

Item No. 23: Amendment of Section 2(b) of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 for definition of Wages" and corresponding amendment in other provisions of the Act and Schemes there under.

From time to time suggestions have been received that the scope of the term basic wages/ wages should be defined in such manner so as to include other Allowances. Such as overtime Allowance, Night shift Allowance, house-Rent Allowance, Training Allowance and such similarly worded or provided allowance also.

At present the term "Basic Wages" has been defined in Section 2(b) of the EPF & MP Act, 1952 as follows:-

(b) "Basic Wages" : means 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 employments and which are paid or payable in cash to him, but does not include.

- (i) The cash value of any food concession;**
- (ii) any dearness allowance (that is to say, all case 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.**
- (iii) Any presents made by the employer;**

The above provision clearly excludes payment towards dearness allowance, retaining allowance, cash value of food concession, house-rent allowance, overtime allowance, bonus, commission or other similar allowance payable to the employee in respect of his employment or of work done in such employment form Basic Wages.

Further, while the dearness allowance and retaining allowance are not included in the definition of "Basic Wages", contributions are payable on these components under the provisions of Section 6 of the Act as follows:-

(6) The contributions which shall be paid by the employer to the fund shall be 10% of the basic wages, dearness allowance and retaining allowance (if any) for the time being payable to each of the employees (whether employed by him directly or by or through a contractor) and the employee's contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires, be an amount exceeding 10% of his basic wages, dearness allowance and retaining allowance (if any), subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section:

Provided that in its application to any establishment or class of establishments which the Central Government, after making such inquiry as it deems fit, may, by notification in the official gazette specify, this section shall be subject to the modification that for the words "10%" at both the places where they occur, the words 12% shall be substituted:

Provided further that where the amount of any contribution payable under this Act involves a fraction of a rupee, the scheme may provide for rounding off of such fraction to the nearest rupee, half a rupee, or quarter of a rupee.

[Explanation I.] For the purpose of this dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.

[Explanation II.] For the purpose of this section “retaining allowance” means allowance payable for the time being to an employee of any factory or other establishment during any period in which the establishment is not working, for retaining his services.

Further, para 29 of the Employees’ Provident Funds Scheme provides that cash value of any food concession shall be included into the dearness allowance. Para 29 of the Scheme reads as follows:-

- (1) *The contributions payable by the employer under the Scheme shall be at the rate of [ten per cent] of the **[basic wages, dearness allowance (including the cash value of any food concession) and retaining allowance (if any)]** payable to each employee to whom the Scheme applies:*

Provided that the above rate of contribution shall be [twelve] per cent in respect of any establishment or class of establishments which the Central Government may specify in the Official Gazette from time to time under the first proviso to sub-section (1) of section 6 of the Act.

- (2) *The contribution payable by the employee under the Scheme, shall be equal to the contribution payable by the employer in respect of such employee:*

*Provided that in respect of any employee to whom the Scheme applies, the contribution payable by him may, if he so desires, be an amount exceeding [ten per cent] or [twelve per cent], as the case may be, of his **basic wages, dearness allowance and retaining allowance (if any)** subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under the Act;*

- (3) *The contributions shall be calculated on the basis of **[basic wages, dearness allowance (including the cash value of any food concession) and retaining allowance (if any)]** actually drawn during the whole month whether paid on daily, weekly, fortnightly or monthly basis.*
- (4) *Each contribution shall be calculated to [the nearest rupee, 50 paise or more to be counted as the next higher rupee and fraction of a rupee less than 50 paise to be ignored.*

Therefore, the following allowances are excluded:-

House-rent allowance, overtime allowance, bonus, commission or other similar allowance.

There are three possible interpretation of the above exclusion:-

1. Only house rent allowance, overtime allowance, bonus, commission or other similar allowance (similar to commission only) are excluded
2. House rent allowance, overtime allowance, bonus, commission or other similar allowance (similar to HRA, overtime allowance, bonus, commission)
3. House rent allowance, overtime allowance, bonus, commission or other similar allowance (any similar allowance)

It is seen that the interpretation used by employer, complainant employees and assessing authority differs significantly leading to a huge diversity in stand taken by different EPF officers while dealing this issue.

