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Analysing developments impacting business

TOWARDS A FACILITATIVE SOCIAL SECURITY REGIME – EPFO'S CIRCULAR ON VERIFICATION OF CONTRACTOR'S COMPLIANCE

5 February 2021

Background

In an important and perhaps a much-needed move, the Employees' Provident Fund Organisation (EPFO) has launched an electronic facility for principal employers (i.e., establishments engaging contract labour through contractors / manpower service providers) whereby they may be able to verify compliance by their contractors with the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act) vis-à-vis the contract labour. By way of its circular dated 1 February 2021, the EPFO has directed the regional officials to take cognizance of the facility and conduct webinars with major establishments engaging contract labour to ensure adequate dissemination of information about the facility.

Towards a facilitative regime

Pursuant to the launch, a principal employer can, at EPFO's *Unified Portal*, add the details of its contractors as well as the Universal Account Number of each of the contract workers deployed at the principal employer's establishment. Thereafter, the principal employer can, after logging in to the said portal, view the remittances made by the contractors on behalf of each of the covered contract workers. The principal employer can also verify the quantum of wages of the contract workers from which the contractor has deducted employees' provident fund contributions and assess whether this is in consonance with the amount paid by the principal employer to the contractor to enable the latter to comply with the EPF Act.

The principal employer can utilise the above-mentioned facility by furnishing certain details / documents such as the duration of the contract entered with the contractor, the work order issued for the relevant assignment, and the details of the contract workers engaged through the contractor every month. Once the contractor is added, the *Compliance Dashboard* available on the *Unified Portal* will become available for the principal employer to check the payment status in respect of the contract workers.

The facility also provides a mechanism whereby any disagreement between a contractor and the principal employer as regards the former's addition to the latter's account can be addressed. In case an entity has disputed its addition as a contractor, the status of contractor in the principal employer's account will be displayed as 'disputed', and the remarks made by the contractor will also be shown therein. The principal employer can then edit or delete the entity's details, or it can re-confirm the

same. In case of reconfirmation, the status of the contractor will be changed to 'active' or 'reconfirmed', and no further dispute can be raised by the contractor.

Comments

The EPF Act is one of the most important constituent of the employment law regime in the country. It governs the remittance of a sacrosanct social security component relevant to the large organised and unorganised workforce in India. The enforcement framework is, therefore, robust when compared to other labour laws in India.

As far as contract labour is concerned, the principal employers may, under the EPF Act, be held liable in the event the contractor fails to deposit contributions or make timely remittances vis-à-vis their workers towards employees' provident fund. There are, however, judicial precedents to the effect that if the contractor has obtained its own employer code from the EPFO, the authorities should not go after the principal employer. That said, we have seen situations wherein principal employers have received notices from the competent authority in case of non-compliances on the part of the contractors engaged by them. There are several cases where the principal employers do not receive adequate information and documentation as proof from the contractors to confirm contractors' compliance with the EPF Act, in which case the principal employers run a greater risk of potential scrutiny or questions by the enforcement authorities.

With the implementation of electronic facility mentioned above, principal employers may exercise the requisite due diligence to ensure that the risk of unwarranted litigation / liability emanating from contractors' default may be mitigated. Similar to the labour codes that may come into effect within the next few months, this initiative indicates EPFO's intent to facilitate compliance instead of prosecution.

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