Overview of Provident Fund regulations Domestic Worker

April 2019

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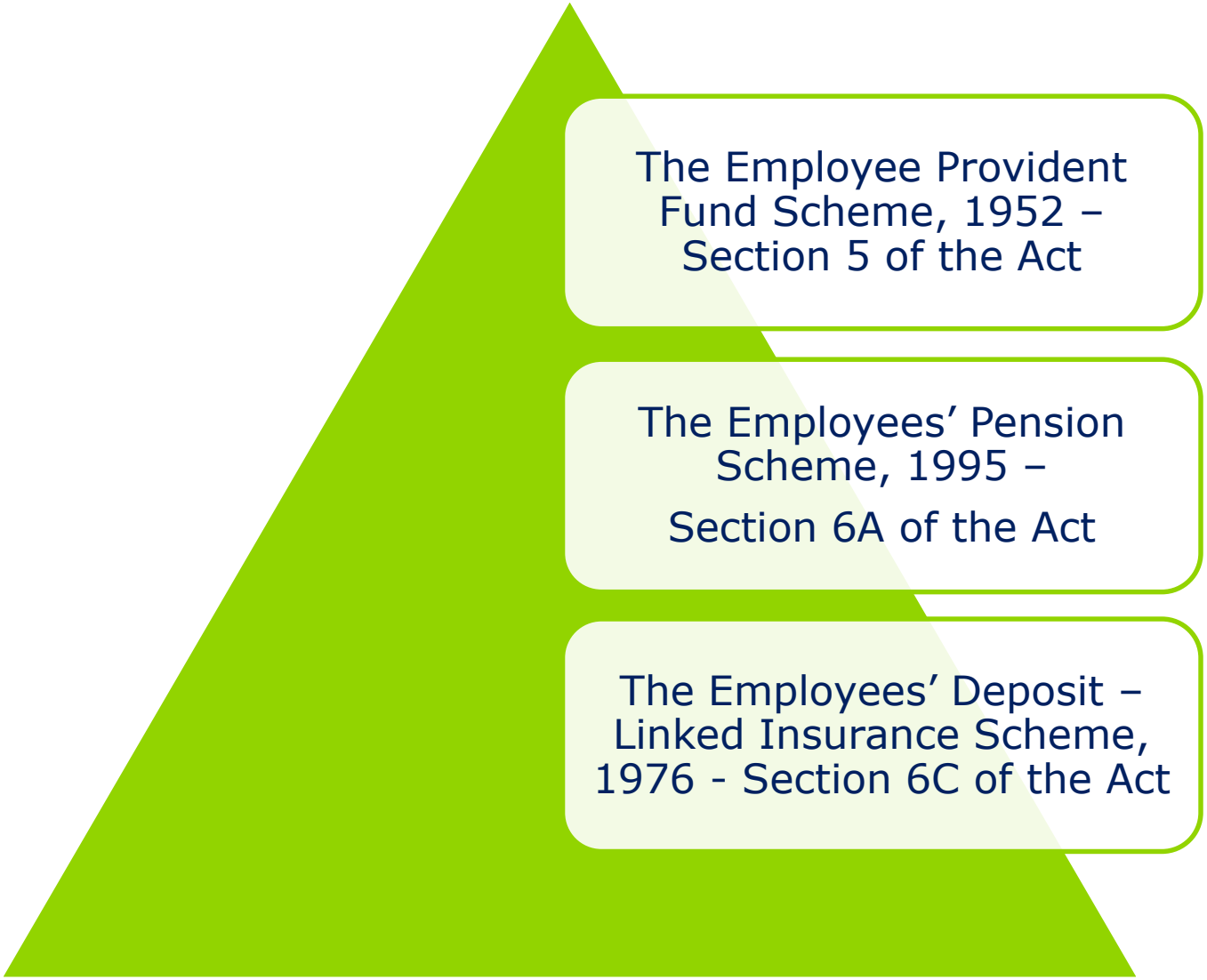
The Employee's Provident Fund and Miscellaneous Provisions Act, 1952 (The Act) and its schemes



Applicability of the Act

The Act extends to

- Whole of India except the state of Jammu and Kashmir
- Every establishment which is a factory engaged in any industry specified in schedule I, employing 20 or more employees.
- Any other establishment employing 20 or more persons which the Central Government may notify
- 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 20.

