Muster Roll.
  - ii. Wage register.

iii. Attendance register

iv. Details of the Contractors.

v. Accident registers in Form – 11. The notice of accident must be given to the ESIC branch office via online within 24 hours of the accident.

vi. An inspection book.

vii. Aside the employer must ensure that the contractors are also maintaining the above registers and are also complying with the ESIC statutory compliance. To ensure that the contractors are doing compliance, the principal employer must conduct periodic statutory compliance audit.

## **CONCLUSION**

ESIC is social welfare legislation. To deduct contribution from the employees is a statutory provision. It is noteworthy that howsoever the minimum insurance monthly premiums; the corporation is extending comparatively more benefits than any branded medical insurance company. There is no threshold limit of claiming medical claim in case of ESIC. The ESIC is also having its dispensaries, hospitals, tie-up hospitals and empanelled doctors list. The appropriate government is the central Government and in few cases is the State Government [Section 1(3) and 1(5) of the ESI Act]. The central government must take steps to bring more categories of people within the scope of ESIC Scheme like the unorganized sectors labourers or in areas which are not notified under the ESIC scheme.

\*\*\*End\*\*\*