



news flash

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RECENT LABOUR LAW UPDATES

➤ Proposed Amendment to the Factories Act

The Factories Amendment Bill, 2014 (“**Bill**”) which was introduced in the Lok Sabha on 6 August 2014 seeks to narrow the definition of a ‘factory’ by allowing the State Governments to keep establishments with fewer employees outside the purview of the Factories Act, 1948 (“**Factories Act**”).

It is proposed that the State Government may set out the following limits in respect of the minimum number of employees that a unit should have to fall within the ambit of the definition of ‘factory’ under the Factories Act:

- Up to 20 employees (as compared to the existing threshold of 10 employees) in the case of units where manufacturing is carried on with the aid of power; and
- Up to 40 employees (as compared to the existing threshold of 20 employees) in the case of units where manufacturing is carried on without the aid of power.

The amendment will therefore give State Governments the power to limit the applicability of the Factories Act to those units which have larger number of employees thereby reducing labour law compliances with respect to units which do not fall within the threshold. The Bill is still in the proposal stage and will need to be passed by both Houses of the Parliament before it can be brought into effect.

➤ Guidelines for Quasi-Judicial Proceedings under the EPF Act

The EPFO has issued a circular on 6 August 2014 laying down guidelines to be followed on case of quasi-judicial proceedings under section 7A of the Employees’ Provident Fund and Miscellaneous Provisions Act, 1952 (“**EPF Act**”). Section 7A of the EPF Act empowers provident fund commissioners to conduct an inquiry in cases where there is a dispute regarding the applicability of the PF Act to an establishment or regarding any amount due from any employer under provisions of the EPF Act.

These guidelines provide for a detailed procedure to be undertaken prior to the initiation of an inquiry, which can only be conducted after actionable and verifiable information is available. A show cause notice is required to be issued to the establishment and in the event that no response is received from the establishment, an investigation may be carried out by

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the enforcement officer. The enforcement officer is then required to submit his investigation report to the compliance branch. If, upon examination, the compliance branch is of the view that a case is made out for initiation of proceedings under section 7A of the EPF Act, the report is forwarded to an assessing officer who will initiate the inquiry proceedings. The guidelines further stipulate that the order of the assessing officer should be a speaking order and provides the indicative structure of the assessment order in an annexure.

➤ **Clarification on including PF contribution in CTC**

The EPFO issued a circular dated 18 March 2014 clarifying that it is not wrong if the employer is showing employer's share of provident fund ("PF") contribution as a part of the total cost to the company ("CTC") of the employee. Such inclusion of the employer's PF contribution in the CTC will not amount to a contravention of paragraph 31 of the Employees' Provident Funds Scheme, 1952 ("Scheme"). Paragraph 31 of the Scheme provides that no employer is entitled to deduct the employer's contribution from the wages paid to an employee or otherwise recover it from him.

It is further observed that all components of CTC could not be treated as forming part of 'basic wages' for the purposes computing PF contributions. Under section 6 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 ("EPF Act"), the employer is required to contribute 12% percent of the salary paid to the employee (i.e. basic wages + dearness allowance + retaining allowance, if any). It is clarified that PF contribution under section 6 of the Act cannot be thus charged on the entire CTC.

It has been further clarified that under no circumstances is the employer permitted to segregate CTC into such components so as to bring the 'wage' (on which the provident fund contribution is made) below the wage ceiling prevailing (i.e. the minimum wage prescribed in the applicable State).

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