

(Updated on 08.08.2024)

THE EMPLOYEES' STATE INSURANCE ACT, 1948[Act No. (34 of 1948)¹, dt. 19-04-1948]

[As amended by ESI (Amdt.) Act, 2010 (18 of 2010), dt. 24.05.2010]

An Act to provide for certain benefits to employees in case of sickness, maternity and 'employment injury' and to make provision for certain other matters in relation thereto.

WHEREAS it is expedient to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto;

It is hereby enacted as follows: —

**CHAPTER I
PRELIMINARY****1. Short title, extent, commencement and application.**

(1) This Act may be called the Employees' State Insurance Act, 1948.

(2) It extends to the whole of India ²[³***].

(3) It shall come into force on such date or dates as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and ⁴[for different States or for different parts thereof].

(4) It shall apply, in the first instance, to all factories (including factories belonging to the Government other than seasonal factories.

⁵[Provided that nothing contained in this sub-section shall apply to a factory or establishment belonging to or under the control of the Government whose employees are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act].

(5) The appropriate Government may, in consultation with the Corporation and ⁶[where the appropriate Government is a State Government, with the approval of the Central Government], after giving ⁷[one month's] notice of its intention of so doing by notification in the Official Gazette, extend the provisions of this Act or any of them, to any other establishment, or class of establishments, industrial, commercial, agricultural or otherwise.

* Repealed by the Code on Social Security, 2020 (36 of 2020), sec. 164.

1. For Statement of Objects and Reasons, see Gazette of India, 1946, Pt. V, pp. 319 to 357 and for Report of the Select Committee, see Gazette of India, 1948, Pt. V, pp. 124 to 159. This Act has been extended to Jaunsar Bawar Parganas in the Dehra Dun District and the areas of South of Kaimpur range in the Mirzapur District of the State of Uttar Pradesh by Schedule IV of Act 20 of 1954; to Pondicherry by Reg. 7 of 1963, sec. 3 and Sch., and to Goa, Daman and Diu by Reg. 11 of 1963, sec. 3 and Sch.

2. Subs. by Act 53 of 1951, sec. 2(a), for "except Part B States" (w.e.f. 6-10-1951).

3. The words "except the State of Jammu and Kashmir" omitted by Act 51 of 1970, sec. 2 and Sch. (w.e.f. 1-9-1971).

4. Subs. by Act 53 of 1951, sec. 2(b), for "for different States" (w.e.f. 6-10-1951).

5. Ins. by Act 29 of 1989, sec. 2(i) (w.e.f. 20-10-1989).

6. Subs. by Act 53 of 1951, sec. 2(c), for "with the approval of the Central Government" (w.e.f. 6-10-1951).

7. Subs. by Act 18 of 2010, sec. 2, for "six months" (w.e.f. 1-6-2010).

¹[Provided that where the provisions of this Act have been brought into force in any part of a State, the said provisions shall stand extended to any such establishment or class of establishments within that part if the provisions have already been extended to similar establishment or class of establishments in another part of that State].

²[(6) A factory or an establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below the limit specified by or under this Act or the manufacturing process therein ceases to be carried on with the aid of power].

COMMENTS

(i) ESI Scheme will be applicable to establishment preparing sweets with the aid of LPG; Employees' State Insurance Corporation v. Premlal, 2009 LLR 282 (Ker HC).

(ii) In the absence of required number of employees in Milk Federation, ESI Act could not be extended upon it; Employees' State Insurance Corporation, Orissa Region v. Gujarat Co-operative Milk Marketing Federation Ltd., 2009 LLR 615 (Ori HC).

(iii) Once the Act has become applicable to a factory or an establishment, its application will be continuous; Kuriacone v. Employees' State Insurance Corporation, (1988) 2 CLR 301 (Ker).

(iv) An advertising agency is a "shop"; Kuriacone v. Employees' State Insurance Corporation, (1988) 2 CLR 301 (Ker).

