

EPFO targets companies giving low PF to international workers

TNN | Jul 20, 2017, 05.55 AM IST



BENGALURU: The Employees Provident Fund Organization (EPFO) is cracking down on companies that are making provident fund contributions for international workers, including OCIs (Overseas Citizens of India), on their rolls on the basis of the basic salary. Some say this could be an effort to pressurise the US and UK to sign the long-pending totalization agreement.

While for Indian citizens, an employer can cap the contribution to PF at Rs 1,800 a month, there is no cap for international workers. The EPFO is using the argument that the employer is splitting the salary into a smaller basic wage and paying out larger portions under other heads to reduce the PF obligation. It is consequently insisting that companies pay PF on the whole of the salary of an international worker including OCIs.

The EPF Act was extended to international workers in 2008. The EPFO became proactive in dealing with the issue in the past two years, and now are telling companies to make full PF contributions with effect from 2008.

Several legal experts told TOI that a number of companies, MNCs in particular, have made the requisite PF contributions, including the penalties for the delayed contributions, even though there are several grey areas in the law.

"In many cases, companies have had to first identify the OCIs in their employment. Very often, when you are hiring Indians from another organisation, you are not asking to see their passports. OCIs do not require an employment visa to enter and work in India. In the case of one client, some 20-25 people were found to be OCIs," Atul Gupta, partner-employment at law firm Trilegal, said. The outgo can run into several crores of rupees.

Companies have even had to find those who had left the organisation, but who were eligible to be part of the scheme during

the tenure with the company.

Pooja Ramchandani, partner & head - employment law at law firm Shardul Amarchand Mangaldas, said that in one case, the company had not made any contribution towards provident fund for an international worker who was engaged for a short duration. "The worker returned to his country of origin and also left the service of the company. Even though the company was willing and ready to rectify the default, tracing the employee became a practical issue for obtaining appropriate documentation for including the worker as a (EPF) member," she said.

There are at least two grey areas in this matter. Vikram Shroff, leader - HR law at law firm Nishith Desai Associates, said the question of whether to make PF on basic salary (given the definition of 'basic wages' in the EPF Act) or on total salary, will remain a grey area until such time it is clarified by the Supreme Court. The court is hearing the matter. One legal expert said that as per the principles laid down by some High Courts, allowances that are universally, necessarily and ordinarily paid to all employees of an organisation would fall under the ambit of 'basic wages.'

The other issue is whether OCIs were really meant to be part of "international workers." Gupta does not think the law was meant to include OCIs. But till the matter is finally clarified, Shroff's advice is that employers should treat both foreigners (on Indian employment visa) and OCIs as international workers and adopt a consistent practice.

Some experts believe the EPFO crackdown is part of an effort to pressurise the US and UK to sign the social security agreement (SSA) or the totalization agreement. India has SSAs with some 18 countries, including Canada, Japan, Germany, France. Under SSA, an Indian employee going to work in a signatory country does not have to subscribe to that country's social security scheme, and an employee from that country does not have to subscribe to India's PF scheme.

Since the US is not a signatory, Indians going to work in the US have to subscribe to the US scheme, and end up forfeiting the contributions if they return to India in less than ten years. IT industry body Nasscom estimates that Indian IT companies and professionals forfeit between \$1 billion and \$2 billion every year. The US appears to have taken the matter less seriously because not too many Americans work in India.