Thus the major problems in ensuring compliance under the Act with regard to the above definitions may be numerated as follows:-

1. Cases have been noticed where employers show basic wages plus dearness allowance to very low extent say just 10 to 30% and the remaining wage is shown as various allowances like performance allowance, entertainment allowance, conveyance allowance and personal allowance.
2. At present any dispute in this regard is being decided by the competent authority under section 7A of the Act. Accordingly, different assessing officers give different orders. While some order for assessment on at least minimum wages, others try to come to a percentage of 40 to 60% of total wages as PF contribution wages.
3. This results in wide discretions and consequent litigations in EPFAT / High Court etc.

Instances are sometimes quoted, where the wages for the purpose of Provident Fund is reduced as the employer compensates the employee making payments in other heads. Further, the definition of wages differs between ESIC Act and EPF & MP Act.

In order to resolve the above problems and to arrive at a common definition of 'wages', detailed consultations took place between top level officers of EPFO, ESIC and Ministry of Labour. Finally, Ministry of Labour vide letter no. 35012/10/2017-SS.II dated 07.02.2018, forwarded the copy of relevant note sheet containing proposed definition for comments (**Annexure-23A**). The comments were sent vide letter no. C-I/1(81)2017/Wages/1801 dated 12.02.2018 (**Annexure-23B**)

Accordingly, it is proposed that Wages as per Section 2(b) of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 may be defined as:

'Wages' means all remuneration paid or payable in cash to an employee, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes any, –

- (a) basic wages;***
- (b) dearness allowances; and***
- (c) retaining allowance (if any);***

but does not include –

- (a) any bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;***
- (b) house rent allowance;***
- (c) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government;***
- (d) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;***
- (e) any travelling allowance or the value of any travelling concession;***
- (f) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or***

- (g) any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex-gratia payment made to him on the termination of employment;*
- (h) any overtime allowance; and*
- (i) cash value of any food grains:*

Provided that for calculating the wage under this clause, if any payments made by the employer to the employee under clauses (a) to (i) exceeds one half of the all remuneration calculated under this clause, the amount which exceeds such one-half shall be deemed as remuneration and shall accordingly be added to all remuneration under this clause.

Explanation.- Where an employee is given in lieu of the whole or part of the wages payable to him, any remuneration in kind by his employer, the value of such remuneration in kind which does not exceed fifteen percent of the total wages payable to him, shall be deemed to form part of the wages of such employee and shall accordingly be added to the wages."

Further, it is also proposed that upon approval of definition of wages as above the corresponding change shall be made in all sections of the EPF & MP Act, 1952 and all paras of the Schemes there under wherever the existing terms of basic wages and allowances has been used.

Proposal: CBT, EPF may consider the proposal and accord approval for proposed changes in the EPF & MP Act and EPF Scheme 1952.

No.S-35012/10/2017-SS.II
Government of India
Ministry of Labour & Employment

Shram Shakti Bhawan, Rafi Marg,
New Delhi, dated the 7th February, 2018

To

1. The Central Provident Fund Commissioner,
Employees' Provident Fund Organization,
Bhavishya Nidhi Bhawan,
14, Bhikaji Cama Place,
R. K. Puram, New Delhi.
2. The Director General,
Employees' State Insurance Corporation,
Panchdeep Bhawan,
Comrade Inderjeet Gupta (CIG) Marg,
New Delhi.



Sub.: - Furnishing comments on definition of 'wages' for the EPF and MP Act, 1952;
The Payment of Gratuity Act, 1972 and the ESI Act, 1948 - regarding.

Sir,

I am directed to refer to the subject cited above and to enclose copy of the notesheet dated 06.02.2018 (Pages 18-21 of file No.S-35012/10/2017-SS-II) and to request that the comments on the definition of the wages as per para 6(b) of the said note may be furnished to the Ministry within 3 days to facilitate taking further necessary in the matter.

(Samir Kumar Das)
Under Secretary to the Govt. of India
Tele:23473325

न.स.वि.वा.युक्त (मुख्यालय)
पृष्ठ सं. 1149
दि. 09/02/2018

Encl.: - As above.

