
UNIT 25 THE EMPLOYEES' STATE INSURANCE ACT, 1948

Objectives

The Objectives of this unit are to:

- discuss the salient features of the Act
- present selected case law on the subject

Structure

- 25.1 Genesis of the Act
- 25.2 Applicability of the Act
- 25.3 Definitions
- 25.4 Contributions
- 25.5 Registration
- 25.6 Administration
- 25.7 Benefits
- 25.8 Restrictions
- 25.9 Protection
- 25.10 Penalties and Damages
- 25.11 Miscellaneous
- 25.12 Case Law
- 25.13 Self-Assessment Questions
- 25.14 Answers to Check Your Progress
- 25.15 Further Readings

25.1 GENESIS OF THE ACT

The Employees' State Insurance Act, 1948, is a pioneering measure in the field of social insurance in our country. The subject of health insurance for industrial workers was first discussed in 1927 by the Indian Legislature, when the applicability of the Conventions adopted by the International Labour Conference was considered by the Government of India. The Royal Commission on Labour, in its report (1931), stressed the need for health insurance for workers in India. One of the earlier decisions of the Labour Ministers' Conferences between 1940 and 1942 was to invite an expert to frame a scheme of health insurance for workers. In pursuance thereof, the responsibility for preparing a detailed scheme of health insurance for industrial workers was entrusted in March 1943 to Prof. B.P. Adarkar who submitted his report in December 1944. This was considered by the Government of India and State governments as well as other interested parties. The Adarkar Plan and various other suggestions emerged finally in the form of Workmen's State Insurance Bill 1946, which was then referred to a Select Committee in November 12, 1947: The Select Committee extended the cover-age to all the employees in factories, and changed its name from Workmen's State Insurance Bill to Employees' State Insurance Bill. The Employees' State Insurance Act came into force from 19th April 1948. The scheme framed under the Act aims at providing for certain cash benefits to employees in the event of sickness, maternity, employment injury, and medical facilities in kind, and contains provisions for certain other matters having bearing thereon.



25.2 APPLICABILITY OF THE ACT

Under Section 1(4) of the Act, the implementation of the scheme is territorial. The Act applies in the first instance to all factories using power and employing 20 or more persons on wages. The provisions of the Act have also been extended, or are being gradually extended, under Section 1(5) of the Act to cover

- a) Smaller power-using factories employing 10 to 19 persons;
- b) Non-power using factories employing 20 or more persons;
- c) Shops;
- d) Hotels and restaurants;
- e) Cinemas, including preview theatres;
- f) Newspaper establishments; and
- g) Road motor transport undertakings employing 20 or more persons.

The Act, however, does not apply to a mine or railway running shed, and specified seasonal factories. The State Government may extend the provisions of the Act to cover other establishments or class of establishments, industrial, commercial, agricultural or otherwise, in consultation with the Corporation and with the approval of the Central Government, after giving six months notice of its intention to do so in the Official Gazette.

25.3 DEFINITIONS

Employee

The term "employee" as defined under Section 2(9) of the Act, refers to any person employed on wages in, or in connection with, the work of a factory or establishment to which this Act applies. It has a wide connotation and includes within its scope clerical, manual, technical and supervisory functions. Persons whose remuneration (excluding the remuneration for over-time work) does not exceed Rs. 6,500 a month are covered under the Act. The Act does not make any distinction between casual and temporary employees or between technical and non-technical employees. There is also no distinction between those employed on time-rate and piece-rate basis. Employees employed directly by the principal employer and those employed by or through a contractor on the premises of the factory and those employed outside the factory premises under the supervision of the principal employer are all included under the Act. It also covers administrative staff and persons engaged in the purchase of raw materials or the distribution or sale of products and similar or related functions. However, the definition of "employee" does not include any member of the Indian naval, military or air force.

Wages

"Wages" means all remuneration paid in cash if the terms of the contract are fulfilled, and includes any payment in any period of authorised leave, lockout or strike which is not illegal or lay-off, and includes other remuneration paid at intervals not exceeding two months but does not include

- i) Contribution paid to the provident fund or pension fund;
- ii) Travelling allowance or value of travelling concession;
- iii) Sum paid to defray special expenses; and
- iv) Gratuity payable on discharge.