Exempt Establishment

- Where employees are in enjoyments of benefits in the nature of provident fund, pension or gratuity
- Such benefits are on the whole not less favorable to employees.

The term 'establishment' has not been defined under the Act or the Scheme. Consequently it shall have the meaning which is assigned to it in common trade parlance.

Software Companies - As per GSR 1190 (E) dated 27 July 2006

Establishments to include all departments and branches

Where an establishment consists of different departments or has branches, whether situated in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment

01

Indian branch of Foreign company has less than 10 employees. The holding company has 40 employees in its head office overseas. Whether PF act will be applicable to all employees?

02

Indian MNC has overseas branches. The branch recruits local hires. Whether PF would be applicable to them?

03

An establishment has 10 direct employees in India. The company has additional 15 employees employed through a contractor. Whether PF Act will be applicable to the establishment?

Who is an employee ?

Section 2(f) of the act defines Employee as

any person who is employed for wages in any kind of work, manual or otherwise, in connection with the work of an establishment, and who gets his wages directly or indirectly from the employer, and includes any person

(i) employed by or through a **contractor** in connection with the work of the establishment;

(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961.

Para 2 (f) of the PF Scheme defines Excluded employee* –

i. An employee who withdrew the entire amount standing to his credit in the fund on retirement after attaining age of 55 or one permanent settlement abroad or taking up employment abroad. or
ii. An employee whose pay exceeds INR 15,000 p.m.* or
iii. Apprentice

*** Wage ceiling of INR 15,000 is not applicable in case of international workers**

Impact of wage ceiling

Proviso to Paragraph 26A (2)

Where the monthly pay of a member exceeds INR 15,000 p.m., the contribution payable by him, and in respect of him by the employer, shall be limited to a monthly pay of INR 15,000 p.m.

Paragraph 26 (6)

An employer and employee can make a joint request in writing for enrolling employee as a member if the pay for the purpose of PF exceeds INR 15,000 p.m. for a new employee or for allowing contribution on more than INR 15,000 p.m. of his monthly pay.

Once a member, always a member

Paragraph 26

Member of the Fund shall continue to be a Member until he withdraws under Paragraph 69 the amount standing to his credit in the Fund or is covered by a notification or order of exemption.

Hence, it can be considered that once a member always a member.

Employer employee relationship

Determination of Employer – Employee relationship

Principles to determining employee/employer relationship

Whether the employer has the authority to instruct the individual in which the work has to be performed

Whether there is an existence of master-servant relationship with the individual

Whether the services are obtained by the company

Who is bearing the remuneration cost of the individual

Whether the employer has the right to impose disciplinary sanctions related to work of that individual

Whether the employer has the right of hire/fire

Whether the employer has the right to select the individual who will perform the work and to terminate the contractual arrangements entered into with that individual for that purpose

Judicial precedence
Employer – employee relationship

Decision	Issue	Principles
M/s. P.M. Patel and Sons and Others Vs. Union Of India And Others (Supreme Court)	Whether home worker would be considered as Employee.	The Supreme Court held that to be an employee under Section (f), it is necessary that the relationship of master and servant should exists. Reliance placed on the earlier decision in the case of Chintaman Rao Vs. State of M.P. where the test for determining the relationship of master and servant lay in the existence of the right in the master to supervise and control the work done by the servant, not only in the matter of directing that what work the servant was to do but, also in the manner in which it should be done.
Ram Singh and Others Vs. Union Territory, Chandigarh and Other (Supreme Court)	Whether in determining the employer – employee relationship "control" is the sole test ?	• "control" is one of the important tests • Integrated test is applied by examining whether the person is fully integrated into the employer's concern or remained apart from and independent of it • Who has the power to select and dismiss, to pay remuneration, supply tools, organize work and what are the mutual obligations between them is also required to be analyzed

Judicial precedence
Employer – employee relationship

Decision	Issue	Principles
Workmen of Nilgiri Co-Op. Mkt.Society Ltd., Vs. State of T.N. & Others (Supreme Court)	Whether a contract is a contract of service or contract for service	No single test – be it control test, be it organisation or any other test – has been held to be the determinative factor for determining the jural relationship of employer and employee. Supervision and control test is the prima facie test for determining the relationship of employment. However, the control test and the organization test, are not the only factors which can be said to be decisive. With a view to elicit the answer, the court is required to consider several factors which would have a bearing on the result: • who is the appointing authority; • who is the paymaster; • who can dismiss; • how long alternative service lasts; • the extent of control and supervision; • the nature of the job e.g. Whether it is professional or skilled work; • nature of establishment; • the right to reject.

