

Bill No. 29 of 2019

THE EMPLOYEES' STATE INSURANCE (AMENDMENT)

BILL, 2019

By

SHRI N.K. PREMACHANDRAN, M.P.

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BILL

further to amend the Employees State Insurance Act, 1948.

BE it enacted by the Parliament in the Seventieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Employees' State Insurance (Amendment) Act, 2019.

Short title,
and
commencement.

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

34 of 1948

2. In section 1 of the Employees State Insurance Act, 1948 (hereinafter referred to as the principal Act),—

Amendment
of section 1.

(a) in sub-section (4),—

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(i) the words, “ in the first instance”, shall be omitted; and

(ii) after the words “seasonal factories”, the words “and workers in the unorganised sectors” shall be inserted.

(b) in sub-section (5), after the words, “agricultural or otherwise”, the words “or to persons such as agricultural workers, railway porters, Life Insurance Corporation (LIC) agents, Accredited Social Health Activists (ASHA) workers, anganwadi workers, Mahila Pradhan Agents, Kudumbhasree workers, auto and taxi drivers, tailors, building and other construction workers, fishermen, National Rural Employment Guarantee Programme (NREGP) workers, domestic workers, street vendors, sanitation workers, mine workers, rickshaw pullers, freelance journalists and such other categories of employees in unorganized sector” shall be inserted; and

(c) in sub-section (6), the following proviso shall be added at the end, namely:—

“Provided that nothing contained in this sub-section with respect to number of employees shall apply to employees in the unorganized sector.”.

Amendment
of section 2.

3. In section 2 of the principal Act,—

(a) after clause (2), the following clause shall be inserted, namely:—

“(2A) “competent authority” means the authority designated under section 25A;”;

(b) after clause (4), the following clause shall be inserted, namely:—

“(4A) “contribution of employee in the unorganized section” means the sum of money payable to the corporation by the employee in such manner as may be prescribed.”;

(c) after clause (9), the following clauses shall be inserted, namely:—

“(9A) “employee in the unorganized sector” means the employee or worker working in the unorganized sector certified by the competent authority in the manner as may be prescribed;

“(9B) “employer in the unorganized sector” means the employer in the unorganized sector certified by the competent authority in such manner as may be prescribed;”;

(d) after clause (21), the following clause shall be inserted, namely:—

“(21A) “unorganised sector” means a factory, establishment or an enterprise owned by individuals or self-employed workers;”;

(e) in clause (24), after the words “Industrial Disputes Act, 1947 (14 of 1947)” the words and the Unorganised Workers Social Security Act, 2008 (33 of 2008)” shall be inserted.

Amendment
of section 4.

4. In section 4 of the principal Act, after clause (j), the following clause shall be inserted, namely:—

“(k) five persons representing the trade unions of the unorganized sector to be appointed by the Central Government in consultation with such trade unions as may be recognised for the purposes by the Central Government.”.

Amendment
of section 8.

5. In section 8 of the principal Act, in clause (c),—

(i) for the words “eight” the words “nine” shall be substituted; and

(ii) after sub-clause (v), the following sub-clause shall be inserted, namely:—

“(vi) one member from among the members of the Corporation representing the employees in the unorganized sector;”.

Amendment
of section 10.

6. In section 10 of the principal Act, in sub-section (1), after clause (g), the following clause shall be inserted, namely:—

“(h) three members representing employees of the unorganized sector to be appointed by the Central Government.”.

7. After section 25 of the principal Act, the following section shall be inserted, namely:—
- Insertion of new section 25A.
- "25A. The Central Government shall, by notification in the Official Gazette, in consultation with the Corporation, designate an Officer to be a competent authority for the purpose of certification of employees and employers in the unorganized sector."
- Designation of an Officer to be a Competent Authority.
- 5 8. After section 38 of the principal Act, the following section shall be inserted, namely:—
- Insertion of new section 38A.
- "38A. Subject to the provisions of this Act, the employees in the unorganized sector shall be insured in such manner as may be prescribed."
- Employees in the unorganized sector to be insured.
9. After section 39 of the principal Act, the following section shall be inserted, namely:—
- Insertion of new section 39A.
- 10 "39A. The contribution payable under this Act in respect of an employee in the unorganized sector shall be in such manner as may be prescribed."
- Contribution of employee in the unorganized sector.
- 10 10. After section 40 of the principal Act, the following section shall be inserted, namely:—
- Insertion of new section 40A.
- "40A. The contribution payable under this Act by the employer with respect to an employee in the unorganized sector shall be in such manner as may be prescribed."
- Contribution of employer in the unorganized sector.
- 15 11. In section 95 of the principal Act, in sub-section (2), after clause (oa), the following clauses shall be inserted, namely:—
- Amendment of section 95.
- "(ob) the manner of appointment, qualifications, conditions of service, powers and duties, office and staff and such other conditions of competent authority for certification of employees and employers in the unorganized sector;
- 20 (oc) the manner and procedure for certification of employees and employers in the unorganized sector;
- (od) the manner of fixing the rate of contribution and, procedure for collection of contribution from employees and employers in the unorganized sector;
- 25 (oe) the process and manner for insuring the employees in the unorganized sector;
- (of) the procedure and manner for redressal of complaints and grievances of employees and employers in the unorganized sector;
- (og) any other manner which may be necessary or proper for the purpose of providing insurance coverage to the employees in the unorganized sector."

