

Govt move to define wages in EPF Act may lead to more confusion: Experts

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The Bill also proposes to insert new sections in the Act to give option to EPFO subscribers opt for NPS

The government's efforts to clarify what constitutes wages in the proposed amendments to the Employees' Provident Funds Act could potentially lead to more confusion and also litigation, according to experts, even as there is growing opposition to the proposed move to allow EPFO subscribers opt for the National Pension Scheme.

Code on Wages 2019

Hoping to bring uniformity with the Code on Wages 2019, which was recently passed by Parliament, the Ministry of Labour and Employment has introduced a new definition of wages in the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Bill, 2019.

The new definition would replace the existing definition of 'basic wage'.

"In the present form, the computational basis for determining provident fund contribution is basic wage, daily allowance, and retaining allowance.

"The amendment seeks to fix computational basis at 'wage' with the further stipulation that allowances paid above 50 per cent or as notified percentage of all remuneration will be included in wage," the ministry has explained in a note on the preliminary draft of the Bill.

"With the passing of the Code on Wages 2019 and the assurance of the government to have uniform simple definitions that are easy to understand and implement... but the revised definition of wage in the wages code does not bring any clarity since what is covered and what is not covered has not been defined," said the Employers' Association of India (Delhi) in its representation to the ministry.

It also noted that while the first part of the definition says wages would include all remuneration, the second part makes exclusions, pointing out there is need for more clarity.

Noting that the alignment of the definition of 'wages' with that of the Code on Wages 2019 is a prudent step from the perspective of ensuring consistency among various labour laws, Vikram Shroff, Head, HR Laws Practice, and Preetha S, Leader, HR Laws Practice at Nishith Desai and Associates, said it is likely to continue posing challenges in terms of what allowances would be subjected to PF contributions. "This question would become more pertinent especially in situations where the allowances are such that they have not been specifically included or excluded under the new definition," they said.

BMS up in arms

The Bill also proposes to insert new sections in the Act to give option to EPFO subscribers opt for NPS in the light of an announcement for the same in the Union Budget 2015-16.

The Bharatiya Mazdoor Sangh, on Thursday, said it has rejected the new amendment in a tripartite consultation meeting of the Labour Ministry held at Delhi, which was chaired by Labour Minister Santosh Gangwar.

BMS also opposed dilution of the latest Supreme Court judgment on the question of inclusion of allowances in calculation of contribution, it said.