25.4 CONTRIBUTIONS

The main sources of finance are the contributions from employers and employees and one-eighth share of expenses by State Governments towards the cost of medical care. Employees' contribution has to be calculated individually for each employee at 1.75 per cent of the wages paid/payable for every wage period. The employers' contribution, however, may be calculated at the rate of 4.75 per cent of the total wages paid to all the employees covered under the ESI Scheme in each wage period, rounded to the next higher multiple of five paise. The total value of the combined employers' and the employees' share has to be deposited in the State Bank of India or in any other authorised bank or branch through a challan in quadruplicate as per the Form on or before the 21st of the month following the calendar month in which the wages fall due. A employer who fails to pay his contribution within the periods specified shall be, liable to pay interest and damages for late payment under Section 85(B) of the Act: The Act has laid down the purposes for which the fund may be expended. The accounts of the Corporation shall be audited by auditors. appointed by the Central Government:-

Employees whose average daily wage is below, Rs. 15 are exempted from payment of their contribution; only the employer's contribution will be payable at 4.75 per cent in respect of such employees.

"Contribution period" and "benefit period" is fixed for the purpose of paying contributions and deriving benefits under the Act. In respect of the contribution period from 1st April to 30th September, the corresponding benefit period shall be from 1st January of the year following, to 30th June, and in respect of the contribution period from 1st October to 31st March of the year following, the corresponding benefit period shall be from 1st July to 31st December of the year following. In the case of a newly employed person, the first contribution period shall commence from the date of his employment, and the corresponding first benefit period shall commence on the expiry of 9 months from the said date (Rule 2 and Regulation 4). The daily rate at which sickness benefit is payable to an insured employee during the period of his sickness is called "standard benefit rate"

25.5 REGISTRATION

The registration of a factory/establishment with the Employees' State Insurance Corporation is a statutory responsibility of the employer under Section 2-A of the Act, read with Regulation 10-B. The owner of a factory/establishment to which the Act applies for the first time is liable to furnish to the appropriate regional office, within 15 days after the Act becomes applicable, a declaration of registration in Form 01. On receipt of the 01 Form] the regional office will examine the coverage; and after it is satisfied that the Act applies to the factory/establishment, will allot a code number to the employer.

The forms for the registration of employees are the declaration form and return of declaration forms (covering letter). The principal employer should get the declaration form filled in by every employee covered under the scheme.

The statutory registers to be maintained up to date are,:-

- a) Register of Employees;
- b) Accident Book in which every accident to employees during the course of employment is recorded; and
- c) Inspection Book (to be produced before an Inspector or any other authorised officer).

As and when required, certain other forms, such as ESIC 32, ESIC 37, ESIC 53, ESIC 71, ESIC 72, ESIC 86, ESIC 105, shall be filled up



25.6 ADMINISTRATION

The Scheme is administered by a corporate body called the Employees' State Insurance Corporation. It comprises members representing vital interest groups like employees, employers, the parliament, central and state governments and medical profession. This broad based body is primarily responsible for policy planning, decision making and oversees the functioning of the scheme through a Standing " Committee drawn from the main corporate body. The Corporation is headed by Union Minister of Labour as its Chairman.

The chief executive officer of the Corporation is its Director-,General, who is also an ex-officio member of the Corporation and its Standing Committee, He is-responsible for the formulation of policy, over-all supervision, co-ordination and liaison with Central and State Governments. The ESIC has set up a network of regional and local offices all over the country for the implementation of the Scheme. Each regional *office* is under the charge of a Regional Director. The Regional Office maintains all the records of insured persons within its area and administers local offices. The medical benefit is administered by the concerned state governments except in Delhi and Noida area of Uttar Pradesh where the Corporation runs the medical units directly.

25.7 BENEFITS

All the benefits under the scheme are paid in cash except medical benefit, which is given in kind. The benefits are:

- a) **Sickness and Extended Sickness Benefit:** For sickness during any period, *an* insured person is entitled to receive sickness cash benefits at the standard benefit rate for a period of 91 days in any two consecutive benefit periods. The eligibility condition for sickness benefit is that the contribution of an insured person should have been paid/or payable for not less than half the number of days of the corresponding contribution period. An insured person suffering from, any special, long-term ailment - for example, tuberculosis, leprosy, mental disease - is eligible for extended sickness benefit at a rate which is 40 % higher than the standard,., benefit rate, rounded to the next higher multiple of 5 paise, for a period of 124/ 309 days. The Director General may enhance the duration of extended sickness benefit beyond the existing limit of 400 days to a maximum, period of 2 years in deserving cases duly certified by a medical board. The facility of extension would be available up to the date on which the insured person attains the age of 60 years. The rate of this benefit is 40 per cent more than the standard benefit rates for 7 days for vasectomy and 14 days for tubectomy. This is paid in addition to the usual sickness benefits.
- b) **Maternity Benefit:** An insured woman is entitled to maternity benefit at double the standard benefit rate. This is practically equal to full wages for a period of 12 weeks, of which not more than 6 weeks shall precede the expected date of confinement. Additional maternity benefit is given in case of miscarriage. In case of sickness arising out of pregnancy, confinement, premature birth `of a child or miscarriage, an additional benefit is given *for* a period not exceeding one month. The eligibility condition for maternity benefit is 80 days in one or two preceding contribution periods of one year.
- c) **Disablement Benefit:** If a member suffers *an injury* in the course of his employment, he will receive free medical treatment and temporary disablement benefit in cash, which is about 70 per cent of the wages, as long as the temporary disablement lasts, provided that the temporary disablement has lasted for not less than 3 days, excluding the day of the accident. In case of permanent total disablement, the insured person will be given a life pension at full rate i.e., about 70 per cent of his wages, while in case of partial permanent disablement, a portion of it will be granted as life pension. The benefit is paid for-Sundays as well. At the option of the beneficiary, the permanent disablement pension may be commuted to a lump sum payment, if the rate of benefit is less than one rupee and fifty paise per day.