Copy to:-

1. JS (MG) MOL&E, New Delhi

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Subject: Bringing uniformity in the definition of Wages in various Labour Acts

Definition of Wages is provided in various Central Labour Acts and is presently not uniform in various Acts leading to confusion and difficulty in enforcement or compliance in various Labour Acts. In order to rationalize and uniform the definition of wages as far as practically possible, it is important that the difference in wages definition in various Central Labour Acts along with their purpose in that statute is examined.

2. Presently, out of total 40 Central Labour Acts, the definition of Wages is provided in following 19 Labour Acts:

S.No	Name of the Central Labour Act	Section	Whether referred to other Act
1	The Minimum Wages Act, 1948	2(h)	No
2	The Payment of Wages Act, 1936	2(vi)	No
3	The Payment of Bonus Act, 1965	2(21)	No
4	The Equal Remuneration Act, 1976	2(g)	No
5	The Industrial Employment (Standing Orders) Act, 1946	2(i)	Yes to ID Act
6	The Industrial Dispute Act, 1947	2(rr)	No
7	The Plantation Labour Act, 1951	2(i)	Yes to Minimum Wages Act
8	The Building and Other Constructions Workers' Act, 1996	2(1)(n)	Yes to Payment of Wages Act
9	The Motor Transport Workers Act, 1961	2(l)	Yes to Payment of Wages Act
10	The Contract Labour Act, 1970	2(h)	Yes to Payment of Wages Act
11	The Inter-State Migrant Workmen Act, 1979	2(1)(i)	Yes to Payment of Wages Act
12	The Cine Workers and Cinema Theatre Act, 1981	2(k)	No
13	The Working Journalists and Other Newspapers (Conditions of Service) Employees Act, 1955	2(eee)	No
14	The Maternity Benefit Act, 1961	3(n)	No
15	The Payment OF Gratuity Act, 1972	2(s)	No
16	The Working Journalists and Other Newspapers (Fixation of Wages) Employees Act, 1955	2(e)	Yes to ID Act
17	The Employees' Compensation Act, 1923	2(m)	No
18	The Employees' Provident Funds and Miscellaneous Provisions Act, 1952	2(b)	No
19	The Employees' State Insurance Act, 1948	2(22)	No

Out of the above 19 Central Labour Acts, it may be seen that a separate definition of Wage is provided in 12 Central Labour Acts. The detailed analysis of these 12 Central Labour Acts may be undertaken to understand the implication of each definition and the possibility of its rationalization to provide a uniform definition which is acceptable in most of the Acts without restricting or hampering the objective of the said Central Labour Legislation.

3. It is observed that the definition of wage in 12 Central Labour Acts has two to three components like what constitutes wages i.e. inclusions; in what form it can be given; when it is to be provided and what should be the exclusions. It is also seen that the definition of wage particularly the inclusions and exclusions should be such that a balance is maintained between the needs of employers and employees and the objective of the legislation is also achieved. In order to find the possibility of uniform definition, a detailed analysis on these components is tabulated for the 12 Central Labour Acts and placed on file at F/X.

4. The detailed analysis leads to following conclusions:

- All the definitions have Basic and DA as their components.
- Payment of Wages Act and Equal Remuneration Act has maximum inclusions due to their objective.
- The Inclusions and Exclusions have financial repercussions on Employer in case of Bonus, EPF, ESIC, Maternity Act, Workmen's Compensation Act and Payment of Gratuity Act. It is to be emphasized that on one hand in these Central Acts, it enhances the contribution but at the same time excludes workers out of that ambit due to existing wage ceiling. For example, in case of EPF, inclusions will increase the wage and would push workers out from the mandatory wage ceiling of Rs.15000/-. However, the existing contribution would increase.
- In case of Payment of Bonus Act, if we increase the inclusions in order to achieve uniformity, it will increase the wage quantum of many workers and so their wage would increase from the wage ceiling of Rs 21000/- per month, making them not eligible for Bonus. Secondly, in case of Bonus it is also to be emphasized that the Bonus is calculated on a fixed amount notified by the Central Government from time to time, which at present is Rs7000/- so inclusions even if increase from the present definition would not have substantial financial burden on the Employer or Employee. Hence a separate definition for the purpose of Definition may be dropped.
- From the comparative chart, it is observed that most common exclusions are
 - (a) Bonus as per Payment of Bonus Act
 - (b) Any social security payment
 - (c) TA
 - (d) Special expenses
 - (e) Gratuity
 - (f) termination benefit and retrenchment compensation
 - (g) Value of house accommodation and other facilities like light, water etc.
- Components which are in the Inclusions category in some Acts and in the Exclusion category in other Acts are as under:
 - (a) Overtime allowance
 - (b) HRA
 - (c) Cash value of food grains
 - (d) Commission
- Common Inclusions in most of the Acts are as under:
 - (a) Basic
 - (b) DA
 - (c) HRA
 - (d) Any additional remuneration by any name

