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## NEEM TRAINEES ARE NOT EXCLUDED FROM THE DEFINITION OF 'EMPLOYEE': EPFO

28 February 2022

In an important development, the Employees' Provident Fund Organisation (EPFO) issued a [circular](#) dated 24 February 2022 clarifying that the trainees engaged by an establishment under the All India Council for Technical Education [National Employability Enhancement Mission (NEEM)] Regulations, 2017 (NEEM Regulations) will not be deemed exempted from the definition of 'employee' under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act). It further clarified that as regards trainees generally, the coverage under the EPF Act would depend on the specific facts of the case and the actual purpose of their engagement by the establishment.

The definition of 'employee' is not uniform across the Central and state labour laws that exist in India. As for employees' provident fund contributions, the term 'employee' is defined under the EPF Act to mean (a) any person who is employed for wages, and (b) any person engaged as an apprentice, *not* being an apprentice engaged under the Apprentices Act, 1961 or under the standing orders of the establishment. Therefore, the definition of 'employee' arguably goes beyond the traditional notion of employment relationship so as to cover apprentices who are not governed by the Apprentices Act, 1961, or the standing orders.

Speaking generally, the question whether a trainee would be considered as an 'employee' within the meaning of the EPF Act would depend on the terms of his / her engagement with the relevant establishment. In the case of *RPFC v Central Aerocnut and Coca Marketing and Processing Co-op Limited* [2006 LLR 263 (SC)], the Supreme Court of India opined that those trainees who are paid stipend during the period of training and have no right to employment would be deemed as *apprentices within the meaning of the model standing orders*, hence would fall outside the purview of the definition of 'employee' under the EPF Act.

The case of NEEM trainees is a special one. The objective of the NEEM Regulations is to offer on-the-job training to individuals to enhance their employability. Therefore, there is no underlying intention on the part of an establishment to guarantee employment to individuals who are engaged pursuant to the NEEM Regulations. To this extent, NEEM trainees are *prima facie* similar to *apprentices within the meaning of the model standing orders* and hence it is often argued that they too would fall outside the purview of the definition of 'employee'. However, the stance taken by the EPFO has been that NEEM trainees are engaged under a special law (i.e., All India Council for Technical Education Act, 1987) and the regulations framed thereunder, and therefore, it would be incorrect to equate them with ordinary trainees engaged under standing

orders. It has maintained that since the definition of 'employee' under the EPF Act expressly covers apprentices (barring the cases discussed above), NEEM trainees would be covered under the EPF Act unless an amendment is brought about in the definition of 'employee' restricting its scope to only those individuals who actually have an employer-employee relationship with the establishment. Consistent with this understanding, the EPFO issued a circular dated 12 February 2019 stating that the trainees engaged under the NEEM Regulations will be treated as 'employees' for the purposes of the EPF Act, unless the EPF Act is amended to exclude such trainees.

#### **Comment**

Interestingly, in query 16 of the [frequently asked questions](#) released by the competent authorities at All India Council for Technical Education in furtherance of the NEEM Regulations, it is stated that the decision to exclude NEEM trainees from the purview of the EPF Act is up to the competent Provident Fund Commissioner. It is on account of this seemingly vague explanation that establishments have been unsure about their compliance under the law vis-à-vis such trainees. The recent circular of the EPFO reiterates the position taken by its officials and may help organisations re-evaluate their compliances accordingly. Having said that, the possibility of some establishments raising concerns over the application of the EPF Act to NEEM trainees and EPFO's stance on this matter being legally challenged by the industry before the competent courts, cannot be ruled out.

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