Contract employees

Para 30(3) of the Scheme

It shall be the responsibility of the principal employer to pay both the contribution payable by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor and also administrative charges".

Extracts from EPFO circular dated February 2nd 2017

- The Principal employer should ensure that the contractor is registered with EPFO before awarding any Contract.
- After award of the contract, the contractor details should be entered in the EPFO portal.
- Payments due to the contractor should be made only after verifying that the statutory PF payments have been made to EPFO. This can be verified either directly from the EPFO portal or insisting on a payment receipt obtained by the contractor from the EPFO portal while making payment.

Judicial precedence

Delhi High Court in the case **Gangadhar Bajpai & Ors Vs IOC & Ors (Delhi HC)** held that a plain reading of statutory provisions makes it clear that it is the liability of principal employer in the first instance to deposit the employer's and employee's share of contributions even in case of contract labourers engaged through the contractor.

Contributions

- The employer has the primary responsibility to pay both the contribution payable by himself and also on behalf of the employee
- The employer is entitled to recover the employee contribution from the wages of the member

- "Pay" means - Basic wages, Dearness allowance, Retaining allowance, Cash value of any food concession

*additionally EDLI and admin charges are also applicable

**For new PF members joining on or after September 1, 2014 whose pay exceeds INR 15,000 the entire employer's contribution shall be towards PF.

The impact of recent Supreme Court order dismissing the special leave petition filed against the Kerala High Court needs to be examined

Recovery of a member's share of contribution

Para 31 provides that "Notwithstanding any contract to the contrary the employer shall not be entitled to deduct the employee contribution from any wage other than that which is paid in respect of the period in respect of which contribution is payable.

The employer is entitled to recover the employee's share from a wage other than that which is paid in respect of the period for which the contribution has been paid or is payable where the employee has in writing given a false declaration at the time of joining service with the said employer that he was not already a member of the Fund.

In case of accidental/clerical error, employer has the option to recover the employee contribution with prior approval of inspector.

Definition of Basic Wages as per EPF Act

The term "basic wages" has been defined in clause (b) of section 2 of the Act as below:
…"basic wages" means all emoluments which are earned by an employee while on duty or [on leave or on holidays with wages in either case] in accordance with the terms of employment and which are paid or payable in cash to him, but does not include:

- the cash value of any food concession;
- any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus, commission **or any other similar allowance** payable to the employee in respect of his employment or of work done in such employment;
- any presents made by the employer

Section 2(b) read with section 6 of the Provident Fund Act provides that contributions are required to be paid on:

- basic wages
- dearness allowance (including cash value of any food concession)
- retaining allowance.

Lack of clarity on "any other similar allowance" and hence litigative

Judicial Precedents Prior to SC ruling

Judicial precedence on basic wages

Decision	Issue	Held
Reynolds Pens Pvt. Ltd. (Chennai HC)	Whether conveyance, educational allowance, food concessions medical, special holidays, night shift incentives, city compensatory allowances were within the meaning of 'basic wages'	• These allowances are universally necessarily and ordinarily paid to the employees and form part of the contract of employment hence should be treated as basic wages
Montage Enterprises Pvt. Ltd. (Madhya Pradesh HC)	Whether HRA, special allowance, management allowance, and conveyance, were within the meaning of 'basic wages'	• These allowances are universally necessarily and ordinarily paid to all employees and form part basic wages
Group 4 Securitas Guarding Limited / Whirlpool of India Limited (Delhi HC)	Whether personnel of G4S can be treated as employees of the contractee? Whether PF is payable on HRA, Conveyance and Washing allowance	• G4S is a employer for its personnel and is responsible for PF compliance • Reliance placed on the decision of the Punjab and Haryana decision as well as the decision of the Karnataka High Court in the case of Manipal Academy. The exclusion clause in Section 2(b) is fairly large and the exclusions made while determining the basic wages cannot be said to be unjustified unless they are totally at variants and in complete deviation of the concept of the allowances sought to be under the exclusion clause