5. In this regard, it is emphasized that, firstly, the issue before us is whether we should provide one single definition for all Central Acts or provide two sets of definitions. One

definition for The Payment OF Gratuity Act, 1972; The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and The Employees' State Insurance Act, 1948; and a separate definition for all other Central Acts. It would be prudent to provide two sets of definitions of wages, one for all the Acts (EPF, ESIC and Gratuity) having financial ramifications with only 2 or 3 inclusions and other for all the remaining Acts with a larger category of inclusions and common exclusions. Secondly, in order to avoid diversion of most of the proportion of wages towards allowances, a cap of 50 % may be provided in both the definitions. Thirdly, it has been observed in Plantation Sector that in the name of "Kind" payment, there is a tendency to under pay the workers and sometimes diverting the mandatory statutory obligation like EPF contribution also towards kind. Hence, it is important to provide a ceiling for kind payment also.

6. In view of the above analysis, following definition is proposed for all Central Labour Acts except The Payment of Gratuity Act, 1972; The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and The Employees' State Insurance Act, 1948

(a) "wages" means all remuneration, whether by way of salary, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes any, -

- (i) dearness allowances;
- (ii) house rent allowance;
- (iii) remuneration payable under any award or settlement between the parties or order of a court; and
- (iv) additional remuneration payable under the terms of employment, with whatsoever name it is called,

but does not include -

- (a) any bonus payable under this Code, which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court or Tribunal;
- (b) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government;
- (c) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
- (d) any travelling allowance or the value of any travelling concession;
- (e) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or
- (f) any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex-gratia payment made to him on the termination of employment;
- (g) any overtime allowance; and
- (h) any commission payable to the employee;

Provided that for calculating the wage under this clause, if any payments made by the employer to the employee under clauses (a) to (h) exceeds one half of the all remuneration calculated under this clause, the amount which exceeds such one-half shall be deemed as remuneration and shall be accordingly added in all remuneration under this clause.

Explanation.- Where an employee is given in lieu of the whole or part of the wages payable to him, any remuneration in kind by his employer, the value of such remuneration in kind which does not exceed fifteen percent of the total wages payable to him, shall be deemed to form part of the wages of such employee.

(b) Definition of Wages for The Payment OF Gratuity Act, 1972; The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and The Employees' State Insurance Act, 1948 may be as under:

"wages" means all remuneration paid or payable in cash to an employee, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes any, -

- (a) basic wages;
- (b) dearness allowances; and
- (c) retaining allowance (if any);

but does not include -

- (a) any bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;
- (b) house rent allowance;
- (c) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government;
- (d) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
- (e) any travelling allowance or the value of any travelling concession;
- (f) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or
- (g) any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex-gratia payment made to him on the termination of employment;
- (h) any overtime allowance; and
- (i) cash value of any food grains;

Provided that for calculating the wage under this clause, if any payments made by the employer to the employee under clauses (a) to (i) exceeds one half of the all remuneration calculated under this clause, the amount which exceeds such one-half shall be deemed as remuneration and shall be accordingly added in all remuneration under this clause.

Explanation.- Where an employee is given in lieu of the whole or part of the wages payable to him, any remuneration in kind by his employer, the value of such remuneration in kind which does not exceed fifteen percent of the total wages payable to him, shall be deemed to form part of the wages of such employee.

7. In view of the above, two separate definitions of wages as mentioned in para 6 are submitted for consideration please.

Anita
6/2/18
(ANITA TRIPATHI)
Deputy Secretary
Labour Reforms Cell

~~JS(RKG)~~

We may circulate definition as
at 6(b) above for comments of
EPFO and ESIC / JS (NG)

~~Secretary (L&T)~~

3 days.