STATEMENT OF OBJECTS AND REASONS

The Employees' State Insurance Act, 1948 is a social security legislation that provides for certain benefits to employees in case of sickness, maternity and injury during the course of employment and to make provisions for certain other matters in relation thereto.

Keeping in view the changing needs of the society, it is essential to extend the application of the Act for providing medical care to unorganized sector workers. The Employees State Insurance Corporation being the premier social security agency has been running healthcare activities in the country. It is also the primary duty of the Government to take the healthcare of the employees in the unorganized sector. The healthcare insurance coverage of meager categories of unorganized workers introduced is not sufficient to address the issues. It is necessary to replace the existing scheme and provide all the ESI benefits available to employees in the organized sector to the employees in the unorganized sector. Considering the healthcare of employees in the unorganized sector, it is necessary to include the employees in the unorganized sector within the purview of the Employees State Insurance Act, 1948.

The Bill, therefore, seeks to amend Employees State Insurance Act, 1948 with a view to:—

(i) bring within the purview of the Act the employees in the unorganized sector such as agricultural workers, railway porters, Life Insurance Corporation (LIC) agents, Accredited Social Health Activists (ASHA) workers, auto/taxi drivers, tailors, building and other construction workers, fishermen, National Rural Employment Guarantee Programme (NREGP) workers, domestic workers, street vendors, sanitation workers, mine workers, rickshaw pullers, freelance journalists and such other categories of employees in unorganized sector;

(ii) designate competent Authority to certify the employee and employer in the unorganized sector for the purpose of this Act;

(iii) ensure the representation of trade unions representing the unorganized sector in the Employees State Insurance Corporation;

(iv) ensure the representation of employees from the unorganized sector in the Standing Committee of the Corporation; and

(v) ensure the representation of employees in the unorganized sector in the Medical Benefit Council.

Hence this Bill.

NEW DELHI;
June 3, 2019.

N.K. PREMACHANDRAN

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 11 of the Bill empowers the Central Government to make rules for the manner of appointment, qualifications, conditions of service, powers and duties, office and staff and such other conditions of competent authority for certification of employees and employers, etc. As the rules will relate to matters of detail only, the delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACT FROM THE EMPLOYEES' STATE INSURANCE ACT, 1948

(34 OF 1948)

Short title,
extent,
commencement
and
application.

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

* * * * *

(4) It shall apply, in the first instance, to all factories (including factories belonging to the 2 [Government]) other than seasonal factories. 3[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 4[where the appropriate Government is a State Government, with the approval of the Central Government], after giving 5[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.

6[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 establishment within that part if the provisions have already been extended to similar establishment or class of establishments in another part of that State.]1

[(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.]

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Definitions.

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

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(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;

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(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—

* * * * *

(21) "temporary disablement" means a condition resulting from an employment injury which requires medical treatment and renders an employee, as a result of such injury temporarily incapable of 2[doing the work which he was doing prior to or at the time of the injury];

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(24) all other words and expressions used but not defined in this Act and defined in the Industrial Disputes Act, 1947 (14 of 1947), shall have the meanings respectively assigned to them in that Act.]

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4. The Corporation shall consist of the following members, namely:—

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(j) the Director-General of the Corporation, *ex-officio*.

* * * * *

Constitution of Corporation.

8. A Standing Committee of the Corporation shall be constituted from among its members, consisting of—

Constitution of Standing Committee.

(c) eight members elected by the Corporation as follows:—

(i) * * * * *

(ii) three members from among the members of the Corporation representing employers;

(iii) three members from among the members of the Corporation representing employees;

(iv) one member from among the members of the Corporation representing the medical profession; and

(v) one member from among the members of the Corporation elected by Parliament;

* * * * *

10. (1) The Central Government shall constitute a Medical Benefit Council consisting of—

Medical Benefit Council.

* * * * *

(g) three members, of whom not less than one shall be a woman, representing the medical profession, to be 2 [appointed] by the Central Government in consultation with such organisations of medical practitioners as may be recognised for the purpose by the Central Government.

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95. (1) The Central Government may, 1 [after consultation with the Corporation and] subject to the condition of previous publication, make rules not inconsistent with this Act for the purpose of giving effect to the provisions thereof.

Powers of Central Government to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

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(oa) the period of non-entitlement for cash benefit in case of conviction of an insured person;

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further to amend the Employees State Insurance Act, 1948.

(Shri N.K. Premachandran, M.P.)