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BIG MOVE IN THE EPF REGIME: REVISION IN RATE OF DAMAGES ON ARREARS AND OTHER CHANGES

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On 14 June 2024 and 15 June 2024, the Ministry of Labour and Employment, Government of India, published a set of notifications (collectively, 2024 Notifications) in the Official Gazette to make notable changes to the social security regime in the country. In this update, we discuss the key changes and their impact on employers.

Rate of damages on arrears

The most important change pursuant to the above move comes in the form of a revision in the rate of damages on arrears in contributions under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act). An overview of these changes is provided below.

- **Employees' Provident Funds Scheme, 1952 (EPF Scheme)**: As per Paragraph 32-A of the EPF Scheme, the competent authority may impose damages ranging from 5% to 25% per annum of the arrears in employees' provident fund contribution, depending on the period of default. Interestingly, these rates were not always the same and were revised by way of a notification dated 26 September 2008. Prior to such notification, the rate of damages ranged from 17% to 37% of arrears per annum, although there continues to be a lack of clarity as to whether these old rates were inclusive of interest, which is now a separate levy on arrears and is calculated at 12% per annum.

  Pursuant to the 2024 Notifications, effective 15 June 2024 (which is the date of publication of the 2024 Notifications in the Official Gazette), the rate of damages shall stand revised to 1% of arrears per month.

- **Other schemes**: The provisions of the Employees' Pension Scheme, 1995 (EP Scheme) and the Employees' Deposit Linked Insurance Scheme, 1976, which had provided for similar rates of damages (i.e., 5% to 25% per annum, depending on the period of default), have also been revised by the 2024 Notifications to provide for a uniform rate of damages of 1% of arrears per month effective 15 June 2024.

Withdrawal benefit under EP Scheme

Paragraph 14 of the EP Scheme provides for a withdrawal benefit to those employees who are members of the scheme but have not completed the eligible service tenure for receipt of pension under the scheme. The lumpsum withdrawal benefit is calculated by multiplying the last drawn wages by the factor mentioned in Table D of the EP Scheme, and the factor that is to be applied depends on the years of service completed by the employee (for instance, if a member has completed 9 years of service, a factor of 9.33 will be considered as per Table D). The table does not specify a factor for 10 years of service or more, because for individuals completing at least 10 years of service, the EP Scheme provides for either superannuation pension or early pension, depending on whether the employee has completed 58 years of age at the time of exit.

The 2024 Notifications link the factors in Table D to months of service and not years of service as has been the case thus far, such a change taking effect from 14 June 2024 (which is the date when the relevant notification was published in the Official Gazette).

Computation of past service pension

The EP Scheme envisages a unique method of calculation of pension in the case of a member who has been in employment prior to 16 November 1995 and who would receive pension after 16 November 2005. For such employees, the monthly pension is a sum of the pension calculated as per Paragraph 12(2) for the period from 16 November 1995 (Component A) and the past service pension (Component B).

Component A is calculated by multiplying pensionable salary by pensionable service and then dividing the product by 70. Component B is calculated by identifying the number of years between the date of joining and 15 November 1995, followed by locating the pension amount in the table provided in Paragraph 12(3)(b) based on such number of years, and thereafter followed by multiplying such pension amount by the factor specified in Table B of the EP Scheme, which factor is linked with the period between 16 November 1995 and the date of exit.

Thus far, Table B has provided factors linked with service durations of less than 34 years. The 2024 Notifications add more rows to the table, so as to set out factors linked with service durations of less than 42 years. Such change will take effect from 14 June 2024 (which is the date when the relevant notification was published in the Official Gazette).

Comment

The decision to revise the rate of damages on arrears in contributions under the EPF Act is being perceived in the public domain as an employer-friendly move, particularly in the absence of a statement from the competent authorities clarifying the rationale for the revision. However, when seen from the perspective of default periods exceeding 25 months, the rate of damages pursuant to the 2024 Notifications would exceed the current standardized rate for all default periods over 6 months, which is 25%. As such, it may be helpful to see how the competent authorities clarify the intent of the revisions.

The other change, that of revisions to Table D of the EP Scheme, assumes relevance as it changes the determination of a factor (for computation of withdrawal benefit) from number of years to number of months. The last month of service specified in the revised Table D is 113^{th} month, which translates into 9 years and 5 months, thus clarifying the eligibility of members to pension in situations where they have not exactly completed 10 years of service but have still completed 9 years and 6 months of service (it may be noted that the EP Scheme already clarifies that a 6-month service shall be treated as a one year of service).

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