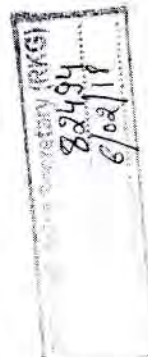
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ASD (APIC)

Subject: **Furnishing comments on definition of wages for the EPF and MP Act , 1952, The Payment of Gratuity Act , 1972 and the ESI Act, 1948- regarding.**

To: CPFC <cpfc@epfindia.gov.in>

Date: 07/02/18 04:38 PM

From: Sanjeev Nanda <sanjeev.dom@nic.in>

wages .pdf (8.5MB)

Sir Madam,

Please find the enclosed copy of Furnishing comments on definition of wages for the EPF and MP Act , 1952, The Payment of Gratuity Act , 1972 and the ESI Act, 1948-regarding.

—
With Kind Regards,

Sanjeev Nanda
Section Officer
M/o Labour & Employment
Government of India
Ph : 011-23473159
Fax : 011-23765103



कर्मचारी भविष्य निधि संगठन
(श्रम एवं रोजगार मंत्रालय, भारत सरकार)
EMPLOYEES' PROVIDENT FUND ORGANISATION
(Ministry of Labour & Employment, Govt. of India)
मुख्य कार्यालय / Head Office
भविष्य निधि भवन, 14-भीकाजी कामा प्लेस, नई दिल्ली-110 066.
Bhavishya Nidhi Bhawan, 14, Bhikaiji Cama Place, New Delhi - 110 066.

No. C-I/1(81)2017/Wages /1801

Date: 08.02.2018

To

12 FEB 2018

The Secretary,
Ministry of Labour & Employment,
Govt. of India, Shram Shakti Bhawan,
New Delhi-110001

Sub:-Furnishing comments on definition of 'Wages' for the EPF & MP Act, 1952; The Payment of Gratuity Act, 1972; and the ESI Act, 1948 - regarding.

Sir,

Please refer to your letter no. 35012/10/2017-SS.II dated 07.02.2018 on the above subject.

2. The proposed amendment of the definition of 'Wages' has been examined. In this regard, it is informed that the above definition has to be examined in view of the existing definition in the EPF & MP Act, 1952. At present in the EPF & MP Act, 1952, 'Wages' are not defined. Section 2(b) defines 'Basic Wages' and Section 6 specifies that contribution shall be paid by the employer on basic wages, dearness allowance and retaining allowance.

3. In the proposed definition of 'Wages', the allowances not included in the definition, are proposed to be restricted to half of all remuneration. This shall ensure that employers are not able to resort to subterfuge of wages. This is a major improvement as it will reduce disputes on the subject considerably. However, upon approval of proposed definition of 'Wages', the corresponding change will have to be made in all sections of EPF & MP Act, 1952 and all paras of the schemes thereunder wherever existing terms of basic wages and allowances have been used.

4. Further, in order to clarify the intent in the proviso and explanation to the proposed definition a little change is suggested as in the enclosure.

[This issues with the approval of CPFC]

Yours faithfully,

Encl: As above.


(Aprajita Jaggi)
Regional PF Commissioner-I(Compliance-I)

Definition of Wages for The Payment OF Gratuity Act, 1972; The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and The Employees' State Insurance Act, 1948 may be as under:

"wages" means all remuneration paid or payable in cash to an employee, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes any, –

- (a) basic wages;
- (b) dearness allowances; and
- (c) retaining allowance (if any);

but does not include –

- (a) any bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;
- (b) house rent allowance;
- (c) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government;
- (d) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
- (e) any travelling allowance or the value of any travelling concession;
- (f) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or
- (g) any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex-gratia payment made to him on the termination of employment;
- (h) any overtime allowance; and
- (i) cash value of any food grains:

Provided that for calculating the wage under this clause, if any payments made by the employer to the employee under clauses (a) to (i) exceeds one half of the all remuneration calculated under this clause, the amount which exceeds such one-half shall be deemed as remuneration and shall ~~be~~ accordingly be added ~~in~~ to all remuneration under this clause.

Explanation.- Where an employee is given in lieu of the whole or part of the wages payable to him, any remuneration in kind by his employer, the value of such remuneration in kind which does not exceed fifteen percent of the total wages payable to him, shall be deemed to form part of the wages of such employee and shall accordingly be added to the wages.