



Labour Laws & Labour Codes : Overview & Must Know Facts for Professionals

*An Insightful session to enhance your understanding of the ignored but very critical area.
An eye opener session which will assist you to extend valuable advice to your clients*

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Takeaways from the Session

1. **Misconceptions / Myths about Labour Laws and Fact Check**
2. **Essential Compliance Facts and Common Pitfalls to Avoid**
3. **Labour Codes : What to Expect and Timelines**
4. **Tax Friendly Salary Structure**



Some Common Myths....



1. *PF is not compulsory if salary is above Rs 15000/-*
2. *If I divide employees between different contractors / firms such that no firm /contractor exceeds threshold of 20/10 workforce, then compliances like PF, ESIC is not applicable*
3. *If employee is added in PF, he becomes permanent*
4. *A group mediclaim insurance for employees can replace ESIC compliances*
5. *I can keep a person on contract/hire a manpower supplier and escape labour law compliances*
6. *Availing Labour License for "x" number of workers, means I have to pay PF/ESI for that many workers*
7. *Under BOCW, as a Principal Employer, I need to take RC / License even for workers engaged through contractor*
8. *One Labour License can be used for multiple sites*
9. *Labour License is a pre-requisite for obtaining a govt / private contract*
10. *ESI retrospective coverage - Penalty can be levied only for the period of delay after completion of ESI inquiry*
11. *I Can cancel PF and ESI registration if employee count falls below threshold limit*
12. *PF / ESI department cannot go beyond 8 years for any inquiry*
13. *I can show Gratuity as part of CTC and recover it every month*

Did You Know ? Shops & Establishments Act, 2017 -

1. Leave Provisions - Sec 18 [Shop Act\Leave Provisions.xlsx](#)
2. Leave Encashment - On Gross Salary only for rejected leaves at the time of FnF - Scope for Savings and Course Correction - Sec 18(6) [Shop Act\Mah Shops & Est \(Reguln of Emp & Cond of Service\) Act 2017.pdf](#)
3. Leave Encashment - During Employment Not Compulsary & Taxable
4. Conditions for Women Workers in Night Shift - Form L Required [Shop Act\Women Workers\Form L Consent of Women Worker.pdf](#)
5. Shop Act Intimation (For Upto 9 workers)
6. Shop Act License (10 workers and above) - No government fee required
7. Shop Act Renewal - Not Required Now [Shop Act\Shop Act License Sample.pdf](#)
8. Follow Calendar Year for Leave Calculations and Not Financial Year

Factories Act



Applicability

- 1) Manufacturing Process - Wide Definition
- 2) 20 or more workers with the aid of power
- 3) Hazardous Units / Processes even if less than 20
- 4) Office Staff attached To Factory Unit will also be counted
- 5) License to be taken per unit and cannot be transferred
- 6) Scope for Conditional License - For Non Hazardous Units [Registers to maintain Factories Act.xlsx](#)

Following are Factories & Factory License Applicable

1. Fuel Pump Station (less than 20 workers also)

1. Two Wheeler / Four Wheeler Service Station (If Paint Shop - Hazardous Unit)



PF/ESI Applicability

1. **Constitution** of Business is immaterial (except certain exemptions)
2. Employees working **through contractor** are also considered for headcount of PF / ESI Applicability
3. **Clubbing Provisions** If employees of same organisation are divided into two entities merely for keeping headcount low, clubbing provisions are applicable based on principle of functional integrity
4. **ESI Exemption (MH)** ESI Not Applicable to Educational and Medical Institutions (Schools, Colleges, Hospitals) but applicable to contractual workers working therewith
5. **Closure** Once Registered, cannot withdraw till Complete Closure / Liquidation /Dissolution irrespective of employee count falling below 20/10 even for Voluntary Coverage (may change in labour codes)