Judicial precedence on basic wages

Decision	Issue	Held
G4S Security Services India Ltd (Punjab & Harayana High Court	Whether PF was required to be computed on the entire amount of minimum wages, or on those components of wages meeting the criteria of "Pay"	For the calculation of contribution under the EPF Act employer to follow statutory provisions which permit contribution to be computed with reference to basic wage as defined thereunder.
Manipal Academy (Supreme Court)	Whether payment towards leave encashment would be considered as basic wages for the purpose of computation of PF	Following the decision of the SC in the case of Bridge & Roof, it was held that a) Where the wage (component) is universally, necessarily and ordinarily paid to all across all levels such emoluments are basic wages b) Where the payment is payable specially for those who avail of the opportunity is not basic wages. c) Any payment by way of a special incentive or work is not basic wages. Payment of leave encashment is contingent upon the claim from the employee and hence does not meet the test of universality
Bridge and Roof (SC)	Whether production bonus is to be included as wages for the purpose of computation of PF	The basis for exclusion of certain specified components seems to be "all that is not earned in all concerns, or by all employees of a concern seems to be excluded". In view of the above and the specific exclusion for bonus, it was held that "production bonus" was not to be included as wages for the purpose of computation of PF.

SC ruling in the case of Vivekananda Vidyamandir and others

Issue under consideration by the SC

Understanding the facts

- Should allowances be treated as wages for PF purposes?
- The SC has considered multiple appeals, given the commonality of issues
- Employers were paying various cash allowances but were not including the same for PF wages, which was disputed by the PF authorities.
- A Special Leave Petition was filed before the SC against the decisions of lower Courts to decide what constitutes PF wages.
- The PF department also preferred an appeal where the Calcutta High Court which had given relief to the establishment from applicability of PF on such allowances.
- Decisions covered in the SC ruling
  - RPFC in the case of Vivekananda Vidya Mandir and others
  - Surya Roshni Ltd
  - U-Flex Ltd
  - Montage Enterprises Pvt Ltd
  - Saint Gobain Glass India Ltd

Supreme Court Ruling on PF wages

Key Conclusions and Principles

- All allowances under question are PF wages
- Authorities have concluded that allowances in question were essentially a part of the basic wage, camouflaged as allowances to avoid PF contributions.

Exclusion where allowances are

- Variable in nature
- Linked to any incentive for production resulting in greater output by an employee
- Not paid across the board to all employees in a particular category
- Paid especially to those who avail the opportunity.

01 Review and revisit positions adopted for course correction

02 Remediation for the past

03 Clarification / Notices from PF authorities

What does this mean

Interpretation of "Pay for the purpose of PF" is widened

- Need to review salary structure, identify gaps in compliances
- Identify impacted population
- Period for which compliances is required to be met

Components which are definitely included

- Basic wages
- Dearness allowance
- Retaining allowance.
- Cash value of food concession

Excluded components

- **House-rent allowance**
- Overtime allowance
- Bonus, Commission
- **Any other similar allowance**.
- Any presents made by the employer

Any other similar allowance

- Needs to meet the tests prescribed by the Supreme Court
- Reimbursements not in the nature of allowance, can be excluded?
- Allowances not meeting the universality test – can be excluded?