- d) **Dependants' Benefit:** The dependants' benefit consists of timely help to the eligible dependants of an insured person who dies as a result of an accident, or an occupational disease arising out of, and in the course of, employment. Pension at the rate of 40 per cent more than the standard benefit rate (70 per cent of wages) will be paid periodically to the widow and children. It will be available to the widow as long as she lives or until she marries; to sons' and unmarried daughters up to the age of 18 without any proof of education; and to infirm or wholly dependant off-spring as long as the infirmity lasts. Where neither a widow nor a child is left, the dependants' benefit is payable to a dependant parent or grandparent for life, but equivalent to 3/10ths of the full rate; and if there are two or more parents or grandparents, the amount payable to them shall be equally divided between them.
- e) **Funeral Benefit:** This benefit was introduced in 1968. Accordingly an amount not exceeding rupees one thousand five hundred is payable as funeral benefit to the eldest surviving member of the family of the deceased insured person. The time limit for claiming the benefit is three months from the death of the insured person.
- f) **Medical Benefit:** The kingpin of the scheme is, medical benefit, which consists of free medical attendance and* treatment of insured persons and their families. This benefit has been divided into three parts
- i) **Restricted Medical Care:** it consists of out-patient medical care at dispensaries or panel clinics.
 - ii) **Expanded Medical Care:** This consists of consultation with specialists and supply of such medicines and drugs as may be prescribed by them.
 - iii) **Full Medical Care** It consists of hospitalisation facilities, services of specialists and *such* drugs and diet as are required for in-patients.

An insured person and members of his family are entitled to medical care of all the above three varieties.

25.8 RESTRICTIONS

When a person is entitled to any of the benefits provided under this Act, he shall not be entitled to receive any similar benefit under any other enactment. An insured person will not be entitled to receive for the same period.

- a) Both sickness benefit and maternity benefit; or
- b) Both sickness benefit and disablement benefit for temporary disablement; or
- c) Both maternity benefit and disablement benefit for temporary disablement.

Where a person is entitled to more than one of the benefits, he has an option to select any one of them. .

25.9 PROTECTION

The employer cannot dismiss, discharge or otherwise punish an employee during the period he/she is in receipt of sickness benefit or maternity benefit, or of disablement, benefit, or is under medical treatment for sickness; or is absent from work as a result of illness which arises out of pregnancy or confinement: *Any* notice of dismissal, discharge or reduction during the period specified above is invalid and inoperative.

An employer can discharge or punish an employee on due notice if

- i) He/she has received temporary disablement benefit and remained absent for six months or more continuously;



- ii) He/she is under medical treatment for sickness, otherwise than T.B. or a disease arising out of pregnancy, and has remained absent continuously for six months or more; and
- iii) He/she is under medical treatment for T.B. or 6: malignant disease and has remained absent continuously for 18 months or more (Section 73 and Regulation 98).

25.10 PENALTIES AND DAMAGES

The Act provides for penalties and damages for various offences. It also provides that if any person commits any offence after having been convicted by the court, he will be punishable, for every such subsequent offence, with imprisonment for a term which may extend up to Rs. 2,000 or both. If the subsequent offence is for failure to pay any contribution, then for every such subsequent offence a person is liable to punishment for a term of imprisonment which may extend up to one year and which shall not be less than 3 months; and he will also be liable to pay. a. fine up to Rs. 4,000:

Any contribution due under the Act and not paid can be recovered through the District Collector under Section 45-B of the Act as arrears of land revenue. The employer can raise any dispute for adjudication in the Employees' Insurance Court of the area, set up under Section 74 of the Act.