Auto Allotted PF and ESI Codes for Companies

1. Applicable only after crossing threshold limit [Auto Allotment PF and ESI \(2\).pdf](#)
2. **Save PF and ESI Login Details for future record - Primary E Mail ID**
3. ESI Portal - Periodical Update every six months
4. Back dated Registration Not Possible
5. Keep Track of Employee Count

PF/ESI Clarifications – continued



Contract Arrangement (PF & ESI)

1. Principal Employer - Contractor relationship
2. Employee engaged through contract is also liable for coverage - indirect employee
3. Pure Consultancy Arrangement can be considered for exclusion (For ex - Visiting Doctors in Hospital, Virtual CFO Services)

ESIC v/s Workmen Compensation

1. If ESI is applicable, then WC not an option
2. IF ESI is not applicable (Construction Contractors / Salary above Rs 21000), then WC insurance covering personal accident is must

PF Excluded Employee - Conditions

1. Basic > Rs 15000/- from Date of Joining
2. Never a PF member earlier
3. Form 11 is compulsory [Slide Inserts Form 11\New Form11.pdf](#)

Did You Know ? PF and ESI Provisions -

ESIC

1. Construction Contractors are not liable for ESI coverage of employees (SC Order) - WC Insurance is must [ESIC_Cases\ESIC_Construction Workers\ESIC_Circular_Applicable to Construction Sector_2015.pdf](#)
2. Waiver of maternity benefit payment for employers in case employee is covered under ESIC (minimum 78 days)

PF

1. EDLI death benefit under PF wherein a minimum lumpsum claim of Rs 2.5 lakhs can be awarded if employee has worked for a minimum of 12 months
2. Under Employee Pension Scheme (8.33% of basic), for eligible employees, Central Govt contributes 1.17%, such that contribution adds up to 9.5%

Inquiry Triggers (PF / ESI)

- 1) Follow Deadlines
- 2) File Nil Returns
- 3) No Major Fluctuations in Monthly Contribution (+-10%)
- 4) Employee Complaints
- 5) Closure Application - Invitation for Inspection



PF and ESI - Consequences of Delay

Damages and Interest Payable to EPFO

Employers defaulting on contributions are liable to pay Damages u/s 14B and Interest u/s 7Q on the amount due.



Damages are levied at the following rates :

Period of default	Rate of damages
Less than 2 months	5% per annum
2-4 months	10% per annum
4-6 months	15% per annum
More than 6 months	25% per annum

Damages are restricted upto 100% of the amount in arrear.
Simple Interest @ 12% p.a is payable on amount due for the entire period of delay.

Consequences for Delay

1. Disallowance under Sec 36(1)(va) & 43-B
2. Interest and Damages as per table here
3. Disallowance of certain benefit schemes
4. Case for Departmental Inquiry

[PF Damages\Damages Case.xlsx](#)

NO NEED TO PAY DAMAGES / INTEREST MERELY REFLECTING IN PF PORTAL UNLESS 14B/7Q PROCEEDING IS COMPLETE

Death Benefit Under PF

- EDLI BENEFIT - INSURANCE COVERAGE BETWEEN 2.5 LAKHS TO 7 LAKHS
- MINIMUM SERVICE PERIOD OF 12 MONTHS
- NOMINEE - WIFE / HUSBAND AND CHILDREN, IF UNMARRIED THEN DEPENDENT PARENTS
- PENSION TO THE NOMINEE TILL THE END OF HER LIFE AND MAX 2 CHILDREN TILL 25 YEARS OF AGE
- TOTAL PF CORPUS ALONG WITH INTEREST CAN BE WITHDRAWN BY NOMINEE

[Video for Advance PF Withdrawal](#)

