

HR Compliance for Indian Businesses

A Reference Guide

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Introduction

Compliance with HR-related laws is essential for businesses in India to ensure smooth operations, maintain employee satisfaction, and avoid legal penalties. This ebook provides an overview of key HR compliance areas, including the Employees' Provident Fund (EPF), Employees' State Insurance Corporation (ESIC), Gratuity, Bonus, and other crucial HR laws. Each section covers the businesses covered, criteria for applicability, calculation methods, and frequently asked questions (FAQs).

Employees' Provident Fund (EPF)

Businesses Covered

The EPF scheme applies to:

- Factories and establishments employing 20 or more persons.
- Certain establishments notified by the Central Government even if employing fewer than 20 persons.

Criteria for Applicability

- All employees earning a basic salary up to Rs. 15,000 per month at the time of joining must be enrolled in the EPF scheme.
- Employers must contribute 12% of the employee's basic wages plus Dearness Allowance.

Calculation

- Employee Contribution: 12% of basic wages plus Dearness Allowance.
 - Employer Contribution: 12%, out of which 8.33% goes to the Employees' Pension Scheme (EPS) and 3.67% to the EPF.
 - Additionally, the employer pays 0.50% towards the Employees' Deposit Linked Insurance (EDLI) Scheme and 0.50% as administrative charges.
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FAQs

Q. What are the contributions payable by the employer and employee?

A. Both employer and employee contribute 12% of the basic wages plus Dearness Allowance. The employer's share is split between the EPF and EPS.

Q. Can an employee opt out of the EPF scheme?

A. Employees with a basic salary over Rs. 15,000 who have never been EPF members can opt out. Once a member, opting out is not allowed.

Q. Is EPF deducted on stipend?

A. No, stipends for trainees or interns under the Apprenticeship Act or Industrial Employment Act are exempt.

Q. Can an employer restrict the EPF contribution to the wage ceiling limit?

A. Yes, employers are not obligated to contribute over the wage ceiling of Rs. 15,000 but may do so voluntarily.

Q. What happens to the EPF if an employee leaves an EPF-covered establishment?

A. The accumulated funds can be transferred to the new employer's EPF account or retained in the existing account.

Q. Can an employer deduct their contribution towards EPF from employees' wages?

A. No, doing so is a criminal offence punishable by imprisonment and a fine.

Q. Can a member contribute beyond the wage ceiling limit?

A. Yes, with permission, members can contribute up to 100% of their basic wages voluntarily.

Employees' State Insurance Corporation (ESIC)

Businesses Covered

The ESIC scheme applies to:

- Factories and establishments with 10 or more employees (20 in some states).

Criteria for Applicability

- All employees earning monthly wages up to Rs. 21,000 (Rs. 25,000 for employees with disabilities) must be enrolled in the ESIC scheme.

Calculation

- Employee Contribution: 0.75% of wages.
- Employer Contribution: 3.25% of wages.

FAQs

Q. How does the ESI scheme help employees?

A It provides medical care, financial assistance during sickness, maternity, and employment injury.

Q. Who administers the ESI scheme?

A. The ESIC, a statutory body under the Ministry of Labour, administers the scheme.

Q. How is the ESI scheme funded?

A. Through contributions from employers and employees, and the state governments bear 1/8th of the medical benefit cost.

Q. What establishments are covered under the ESI scheme?

A. Factories, shops, hotels, restaurants, cinemas, road motor transport undertakings, newspaper establishments, educational institutions, and medical institutions.

Q. Who fixes the contribution rate for the ESI scheme?

A. The Government of India revises and fixes the contribution rates periodically.

Q. Is ESIC compulsory for all employees?

A. Yes, for establishments covered under the ESI Act and employees earning up to Rs. 21,000 per month.

Q. What happens if an employer does not comply with the ESIC provisions?

A. Non-compliance can lead to penalties, including fines and imprisonment.

Q. Are contract and casual employees covered under the ESIC scheme?

A. Yes, contract and casual employees of covered establishments are included.



Gratuity

Businesses Covered

The Payment of Gratuity Act applies to:

- Shops and establishments with 10 or more employees.
- Factories, mines, oilfields, plantations, ports, and railways.