Under Regulation 31-A, the employer is liable to pay interest at the rate of 6 per cent per annum for each day of default or delay in the payment of his contribution. In addition, under Section 85-B of the Act, the Corporation is empowered to recover damages from the employer who fails to pay the contribution or delays payment. The amount of damages, however, cannot exceed the amount of contribution. The damages can also be recovered as arrears of land revenue.

25.11 MISCELLANEOUS

Cash benefits payable under the Employees' State Insurance Act are not liable to attachment or sale in execution of any court decree or order. Also, the right to receive any benefit is not transferable or assignable.

Where a dispute arises under the provisions of the Act, that matter has to be decided by the Employees' Insurance Court and not by a civil court. An appeal will lie to the High Court from an order of the Employees' Insurance Court if it involves a substantial question of law. The period of limitation for appeal is 60 days. The delay can be condoned for sufficient reasons.

25.12 CASE LAW

In a theatre premises, there was a canteen and cycle stand run by private contractors with their own employees. The theatre owners were charged with the liability to pay ESI contributions. They applied to the Insurance Court under section 75 of the Act. The Insurance Court rejected their applications and on an appeal, the High Court held that the definition of employee postulates that a person must be employed "in or in connection with" the work of an establishment. Some nexus must exist between the establishment and the work of the employee, It is enough if the employee does some work which is ancillary and incidental or which has relevance to or link with the object of the establishment. Clearly, the two operations in the instant case, namely, keeping a cycle stand and running a canteen are incidental to the primary purpose of the theatre. Therefore, the theatre owner is liable as a principal employer for the payment of contribution (*Royal Talkies, Hyderabad v. ESIC 1978 II LLJ 390 S.C.*).

Francis Be Costa, the respondent met with an accident on June 26; 1971 while he was on his way to his place of employment. The accident occurred at a place which was



about one kilometer away to the north of the factory. The time of occurrence was 4.15 p.m. The respondent was going to his place of work on bicycle. He was hit by a lorry belonging to his employers, M/s. J.P. Coats (P) Ltd. He sustained fracture injuries and was in hospital for 12 days. His claim for disablement benefit was allowed by ESI Court and appeal against the same was also dismissed. Allowing the appeal by special leave, the Supreme Court held that the injury suffered by the workman one kilometer, away from the factory while he was on his way to the factory was not out of employment. There was no causal connection between the accident and the employment. In order to succeed; it has to be proved that (i) there was an accident, (ii) the accident had a causal connection with the employment, and (iii) the accident must have been suffered in course of employment (*R. D. ESIC & Anr vs. Francis De Costa & Anr.* 1996 II CLR 812 SC).

After the amendment to Section 2(8) i.e. 'employment injury' in 1966, it is not material where the accident occurred, whether it was inside the factory or outside. It is equally not relevant whether the accident was during office hours or after. It is now sufficient if it is proved that the injury to the employees was caused by an accident arising out of and in the course of employment, no matter when it occurred and where it occurred. There is not even a geographical limitation. The accident may occur within or outside the territorial limits of India. However, the place or time of accident should not be totally unrelated to the employment. There should be a nexus or causal connection between the accident and employment (*R.D.ESIC vs. Ranga Rao* 1982 I LLJ 29)..

The employees in all the branches of an establishment or factory within a state can be aggregated for the purposed coverage under the ESI Act, notwithstanding the fact that the head office of the establishment or factory is situated outside the state. The situs or coverage of the head office of the establishment or factory is not relevant for 'the purpose of the coverage of the employees in the branch offices. The crucial ~ ' consideration is whether the employees in the branches are within the fold of the definition of "employee" in Section 2(9) of the Act. If this foremost test is satisfied, the issue of the coverage of the head office recedes to the background. The provisions of the Act can be extended by the state government by notification to any establishment. Therefore, the coverage of the head office as a condition precedent for the coverage of the employees in the branch office is not visualised by the provisions of the Act (*ESIC vs. South Eastern Roadways* 1983 63 FJR 113).

An engineering construction company-was having its head office at Mumbai and it was carrying on construction of buildings all over India. It is admitted that the workshop or the laboratory or the godown form one unit and they are covered by the ESI Act. The employees working at head office are doing the work of factory and attending to all administrative work: Work done by head office is incidental to the work of factory. Employees working at head office would fall within the definition of "employee". However, construction site is not a factory. Employees at site cannot be treated as employees of workshop and ESI Act cannot be made applicable to worksites (*Cemendia Co. Ltd. vs. ESIC* 1995 II LLJ 519).

Medical College Hospital having a department for equipment maintenance is not a factory even if there is some manufacturing process (*ESIC vs. CMC Hospital, Vellore* 1995 I LLJ 289).