The infographic is titled "Salient Features of Employees' Deposit Linked Insurance (EDLI) Scheme, 1976". It is presented in a light orange background with a white border. At the top, there are logos for the Ministry of Labour & Employment, Government of India, Azadi Ka Amrit Mahotsav (75th), G20 India 2023, and the Employees' Provident Fund Organisation (EPFO). The main title is in a large, bold, black font. Below the title, there are six features, each accompanied by a small icon and a brief description. The features are: 1. Maximum assured benefit up to Rs. 7 lakh paid to nominee or legal heir of EPF member, if death occurs while in service. 2. Minimum assurance benefit of Rs 2.5 lakh, if deceased member was in continuous employment for 12 months prior to his/her death. 3. Minimal contribution by employer @ 0.5% of employees' monthly wages, up to wage ceiling of Rs. 15,000. 4. No contribution paid by employee. 5. Auto enrollment of PF members in EDLI Scheme. 6. Benefit directly credited to bank account of nominee or legal heir. At the bottom, there are social media handles for EPFO: @socialpefo on Facebook, @socialpefo on Instagram, @socialpefo on Twitter, and @socialpefo on LinkedIn.

श्रम एवं रोजगार मंत्रालय
Ministry of Labour & Employment
भारत सरकार (Government of India)

75
Azadi Ka
Amrit Mahotsav

G20
भारत 2023 INDIA

सोशल
EPFO

Salient Features of Employees' Deposit Linked Insurance (EDLI) Scheme, 1976

- Maximum assured benefit up to Rs. 7 lakh paid to nominee or legal heir of EPF member, if death occurs while in service.
- Minimum assurance benefit of Rs 2.5 lakh, if deceased member was in continuous employment for 12 months prior to his/her death.
- Minimal contribution by employer @ 0.5% of employees' monthly wages, up to wage ceiling of Rs. 15,000.
- No contribution paid by employee.
- Auto enrollment of PF members in EDLI Scheme.
- Benefit directly credited to bank account of nominee or legal heir.

epfindia.gov.in @socialpefo @socialpefo @socialpefo



Some Compliance Hacks - PF

- Option to pay only Employee Share to keep Sec 36(1)(va) at bay
- PF Penalty levy is exponential - so pay in reverse chronology - latest to oldest
- PF - Damages Waived off for lockdown period [PF Damages\Penal damages-Lockdown.pdf](#)
- Some Important Circulars to help deal with fishing / roving inquiry & departmental high handedness [PF Notifications\PF Inspections and Inquiry](#)
- CTC Concept Allowed - Corresponding Circular
- Payslip - appropriate format means avoidance of showing Employer Share in Deductions
- File Nil Challan of Rs 75/- per month to avoid non compliance action
- Damages Waiver Possible only for sick units approved by BIFR
- Higher PF contribution for Directors / CXOs - Smart Tax Planning with better returns on safe investment [Salary Structure\PF tax calculation.xlsx](#)
- Dual Employment Check is possible by scanning PF Records [Dual Employment](#)
- We can check any company data online along with Payment Details and List of Employees
- No Intra-Appellate Authority in PF, however you can file Review Petition under Sec 7-B for mistake apparent on the face of record



Some Compliance Hacks - ESIC

- ESIC - Ad Hoc Notice C(18)(Adhoc) - utilize this provision to deal with non compliance cases
- ESIC - Mandatory to file Nil Return to avoid non compliance action
- ESIC - Retrospective Coverage by department - can save penalty / damages [ESIC_Cases](#)
- Damages Waiver Possible only for sick units approved by BIFR
- ESIC Penalty levy is exponential - so pay in reverse chronology
- Not Applicable to Educational Institutions / Hospitals in MH but applicable to contractors working therein
- ESI liable for Maternity Benefit Payment of covered employee - 26 weeks of salary
- Intra Appeal - Can File an appeal by pre-deposit of 25% of Dues under Sec 45-AA

Apprentice / Trainees and Labour laws

1. Mere Nomenclature as Trainees / Apprentice / Stipend is questionable
2. Degree Holders cannot be categorized as Interns / Apprentice unless as part of Govt Scheme
3. Exempt
 - a. Certified Govt Scheme
 - b. Degree Pursuers (MBA Summer Internship, CA Articles)