Criteria for Applicability

- Employees who have rendered at least 5 years of continuous service are eligible for gratuity.

Calculation

- $\text{Gratuity} = \text{Last drawn salary (Basic + DA)} \times \frac{15}{26} \times \text{Number of years of service.}$
- The maximum gratuity payable is Rs. 20 lakhs.

FAQs

Q. What is gratuity?

A. A monetary benefit given by employers to employees for their service of 5 or more years.

Q. When is gratuity payable?

A. Upon termination, superannuation, retirement, resignation, death, or disablement of the employee.

Q. Is gratuity taxable?

A. Government employees' gratuity is fully exempt. For others, up to Rs. 20 lakhs is tax-exempt.

Q. Can gratuity be paid before five years of service?

A. Yes, in cases of death or disablement, the 5-year condition is waived.

Q. How is gratuity calculated?

A. Based on the last drawn salary and years of service, with a formula of (Last drawn salary x 15/26 x Years of service).

Q. What is the due date for gratuity payment?

A. Within 30 days from when it becomes payable.

Q. What are the penalties for default in gratuity payment?

A. Penalties include imprisonment up to 1 year and fines up to Rs. 20,000.

Q. Is interest payable for delayed gratuity payment?

A. Yes, at a simple interest rate notified by the Central Government.



Payment of Bonus Act

Businesses Covered

The Payment of Bonus Act applies to:

- Factories with 10 or more employees.
- Other establishments with 20 or more employees.

Criteria for Applicability

- Employees earning up to Rs. 21,000 per month and who have worked for at least 30 days in an accounting year.

Calculation

- Minimum bonus: 8.33% of salary or Rs. 100, whichever is higher.
- Maximum bonus: 20% of salary.

FAQs

Q. What is the Payment of Bonus Act?

A. An Act to provide for payment of minimum and maximum bonus in certain establishments.

Q. Who is eligible for bonus?

A. Employees earning up to Rs. 21,000 per month and having worked for at least 30 days in an accounting year.

Q. How is the bonus calculated?

A. Minimum 8.33% and maximum 20% of the salary or wage earned during the accounting year.

Q. When is the bonus payable?

A. Within 8 months from the close of the accounting year.

Q. Are part-time employees eligible for bonus?

A. Yes, part-time employees are eligible for bonus.

Q. Can bonus be forfeited?

A. Yes, in cases of fraud, riotous behavior, theft, or sabotage of property.

Q. Are apprentices eligible for bonus?

A. No, apprentices are not eligible for bonus under the Act.

Q. What records must employers maintain for bonus calculation?

A. Employers must maintain registers showing details of bonus computation and disbursement.



**HR
COMPLIANCE**

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

Businesses Covered

- All organisations, regardless of size or nature, must comply with this Act.

Criteria for Applicability

- Every employer must constitute an Internal Complaints Committee (ICC) if they have 10 or more employees.

Key Provisions

- Establishment of ICC at every office or branch with 10 or more employees.
 - Mechanism for the prevention, prohibition, and redressal of sexual harassment complaints.
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Q. What constitutes sexual harassment under this Act?

A. Unwelcome acts or behavior including physical contact, advances, demand for sexual favors, sexually colored remarks, showing pornography, etc.

Q. What is the composition of the ICC?

A. Presiding Officer (a senior woman employee), at least two members from employees, and one external member with experience in social work or legal knowledge.

Q. What is the process for filing a complaint?

A. A complaint must be made in writing to the ICC within three months of the incident.

Q. What actions can the ICC take upon receiving a complaint?

A. The ICC can initiate an inquiry and recommend action to the employer, which may include disciplinary action.

Q. What are the penalties for non-compliance?

A. Employers may face fines and cancellation of business licenses for not constituting the ICC or not complying with the Act's provisions.