Catering section of the club is a factory as defined under the ESI Act. Profit motive is irrelevant. Persons employed in other sections of the club are not covered by the Act (*Bangalore Club vs. R.D. ESIC* 1996 11 LLJ 780).

The term "wages" under the ESI Act includes overtime wages. Both the remuneration received during the working hours and overtime constitute a composite wage and thereby it is a wage within the meaning of Section 2(22) of the Act. Concomitantly,, the employer is bound to pay the contribution under the Act in respect of overtime wages also (*Indian Drugs and Pharmaceuticals Ltd. vs. ESIC* 1997 I CLR 193 SC).

Payment under quarterly attendance bonus scheme, which is incorporated in settlement reached before Conciliation Officer,' becomes part of additional remuneration, if any paid (*Wellman Ltd. vs. ESIC* 1994 I LLJ 545 SC).



Workmen covered under the ESI Act cannot claim compensation under the Workmen's Compensation Act as there is a bar under section 53 of the ESI Act (*A. Trehan v. Associated Electrical Agencies & Ann* 1996 H CLR 348).

The subsistence allowance to suspended employee will fall within the definition of "wages". Requisite contributions on such wages have to be paid by employer as well as employee (*R.D. ESIC v Popular Automobiles Ltd.* 1998 1 LLJ 621 S.C.).

The definition of "wages" under the ESI Act includes incentive bonus or allowance Hence contributions are recoverable for such bonus under the Act (*R.D. ESIC v. Enfield India Ltd.* 1998 1 LLJ% 1070 S.C.).

25.13 SELF-ASSESSMENT QUESTIONS

1. What is the object of the Employees' State Insurance Act, 1948?
2. Which establishments are covered by the Act?
3. Who is an "employee" under the Act?
4. What is the procedure for registration of a factory or an establishment under the Act?
5. Discuss the various benefits payable under the Act

25.14 ANSWERS TO CHECK YOUR PROGRESS

Write "True" or "False" against the following statements:

- () 1. Persons whose remuneration, does not exceed Rs. 1,600 a month are covered under the Act.
- () 2. The Act covers administrative staff and persons engaged in the purchase of raw materials or the distribution or sale of products and similar or related functions.
- () 3. The Act covers casual and contract employees.
- () 4. Employees' contribution under the Act is 1.50 per cent of the wages and employers' contribution is 4 per cent of the total wages paid to all employees covered under the scheme.
- () 5. The ESI corporation is empowered to recover damages from the employer who fails to keep the contribution or makes delay in its payment.
- () 6. If a director is appointed as a factory-in-charge on a monthly remuneration of Rs. 3,500, he would fall within the definition of "employee" under the Act.
- () 7. Workers employed in a hospital attached to and maintained for a factory exclusively for the benefit of its employees and their families are employees employed in connection with the work of the factory.
- () 8. The department of publications and press of Osmania University is not a 'factory' for the purpose of coverage by ESI Act.
- () 9. The workers employed for the work of construction of building and for the expansion of factory are not employees within the meaning of Section 2(9) of the Act.
- () 10. The ESI contribution for contract workers engaged in construction work has to be calculated only on salary paid to contract labourers and not on the entire amount paid to contractor.



- () 11. Whenever the main factory -or establishment is not covered under the ESI Act, the branches also will not be covered.
- () 12. The subsistence allowance is not paid for services rendered and hence will not fall within the definition of "wages".
- () 13. Where an employer is held guilty of negligence in observing safety measures, which is a mandatory provision, he is liable to reimburse ESIC for the amount claimed.
- () 14. Where a dispute arises under the provisions of the ESI Act, that matter has to be decided by Labour Court.
- () 15. Catering service of Bangalore Club which has no profit motive is a factory as defined in the ESI Act.
- () 16. The employer can-be asked to pay contribution towards ESI even after closure of the business and cannot escape liability on the ground that he had not deducted: employees' :contribution from the wages.

Answers:

- | | |
|----------|-----------|
| 1. False | 9. False |
| 2. True | 10. True |
| 3. True | 11. False |
| 4. False | 12. False |
| 5. True | 13. True |
| 6. True | 14. False |
| 7. True | 15. True |
| 8. False | 16. True |

25.15 FURTHER READINGS

Bare Act on the Employees' State Insurance Act, 1948 (latest edition). *Employees' State Insurance Act, 1948*, Labour Law Agency, Mumbai.

Kumar, H.L., *What Everybody should Know About Labour Laws*, Universal Book Traders, Delhi, 1995,

Samant, S.R., *Employer's Guide to Labour Laws*, Labour Law Agency, Mumbai, 1999. 26