Industry practice has been to consider Basic Salary as PF wages. Special allowances and other specific allowances were excluded

Supreme Court Ruling
Impact on establishments

Impacted population

Domestic Workers

- Where the basic salary < Rs.15,000 p.m i.e. monthly PF contribution does not exceed Rs. 1,800 per month
- Statutory wage ceiling of Rs. 15,000 applicable from 1 September 2014

International Workers

- Foreign nationals working for a covered establishment – includes expats, foreign nationals on India payroll, Overseas Citizens of India (OCI cardholders)
- Statutory wage ceiling not applicable
- Provisions applicable from 1 November 2008

Contracted employees

- Principal employer liable for PF contributions and admin charges relating to contract employees Para 30(3) of the Scheme.
- EPFO circular dated 2 February 2017 – overall responsibility with principal employer
- Exposure where employees basic salary < INR 15,000 pm

Domestic workers – Excluded employee
Wages > 15000 pm

Domestic worker
Excluded employee

A domestic employee whose pay at the time he is otherwise entitled to be a member of the fund exceeds INR 15,000 per month (INR 6,500 per month prior to 1 September 2014) may not get impacted due to this ruling where PF wages exceed the statutory wage ceiling under the PF Act.

Reliance in this regard is placed on
SC ruling in case of Marathwada Gramin Bank and PF department internal circular dated May 27, 2014 where in the EPFO has directed the RPFC not to force employers to contribute over and above statutory wage ceiling

Domestic workers with wages exceeding the wage ceiling not impacted

Supreme Court Ruling

Prospective or retrospective

Outcome of the ruling

- No new principles have been introduced
- Intent is to clarify the interpretation of existing provisions on basic wages
- Ruling is based on the principles of social justice and equity
- Ruling relies on principles laid down in earlier decisions – Bridge & Roof (1963) and Manipal Academy

Limitation Period

- Period of limitation not specified under PF Act
- Supreme Court in the case of Hindustan Times Limited – no legislative intent to prescribe period of limitation under PF Act
- EPFO circular dated 20 November 2012 – inquiry period u/s 7A not to exceed 7 financial years – held in abeyance

Counter Arguments

- While the provisions where existing, there was no clarity on interpretation of basic wages in the past and there were contradictory rulings.
- The decision on Bridge & Roof related to production bonus, Manipal Academy related to Leave Encashment, special allowances were not specifically examined.
- Impact on industry will be severe if considered on retrospective basis – companies have been subject to inspections in the past where this has not been raised by authorities
- Where employees' PF wages exceed INR 15,000 by retro-application, does this mean such employees can be considered excluded employees

Considerations for the industry
If applied retrospectively

Past remediation

- Meet employer and employee contributions for the past on additional wages
- Past employee contributions not recoverable from employee – Proviso to Para 32(1)
- Employee contribution met by employer – tax / gross up implications
- Clock on interest liability continues to tick
- Exposure to damages - Argument for waiver for suo moto payments?
- Administrative charges for additional wages
- Ballooning liability to employer

Practical challenges

- Electronic Challan cum Return (ECR) to be generated for past years
- Identifying past employees, reporting UANs – administrative burden
- Employees have withdrawn and closed their PF accounts?

Pradhan Mantri Rojgar Protsahan Yojana

Pradhan Mantri Rojgar Protsahan Yojana (PMRPY)

PMRPY Scheme

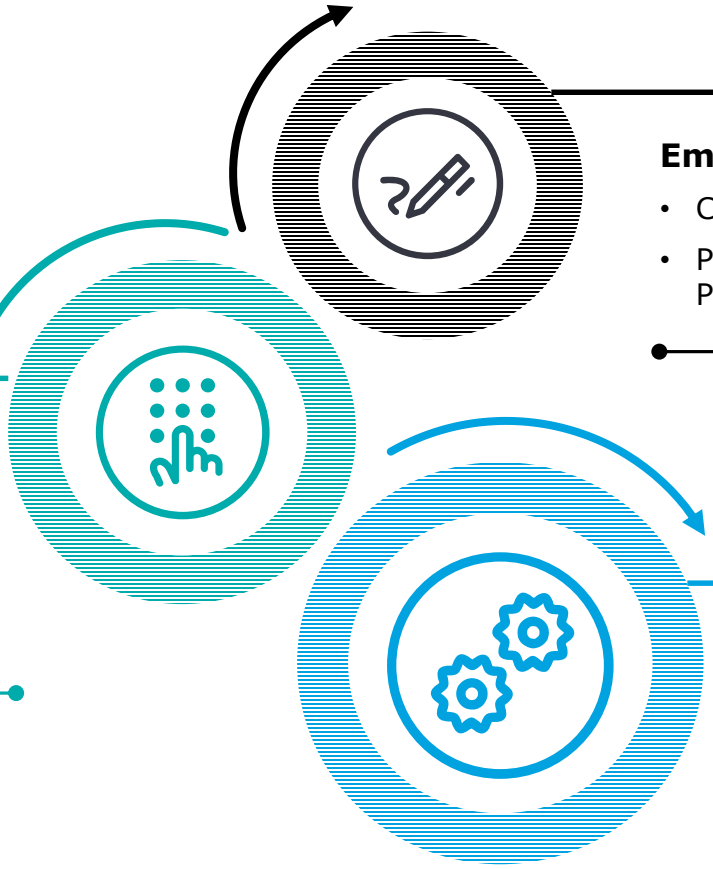
- Incentivise new employment generation
- Government to reimburse employer contribution of EPS i.e. 8.33% & 3.67 % EPF for the first three years of new employment with reference base as employee count on previous year end
- Claim to be made on a monthly basis (before 10th of the following month) by filing online PMRPY form post online registration on PMRPY portal
- The terminal date for registration of beneficiary through establishment ended on 31st March, 2019.

