

EMPLOYEES' STATE
INSURANCE ACT

Applicability

- The act is applicable to every establishment employing 10 or more employees.
- The act is applicable only in the notified areas.
- Act is not applicable to seasonal factories.
- Construction workers are covered under ESI Act with effect from 1.8.2015.
(However Supreme Court has stayed the implementation)

EMPLOYEE

- Employee – Person employed directly or through immediate employer whose services are temporarily lent; and apprentice and employee wages not exceeding Rs. 21,000/- per month.
- Wages shall mean gross monthly wages. Transport allowance and Washing allowance shall be excluded for the purpose of wage.

CONTRIBUTIONS

- Employer – 4.75% & Employee – 1.75%
- Due date - on or before 15th of the month.
- Default in payment – simple interest @ 15% p.a.

Duties of employer

- Principal employer to pay contribution in first instance on behalf of employer and employee.
- Immediate employer to submit registers of employees to principal employer in Form 7
- Employer to submit annual information by 31st January every year in Form 1 (A)

ESI PENALTIES

Offence	Penalty
False statement/representation to avoid payment	Imprisonment up to six months or fine of Rs. 2,000 or both
False to pay any employees contribution, which under this act he is liable to pay	Imprisonment up to 3 years or fine shall not be less than one year or fine of Rs. 10,000.
Deducts or attempts to deduct from up to wages of an employee the whole or any part of the contribution	Imprisonment up to 1 year or fine of Rs. 4,000 or both
Contravention of any provisions	Imprisonment not less than

SECTION 45-A – DETERMINATION OF CONTRIBUTIONS IN CERTAIN CASES

The Corporation is empowered to claim the contributions where no returns, particulars, registers or records are submitted, furnished or maintained in accordance with the Act or if any official of the corporation is prevented from discharging his duties. Provided that no order shall be passed by the Corporation unless a reasonable opportunity is given to the employer.

ATTACHMENT OF PROPERTY

- In case the contributions are not paid, the corporation have got the power for;-
- a) Attachment and sale of moveable or immoveable property of the factory or establishment.
- b) Arrest of the employer ad his detention in prison.
- c) Appointing a receiver for the management of the properties of the factory.
- d) Provided the properties of the factory or establishment shall be effected first.

WAGES

- The Supreme Court in the case of Whirlpool India Ltd. Vs ESI Corporation 2000 LLR page no.431 SC held that any payment made within a gap of two months does not fall within the definition of wages even though the same was paid under a settlement.

CONSUMER

- The Supreme Court in the case of Kishori Lal Vs Chairman, ESIC reported in 2007 (114) FLR page no.219 SC held that medical services rendered by ESI hospitals are covered by Consumer Protection Act.

LIMITATION

- The Supreme Court in the case of ESI Corporation Vs C.C. Santa Kumar reported in 2007 (112) FLR page No.636 SC held that the corporation has to make claims within a reasonable period and not necessarily within a period of 5 years.
- Now as per the amended act, ESI Corporation should make the claim, if any, with a period of 5 years.