

THE EPF & MISCELLANEOUS PROVISIONS ACT, 1952

Question 1

Define the term 'Employer' under the Provident Fund and Miscellaneous Provisions Act, 1952.
(May 2007)

Answer

Section 2(e) read with Section 2(k) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 defines employer as –

- (i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person has been named as a manager of the factory, and
- (ii) in relation to any establishment, the person who, or the authority which has ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, Managing Director, managing agent, such manager, MD or Managing agent shall be treated as employer.

Question 2

State the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 regulating the quantum of contribution to be made by the employer and employee to the provident fund. Is it possible for an employee to increase the amount of his contribution to the provident fund more than the minimum contribution as statutorily prescribed?
(November 2007)

Answer

Contribution to Provident Fund under the EPF and Miscellaneous Provisions Act, 1952

Section 6 of the EPF and MP Act, 1952 regulates contribution to Provident Fund Scheme established under the Act. The employer's contribution shall be 10% of the basic wages, dearness allowance and retaining allowance, if any. The employee's contribution shall be equal to the contribution payable by the employer in respect of him.

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Dearness allowance includes cash value of any food concession allowed to the employees. Retaining allowance means the sum paid for retaining the service, when the factory is not working. The Central Government may by notification make the employer's contribution equal to 12% for certain establishments or class of establishments.

The above rule will prevail irrespective of whether the employer employs the person directly or through a contractor.

An employee can at his will voluntarily contribute, beyond 10%. But the employer shall not be under an obligation to pay any contribution over and above his contribution payable under section 6 of the said Act.

Question 3

Describe in brief the mode of transfer of balance to the credit of Provident Fund Account of an employee leaving one organisation and joining another organisation, to the new employer under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.
(May 2008)

Answer

Transfer of balance of P.F. (Section 17-A of the Employees' Provident Funds and M.P. Act, 1952): Where an employee of an establishment to which this Act applies leaves his employment and obtains re-employment in another establishment to which this Act does not apply, the amount of accumulations to the credit of such employee in the Fund or, as the case may be, in the provident fund in the establishment left by him shall be transferred to the credit of his account in the provident fund of the establishment in which he is re-employed, if the employee so desires and the rules in relation to that provident fund permit such transfer. This transfer has to be made within such time as may be specified by the Central Government in this behalf [Sub-section (1)].

Conversely, when an employee of an establishment to which this Act does not apply leaves his employment and obtains re-employment in another establishment to which this Act applies, the amount of accumulations to the credit of such employee in the provident fund of the establishment left by him, if the employee so desires and the rules in relation to such provident fund permit, may be transferred to the credit of his account in the fund or as the case may be, in the provident fund of the establishment in which he is re-employed [Sub-section (2)].

Question 4

Discuss under the Employees' Provident Funds and Miscellaneous Act, 1952 as to whether the Provident fund contribution is a preferential payment in case of the employer being declared insolvent.
(November 2008)

Answer

In accordance with the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, as provided in Section 11 of the said Act, if the employer is declared an insolvent or if the employer is a company and an order for winding-up thereof has been

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made the amount due from the employer whether in respect of the employees' contribution or the employer's contribution must be included among the debts which are to be paid in priority to all other debts under both the Insolvency Acts i.e. Presidency Towns Insolvency Act, 1909 (Section 49) and Provincial Insolvency Act, 1920 (under section 61). Hence, this payment will be preferential payment provided the liability therefor, has accrued before this order of adjudication or winding up is made.

Question 5

State the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 relating to the protection of the amount standing to the credit of an employee in the provident fund against attachment.
(June 2009)

Answer

Protection of the amount standing to the credit of an employee in provident fund against attachment.

As per Section 10 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the amount standing to the credit of any member in the fund or of any exempted employee in a provident fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the member or exempted employee, and neither the official assignee appointed under the Presidency Town Insolvency Act, 1909, nor any receiver appointed under the Provincial Insolvency Act, 1920, shall be entitled to or have any claim on, any such amount. This protection also applies to provident fund, pension and insurance amount receivable by employee under the scheme.

In case of death of such above person, the money will be payable to nominees and the amount shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member or of the exempted employee and shall also not be liable to attachment under any decree or order of any court {Section 10(3)}.

Question 6

An Executive Committee is to be constituted to assist the Central Board under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. State the composition of such Executive Committee.
(November 2009)

Answer

The Central Government may by notification in the official gazette, constitute with effect from such date as may be specified therein, an Executive Committee to assist the Central Board in the performance of its functions under Section 5AA of the Employees' Provident Funds and Miscellaneous Provision Act, 1952.

The Executive committee shall consist of the following persons as members, namely:

- (a) A Chairman appointed by Central Government from amongst the members of the Central Board.

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- (b) Two members appointed by the Central Government from amongst the persons referred to in clause (b) of Sub-section 1 of Section 5 A. (These two will actually be Central Government officials as per the aforementioned clause).
- (c) Three persons appointed by the Central Government from amongst the persons referred to in clause (c) of Subsection (1) of Section 5A. (These three will actually be representatives of the State Governments as per the aforementioned clause).
- (d) Three persons representing the employers elected by the Central Board from amongst the persons referred to in clause (d) of subsection (1) of Section 5A.
- (e) Three persons representing the employees elected by the Central Board from amongst the persons referred to in clause (e) of subsection (1) of Section 5A.
- (f) The Central Provident Fund Commissioner, *ex officio*.