Illustrative Conditions to be satisfied

- Eligible employees would be new employees having PF wages of INR 15,000 or less per month and who have not worked in any establishment registered with the EPFO / did not have a Universal Account Number (UAN) prior to joining the organization.
- Aadhaar seeding must for those employees.

Practical Aspects, Timelines and Compliances

Approach by an employer



Employee onboarding

- Collection of Personal Information
- Proof of Name, address, PAN, Bank, Passport and other KYC information

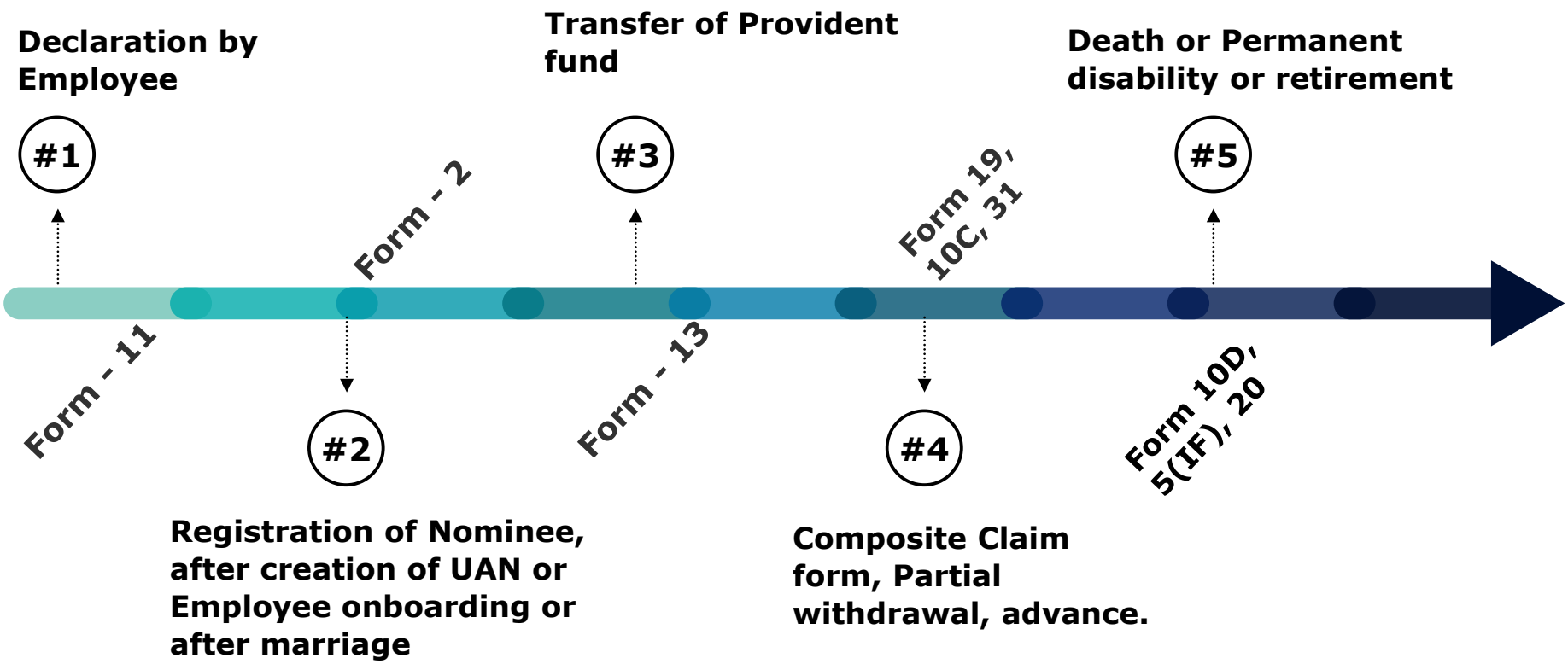
Creation of UAN

- If an employee is new Joinee or is in first time employment, it is the duty of employer to create UAN
- Sharing UAN with employee

Electronic Challan cum Return (ECR)

- Preparation of return
- Submission of return tagging UAN
- Remittance of Provident fund within 15th of subsequent month.

Provident fund: Life cycle



Preparation of monthly return known as ECR which also subsumed form 5/10/12A/3A and 6A.

On-boarding forms

	Form – 11 (new)	Form – 2 (revised)	Form - 13
Purpose	To provide basic information to employer.	Declaration and nomination of beneficiaries for EPF and EPS	For transferring the previous PF to new PF account, only
When to file	At the time of joining	After the member is enrolled	After the member is enrolled / UAN is active
Amendment	Can be amended but only KYC	Can be amended any number of times, after marriage the form is to be filled again	NA
Mode	Offline	Online / offline	Offline

Advance / Withdrawal forms

Form 31 – Partial EPF Withdrawal

- This form can be filled online as well as offline
- Only partial amount can be withdrawn from his corpus
- Withdrawal can be on requirement basis and life of service

Form 19 – Final Settlement of EPF

- This form can be filled online as well as offline
- Members can claim for Final Settlement of old EPF accounts by filling this form
- To be submitted at the time of retirement, leaving service, termination

Form 10C – Pension withdrawal / scheme certificate

- This form can be filled online as well as offline
- This form is used for the withdrawal of pension corpus accumulated in the member's Employee Pension Scheme account.
