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Analysing developments impacting business

EMPLOYEE OR NO EMPLOYEE: EPFO RE-CLARIFIES THE STATUS OF STUDENT-TRAINEES

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Background

By way of a [circular](#) dated 27 July 2022 (New Circular), the Employees' Provident Fund Organisation (EPFO) issued a clarification on the status of student-trainees 'under any scheme' vis-à-vis the applicability of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act). This circular has been issued in furtherance of EPFO's [circular](#) dated 12 October 2015 (Old Circular), wherein a distinction was made as regards student-trainees and their coverage under the EPF Act.

The Old Circular had clarified that no employer-employee relationship exists in respect of student-trainees who return to their respective institutions for completion of their academic course post the industrial / practical training received by them as trainees, and as such, the stipend payable to such trainees will not attract the provisions of the EPF Act including the obligation of the relevant establishment to deposit employees' provident fund contributions in respect of them. That said, for students having been placed with establishments / being appointed as employees of the establishments, the provisions of the EPF Act will be applicable even in respect of the duration of such practical training (presumably because there is a promise of employment post completion of the training). Accordingly, the applicability of the provisions of the EPF Act to trainees is required to be assessed on a case-to-case basis and much would depend on the specific facts and circumstances, and the actual purpose of their engagement by the establishment.

Requirements in the New Circular

Reiterating the position taken by EPFO as regards student-trainees, the New Circular prescribes further guidelines to determine the status of student-trainees 'under any scheme'. Notably, these guidelines include:

- recognition of the institution and the course (by a competent authority) from or in respect of which the student-trainees have been engaged, which institution / course in turn incorporates practical training as part of the curriculum / programme;
- the duration of the practical training not exceeding the period specified under the concerned course; and

- the purpose of the practical training not exceeding the scope envisaged / allowed under the concerned course.

Having so set out the guidelines, the New Circular further requires establishments to declare details of the student-trainees engaged by them in the electronic challan-cum-return required to be filed with EPFO in respect of the contributions made under the EPF Act. It also clarifies that any instances of dispute arising out of or in connection with the coverage of an individual under the EPF Act and the schemes formulated thereunder will be decided by the competent authority as per the law.

Comment

The question of whether a student-trainee would be considered as an 'employee' within the meaning of the EPF Act assumes significance to assess the coverage of such individual under the contributory social security regime and *inter alia* requires analysis of the concerned person's terms of engagement with the establishment (including whether the purpose of the engagement is to thereafter absorb the individual into the payroll of the concerned establishment, and the treatment of such individual vis-à-vis the employees of the establishment). To this end, the New Circular is largely clarificatory in nature, as it places emphasis on conducting practical training within the contours of the relevant course.

On a related note, much discussion also revolves around whether trainees engaged by an establishment under the All India Council for Technical Education [National Employability Enhancement Mission (NEEM)] Regulations, 2017 (NEEM Regulations) would be deemed as 'employees' under the EPF Act. In this regard, EPFO has repeatedly taken the position that such trainees engaged under the NEEM Regulations are covered within the definition of 'employee' under the EPF Act. Previously this year, EPFO also issued a [circular](#) dated 24 February 2022 clarifying that the trainees engaged by an establishment under the NEEM Regulations will not be deemed to be exempted from the definition of 'employee' under the EPF Act. We examined the said circular in our [ERGO](#) dated 28 February 2022.

One may arguably take the position that when the New Circular uses the expression 'under any scheme', the same may cover NEEM Regulations as well. However, considering the consistent stance taken thus far by EPFO to cover NEEM trainees under the EPF Act, which position has not been withdrawn under the New Circular, it is advisable to err on the side of caution and continue to take note of the special status accorded to NEEM trainees by the enforcement regime under the EPF Act.

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