Q. Can the complaint be withdrawn?

A. Yes, the complainant can withdraw the complaint at any stage of the inquiry.

Q. What if the complaint is found to be false?

A. If the complaint is found to be malicious, the ICC may recommend action against the complainant.

Q. What support is provided to the complainant during the inquiry?

A. The employer must provide support such as transfer, leave, or any other relief recommended by the ICC.

Maternity Benefit Act, 1961

Businesses Covered

- All establishments employing 10 or more employees.

Criteria for Applicability

- Female employees who have worked for at least 80 days in the 12 months preceding the expected date of delivery.

Key Provisions

- Paid maternity leave for up to 26 weeks.
- Provisions for crèche facilities in establishments with 50 or more employees.
- Protection from dismissal or discharge during maternity leave.

FAQs

Q. What is the duration of maternity leave?

A. Up to 26 weeks, with a maximum of 8 weeks before the expected date of delivery.

Q. Are there provisions for miscarriage or medical termination of pregnancy?

A. Yes, up to 6 weeks of paid leave is provided.

Q. What is the eligibility for maternity benefits?

A. Female employees must have worked for at least 80 days in the 12 months before the expected date of delivery.

Q. Are adoptive mothers entitled to maternity leave?

A. Yes, adoptive mothers are entitled to 12 weeks of leave from the date of adoption for a child below three months.

Q. Is maternity leave applicable for commissioning mothers?

A. Yes, commissioning mothers are entitled to 12 weeks of leave.

Q. What facilities must employers provide under the Act?

A. Nursing breaks, crèche facilities, and protection from dismissal or discharge during maternity leave.

Q. Can maternity leave be extended?

A. Yes, but the extended leave may be unpaid unless otherwise specified by the employer.

Q. What are the penalties for non-compliance with the Maternity Benefit Act?

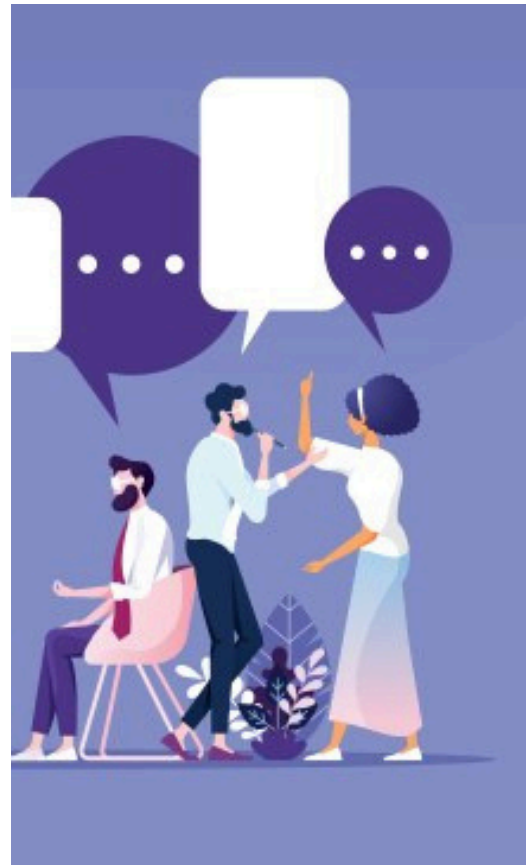
A. Employers may face fines and imprisonment for violating the Act's provisions.



Conclusion

Compliance with HR-related laws is a fundamental aspect of running a successful and sustainable business in India.

This ebook has provided a detailed overview of critical compliance areas, including EPF, ESIC, Gratuity, Bonus, and additional HR laws such as the Maternity Benefit Act and the Sexual Harassment of Women at Workplace Act.



Understanding these regulations helps businesses protect their employees' rights, ensure fair treatment, and create a safe and conducive work environment. Non-compliance can lead to severe penalties, legal battles, and damage to the organisation's reputation. Therefore, it is essential for employers to stay informed about legal requirements and implement robust compliance practices.

In conclusion, while compliance may seem challenging, it is a vital investment in the long-term success and integrity of any business. We hope this ebook serves as a valuable resource in navigating the complex landscape of HR compliance in India. For specific legal advice, always consult with a qualified legal expert.