- A member can withdraw pension amount only if the service period is less than 10 years
- This form can also be used for getting the EPS Scheme Certificate (which is used for transferring your EPS balance from one employer to another).

Composite claim form

- This form is required to be submitted for an offline settlement
- Composite Claim Forms (Both Aadhaar and Non-Aadhaar) has replaced Form 19, 31, and 10C, As per 2017 circular released by the EPFO
- Therefore, all types of EPF and EPS settlement forms (Form 19, 31, and 10C) have been subsumed under the CCF.

Advance / Withdrawal forms

Form 20 – Final settlement of EPF in case of death of an employee

- To be filled by nominees/heirs of a deceased member for the final settlement of the EPF account.
- The guardian has to fill the form on behalf of nominee/s In case the s/he is a minor/lunatic.
- The money can be remitted in the bank account of the beneficiary directly

Form 10D – Claim form for Monthly Pension

- With this form a member can request for availing pension benefits
- A member becomes eligible for a pension after completing 10 years of service in the formal sector.
- This form is filled by the pensioner at the time of retirement or by the widow or by nominee to claim pension.

Form 5(IF) – Claim as per EDLI scheme

- This form is related to Employee deposit linked Insurance scheme
- With this form a widow/heir, can request for availing insurance benefits
- To be submitted by the person eligible to receive the PF Account dues of the deceased member, who died whilst in service

EPFO initiatives towards digitisation

Initiatives by Department

Introduction of UAN
Linking of UAN, PAN and Aadaar
Mandatory Aadhaar seeding
PF balance details available on call
Launch of Umang App
Shram Suvidha portal

Move to Online

- PF balance available online or can be sourced through SMS
- Greater portability - Faster execution inter-company transfer requests
- Faster processing – assurance of withdrawals being done within 10 days
- Introduction of Online request functionality to EPF Subscribers for correction in Name, DoB and Gender
- e-Nomination facility for filing nomination form by the member.
- e–grievance redressal mechanism (grievance redressal period is reduced to 15 days from 20 days)