(v) Regional office which carries on the administration and supervises the business of selling of goods in various branches and sales emporiums is a shop; Employees' State Insurance Corporation v. The Tamil Nadu Handloom Weavers Co-op. Society Ltd., (1990) 60 FLR 305 (AP).

(vi) The premises of an advertising agency is a "shop"; Employees' State Insurance Corporation v. R.K. Swamy, 1994 LLR 51 (SC).

(vii) The word 'shop' has acquired an expanded meaning. Where in a premises any economic activity is carried on leading to sale or purchase that premises will have to be held a 'shop' for the purpose of the Act even though there is no actual giving or taking of goods in such premises. If the business carried on in a premises results in having some nexus with the purchase or sale of goods is sufficient to be 'shop' for the purpose of the Act; Southern Agencies, Rajamundry v. Andhra Pradesh Employees' State Insurance Corporation, AIR 2000 SC 3718.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,-

(1) "appropriate Government" means, in respect of establishments under the control of the Central Government or ³[a railway administration] or a major port or a mine or oilfield, the Central Government, and in all other cases, the State Government;

⁴[***]

1. Ins. by Act 29 of 1989, sec. 2(ii) (w.e.f. 16-5-1990).

2. Ins. by Act 29 of 1989, sec. 2(iii) (w.e.f. 20-10-1989).

3. Subs. by the A.O. 1950, for "a federal railway".

4. Clause (2) omitted by Act 29 of 1989, sec. 3(i) (w.e.f. 1-2-1991).

(3) “confinement” means labour resulting in the issue of a living child, or labour after twenty-six weeks of pregnancy resulting in the issue of a child whether alive or dead;

(4) “contribution” means the sum of money payable to the Corporation by the principal employer in respect of an employee and includes any amount payable by or on behalf of the employee in accordance with the provisions of this Act;

¹[***]

(5) Clause (5) omitted, *ibid.*

(6) “Corporation” means the Employees’ State Insurance Corporation set up under this Act;

²[(6A) “dependant” means any of the following relatives of a deceased insured person, namely:

³[(i) a widow, a legitimate or adopted son who has not attained the age of twenty-five years, an unmarried legitimate or adopted daughter;]

⁴[(ia) a widowed mother;]

(ii) if wholly dependent on the earnings of the insured person at the time of his death, a legitimate or adopted son or daughter who has attained the age of ⁵[twenty-five years] and who is infirm;

(iii) if wholly or in part dependent on the earnings of the insured person at the time of his death, —

(a) a parent other than a widowed mother,

(b) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and a minor or if widowed and a minor,

(c) a minor brother or an unmarried sister or a widowed sister if a minor,

(d) a widowed daughter-in-law,

(e) a minor child of a pre-deceased son,

(f) a minor child of a pre-deceased daughter where no parent of the child is alive, or

(g) a paternal grandparent if no parent of the insured person is alive;

(7) “duly appointed” means appointed in accordance with the provisions of this Act or with the rules or regulations made thereunder;

⁶[(8) “employment injury” means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India;]

1. Clause (5) omitted by Act 29 of 1989, sec. 3(ii) (w.e.f. 1-2-1991).

2. Ins. by Act 44 of 1966, sec. 2(1) (w.e.f. 28-1-1968).

3. Subs. by Act 18 of 2010, sec. 3(A)(a), for sub-clause (i) (w.e.f. 1-6-2010). Earlier sub-clause (i) was amended by Act 29 of 1989, sec. 3(iii)(a) (w.e.f. 20-10-1989). Sub-clause (i), before substitution by Act 18 of 2010, stood as under:

"(i) a widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter;"

4. Ins. by Act 29 of 1989, sec. 3(iii) (b) (w.e.f. 20-10-1989).

5. Subs. by Act 18 of 2010, sec. 3(A)(b), for "eighteen years" (w.e.f. 1-6-2010).

6. Subs. by Act 44 of 1966, sec. 2(2), for clause (8) (w.e.f. 28-1-1968).

(9) “employee” means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and —

- (i) who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or
- (ii) who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment ; or
- (iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service;