NAPS

1. Central Govt Gazetted Scheme
2. Paperless Execution
3. 2.5% to 25% of Total Workforce
4. Benefits
 - a. PF / ESI / Labour Laws Exemption
 - b. CSR Benefit
 - c. Contract Terms Based
 - d. Subsidy of Rs 1500/- /25% of Stipend pepm
 - e. Stipend starting Rs 6000/-
 - f. Hire & Fire
 - g. 6 Months to 36 Months

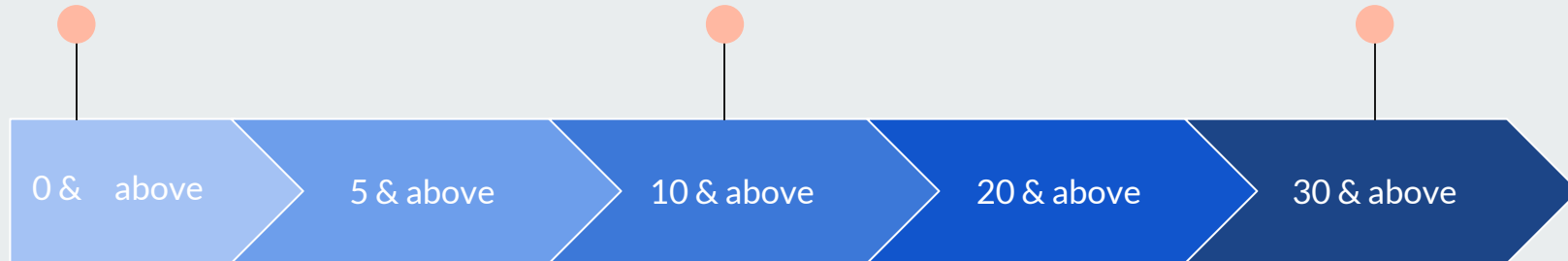
Labour Laws Applicability in Maharashtra

1. Professional Tax Of Employee (PTRC)
2. Professional Tax Of Employer (PTEC)
3. Shop Act Intimation
4. Employee Compensation Act
5. Prevention of Sexual Harrasment of Women
6. TDS

1. Maternity Benefit Act
2. ESIC (If Gross is <21000)
3. Shop Act License
4. Payment of Gratuity Act

Apprentice engagement compulsory between 2.5% to 25% of total headcount under any govt. scheme like **NAPS**

Employee Range (including Contractual)





BOCW v/s Contract Labour Act

Contract Labour Act

1. Applicable to all kinds of sectors / industries engaging contractual labour including construction work
2. Principal Employer - Contractor arrangement is formalized
3. Applicable if more than 20/50(MH) workers engaged
4. Security Deposit is payable for contractor (Refundable)

[Flowcharts with FAQ \(1\).pdf](#)

BOCW - Building & Other Construction Workers Act

1. Applicable only to Construction Work (Dam, Building, Roads)
2. No Principal Employer Concept, Contractor engaging labour is liable for licenses for each site separately [definition of employer under BOCW act \(2\).pdf](#)
3. Applicable if more than 10 workers engaged per site
4. No Security Deposit to pay

Did You Know ? - continued



1. Payment of Bonus Act - Relief in first five years of incorporation
2. LIC Group Gratuity Policy - Term Insurance Available and No need to form trust
3. MLWF - with benefits Loaded & Completely Online Process
4. Motor Transport Worker License required for Passenger Transport Service Provider with more than 5 workforce
5. Security Deposit @ Rs 500/-(MH) or any other amount, per worker is refundable
6. Contract labour Act - Not applicable < 50 workers at a site (except Central Govt & PSU Contracts)

Some Compliance Hacks - Allied Laws



- Bonus - Payable only if Gross Salary is below Rs 21000/- (not basic salary) - Refer Opinion [Payrule Opinion_Bonus Criteria.pdf](#)
- Gratuity - Option to address Gratuity Liability before implementation of labour codes where basic salary is below 50%
- Soft Copy of Compliance/Payroll Record - Allowed to be maintained, however on demand printout required [Shop Act\Computerised Record.pdf](#)
- Shop Act License - Renewal Not required
- Maternity Benefit Cases - A Pragmatic Approach to make employees accountable for the benefit received
- Factories Act - Connected Load to check and not Sanctioned Load
- Factories Act - Scope for Conditional License for Non Hazardous Factory (issued within 7 days)
- Security Deposit @ Rs 500/- (MH) or any other amount, per worker is refundable