Practical Challenges

- Multiple UANs
- Aadhaar unmapped / not available with the employees
- Incorrect KYC details
- Mismatch in the name as per Aadhaar and UAN
- Mismatch in Date of birth and PAN / Aadhaar
- Incorrect Personal information (including father's / spouse name)
- Withdrawal / advance accepted by Field officer but amount still not credited to bank account
- Transfer rejected by the EPFO – Dormant/inoperative account, EPS issue etc.
- Transfer rejected due to non submission of Form – 9 by employer,
- Transfer of Funds within 3 years.

Other aspects

Loan against Provident fund accumulations

Purpose	Eligibility
For marriage of Self/ brother/ sister/children or For higher education of self and children [para. 68K]	• Should complete at least 7 years of service. • 3 times in the entire service • 50% of employee share with interest
For the construction/ purchase of dwelling unit (house/ flat) or plot/ or repayment of housing loan [para 68B]	• Should complete at least 5 years of service (10 year for repayment of housing loan). • Once in the entire service • Joint ownership with spouse only
Illness in certain cases [para 68J]	• No minimum service required • Certificate from ESI or from Employer that the ESI facility are not available to the member • Doctor certification "C"

Loan against Provident fund accumulations

Purpose	Eligibility
Lockout or closure of the establishment [para 68H]	• No minimum service • should be closed for more than 15 days • Wages for at least 2 months is not paid • Balance should be there in Employee's share. If closed for more than 6 months, advance can be allowed from Employer's share also
Unemployment for more than 1 month [para 68HH]	• Non refundable 75% advance • Pension benefit as the account is retained

Withdrawal of Provident fund accumulations – Para 69 of the Scheme

Conditions / situations

- On retirement from service after attaining age of 55 years.
- On retirement on account of permanent and total incapacity for work
- On migration from India or for taking employment abroad
- On termination of service in case of mass or individual retrenchment
- On happening of any unfortunate event (death/disability etc.)
- On remaining unemployed for a period of 2 months, if a woman employee resigns to getting married two month should be read as 1 month.

Non Compliance penalties

Rates of damages

Period of default	Damages - % of arrears per annum
Less than 2 months	5%
2 months to 4 months	10%
4 Months to 6 months	15%
6 months and above	25%
Damages to be restricted to amount in default	

Penalties and prosecution

Nature of Offence	Person Liable	Consequences
Default in relation to the payment of contributions (or administration charges or inspection charges) towards the provident fund according to the provisions of the PF Act.	Employer	Where the default is in relation to payment of the employee's contribution which has already been deducted by the employer from the employees wages — Imprisonment for a minimum term of one year (which may be extended to three years) together with a fine of INR 10,000. For all other cases Imprisonment for a minimum term of six months (which may be extended to three years) together with a fine of INR 5,000.
Default in relation to the payment of contributions (or inspection charges) towards the Deposit Linked Insurance Scheme.	Employer	Imprisonment for a term not less than six months which may be extended to one year and a fine of up to INR 5,000.

Penalties and prosecution

Nature of Offence	Person Liable	Consequences
Making a false statement or misrepresentation to avoid any payment towards the provident fund, pension fund or deposit linked insurance fund.	Any Person	Imprisonment up to one year fine of INR 5,000 or both.
Contravention/default in complying with any provision	Any Person	Imprisonment up to one year fine of INR 4,000 or both.
Contravention/default in complying with any provision of the PF Act where no other penalty is provided elsewhere in relation to that non compliance	Any Person	Imprisonment for a term not less than one month which may be extended up to six months and a fine of up to INR 5,000.

Questions

Q&A

Annexure

Circular on CTC clarification

Contribution not payable on CTC – 24 March 2014

- PF contributions required on "basic wages, dearness allowance and retaining allowance including cash value of food concessions"
- CTC cannot be construed to mean "emoluments" earned by an employee within the meaning of basic wages
- Including employer's share of PF as part of CTC does not tantamount to employer contribution being recovered from employee.
- Segregation of CTC into various components to bring down the amount of wages on which PF contributions is payable not permitted