¹[and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the products of, the factory or establishment;]

²[or any person engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), ³[and includes such person engaged as apprentice whose training period is extended to any length of time]

but does not include —

- (a) any member of ⁴[the Indian] naval, military or air forces; or
- ⁵[(b) any person so employed whose wages (excluding remuneration for overtime work) exceed ⁶[such wages as may be prescribed by the Central Government] a month:

Provided that an employee whose wages (excluding remuneration for overtime work) exceed ⁶[such wages as may be prescribed by the Central Government] at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period;]

(10) “exempted employee” means an employee who is not liable under this Act to pay the employee’s contribution;

⁷[(11) “family” means all or any of the following relatives of an insured person, namely: —

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1. Subs. by Act 44 of 1966, sec. 2(3)(a), for "but does not include" (w.e.f. 28-1-1968).
 2. Subs. by Act 29 of 1989, sec. 3(iv)(a), for "but does not include" (w.e.f. 20-10-1989).
 3. Subs. by Act 18 of 2010, sec. 3(B), for "or under the standing orders of the establishment" (w.e.f. 1-6-2010).
 4. Subs. by the A.O. 1950, for "His Majesty's".
 5. Subs. by Act 44 of 1966, sec. 2(3)(b), for sub-clause (b) (w.e.f. 28-1-1968).
 6. Subs. by Act 29 of 1989, sec. 3(iv)(b), for "one thousand and six hundred rupees a month" (w.e.f. 1-2-1991).
 7. Subs. by Act 29 of 1989, sec. 3(v), for clause (11) (w.e.f. 20-10-1989). Earlier clause (11) was amended by Act 44 of 1966, sec. 2(4) (w.e.f. 17-6-1967).

- (i) a spouse;
- (ii) a minor legitimate or adopted child dependent upon the insured person;
- (iii) a child who is wholly dependent on the earnings of the insured person and who is —
 - (a) receiving education, till he or she attains the age of twenty-one years,
 - (b) an unmarried daughter;
- (iv) a child who is infirm by reason of any physical or mental abnormality or injury and is wholly dependent on the earnings of the insured person, so long as the infirmity continues;
- ¹[(v) dependant parents, whose income from all sources does not exceed such income as may be prescribed by the Central Government;]
- ¹[(vi) in case the insured person is unmarried and his or her parents are not alive, a minor brother or sister wholly dependant upon the earnings of the insured person;]

²[(12) “factory” means any premises including the precincts thereof whereon ten or more persons are employed or were employed on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a railway running shed;]

(13) “ immediate employer ” in relation to employees employed by or through him, means a person who has undertaken the execution on the premises of a factory or an establishment to which this Act applies or under the supervision of the principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on in, or incidental to the purpose of, any such factory or establishment and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent or let on hire to the principal employer and ³[includes a contractor].

1. Subs. by Act 18 of 2010, sec. 3(C), for sub-clause (v) (w.e.f. 1-6-2010). Earlier sub-clause (v) was substituted by Act 29 of 1989, sec. 3(v) (w.e.f. 20-10-1989). Sub-clause (v), before substitution by Act 18 of 2010, stood as under:

"(v) dependant parents".

2. Subs. by Act 18 of 2010, sec. 3(D), for clause (12) (w.e.f. 1-6-2010). Earlier clause (12) was amended by Act 44 of 1966, sec. 2(5) (w.e.f. 28-1-1968) and was substituted by Act 29 of 1989, sec. 3(v) (w.e.f. 20-10-1989). Clause (12), before substitution by Act 18 of 2010, stood as under:

'(12) "factory" means any premises including the precincts thereof-

(a) whereon ten or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on, or

(b) whereon twenty or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952) or a railway running shed;'.

3. Added by Act 29 of 1989, sec. 3(vi) (w.e.f. 20-10-1989).