Labour Codes -Consolidation of Labour Laws



1. 29 Laws Subsumed into four labour codes
 - a. Code on Wages
 - b. Industrial Relations Code
 - c. Code on Social Security
 - d. Occupational Safety, Health and Working Conditions Code
2. Enacted in 2019-2020 and majority states have pre-published draft rules
3. Ambiguity
 - a. Shop Act Applicable or no
 - b. Difference Yardstick of Basic Wages Definition under Labour Codes / Income Tax Act (for HRA exemption)
 - c. Wages Definition - Compensation paid in Kind
4. Less Possibility of getting implemented before next general elections
5. Do not advise to change salary structure in view of Ambiguity
6. [Payrule Write Up Labour Codes.pdf](#)

Labour Codes - what's in store?



1. Basic should be at least 50% of gross - may result in reduction of ESI, Maternity Benefit costs
2. Provision for Fixed Term Employment - gratuity payable irrespective of 5 years completed
3. Gratuity - Eligibility will continue for 5 years services
4. Formalization of employment - compulsory to issue offer letter / appointment letter
5. Architects , designers or Project Engineers - liable for safety of workers at designing stage
6. Group Gratuity Scheme - Scope for private insurance players
7. Five Year Limitation Period for initiation of inquiry, assessment, inspection
8. Three Year Limitation Period for employees to file any claims
9. Recognition & Coverage of Gig, Platform and Unorganised Workers under Social Security Scheme
10. Consolidation of Various Returns
11. Decriminalization of Various Offences

A word of advice to fellow professionals



- Routing Employees as Consultants has its implications and not suggested as a norm
- Employer - Employee Relationship has a very wide coverage
- IW Definition in PF Law is very wide - Expat / Other Than Indian Passport Holder / OCI
- Do not dump unexplainable expenses under Labour Charges - major compliance issue
- If Directors are drawing salary, push them for higher PF contribution
- Principal Employer is liable for compliance of Contractors / Contractual Payments
- If one person contract - 1% TDS deduction is not acceptable
- Provision of Gratuity in books of accounts



Payroll Audit - Pitfalls and Check Areas

- 1) Professional Fees / Consultancy Fee is disproportionately high compared to Salaries and Wages
- 2) Payslip and Payroll / Salary Statements - Do not show Employer Share under Deductions
- 3) Payroll Statements - Should not contain Consultants' Remuneration Record
- 4) Taxability of Perquisite - If Employer Share of PF & NPS > Rs 7.5 lakh Annually
- 5) GST on Notice Period Recovery - Not Liable
- 6) Stipend - Check for Employer - Employee Relationship
- 7) Salary Structure - Basic should be minimum 50% of Gross Salary
- 8) Interest and Penalty under PF / ESI for late payment should be disclosed under appropriate heading as it is certain liability



Employee Compensation - Tax Friendly Areas

- 1) Food Coupon @ Rs 2200/- per month - paytm wallet
- 2) Car and Fuel Expenses @ Rs 1800/2400 per month
- 3) Driver Allowance @ Rs 900 per month
- 4) NPS Scheme @ 10% of Basic
- 5) Employer Share of PF - @12% of Basic allowed as exempt income
- 6) Leave Travel Allowance - Travel Tickets of self and family for 2 trips allowed
- 7) Annual Tax Savings of over Rs 1 lakh with smart tax planning
- 8) New Regime v/s Old Regime
- 9) [Salary Structure\Final CTC Annexure.xlsx](#)



Thank You for
Patiently
Hearing the back
bencher CA
Student !!!!!
Questions ?

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