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COVID-19 RELIEF MEASURES FOR EMPLOYEES: EMPLOYEES' STATE INSURANCE CORPORATION ANNOUNCES SCHEME AMIDST THE RAGING PANDEMIC

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In an important move, against the backdrop of a nationwide health crisis emanating from COVID-19 outbreak, the Employees' State Insurance Corporation (ESIC), by way of circular dated 3 June 2021, has announced the ESIC COVID-19 Relief Scheme (Scheme) for the beneficiaries of the insured persons, in the instance the insured person died as a result of COVID-19. The Scheme will be valid for a period of 2 years with retrospective effect from 24 March 2020. In this update, the authors examine the salient provisions of the Scheme.

Understanding the ESIC-benefit framework

Under the Employees' State Insurance Act, 1948 (ESI Act), an 'insured person' is a person who is or was an employee in whose respect the employer deposits or deposited contributions and who, by this reason, becomes entitled to any benefit under the statute and its regulations. At present, the insured persons are employees drawing wages not exceeding INR 21,000 per month.

The ESI Act provides 6 kinds of benefits to insured persons. These are (a) medical benefit to insured persons and their family members, (b) sickness benefit in the form of cash compensation to insured persons for a period up to 91 days in a year, (c) maternity benefit in case of confinement, sickness arising out of pregnancy, premature birth of child or miscarriage, (d) disablement benefit in case of employment injury, (e) dependants' benefit in case of death of the insured person, and (f) payment of funeral expenses to the eldest surviving member of the family of the deceased insured person.

Notwithstanding the abovementioned statutorily mandated benefits, the ESI Act empowers ESIC to come up with additional measures for improvement of the health and welfare of the insured persons and related beneficiaries. It is in pursuance of this provision that ESIC has released the Scheme, given that the current benefits of this nature largely relate to death arising from an 'employment injury' (in other words, personal injury arising out of or in the course of employment of the insured person).

Salient provisions of the Scheme

As mentioned above, the Scheme aims to provide periodic payments to eligible dependant family members of the insured person upon the latter's death due to COVID-19 (with a guaranteed minimum relief of INR 1,800 per month). The noteworthy provisions of the Scheme are set out below:

a) *Eligible insured person*: For the eligible dependants to claim periodic payments under the Scheme, the deceased insured person should have been registered on ESIC's online portal at least 3 months prior to the date of diagnosis of COVID-19. Further, he / she should have been in employment on the date of such diagnosis and should have, through his / her employer, paid contributions for at least 70 days in the course of up to 1 year immediately preceding the date of diagnosis of the disease.

b) *Eligible dependants*: The Scheme provides the list of relatives who shall be eligible to claim the relief in the event of death of an eligible insured person. These *inter alia* include the spouse, a legitimate or adopted son who has not attained 21 years of age, an unmarried legitimate or adopted daughter, and the widowed mother.

c) *Quantum of the benefit*: Upon meeting the above-mentioned criteria, the eligible dependants shall be entitled to receive 90% of the deceased insured person's average daily wages (Full Rate). The manner of payment of the benefit is set out below.

Dependant	Rate of Payment	Period of Payment
Spouse	3/5th of the Full Rate	During life
Legitimate or adopted son	2/5th of the Full Rate (per dependant)	Until he attains 25 years of age (unless the son is infirm and wholly dependent on the insured person's earnings, in which case payment shall be made until the infirmity lasts)
Unmarried legitimate or adopted daughter	2/5th of the Full Rate (per dependant)	Until marriage (unless the daughter is infirm and wholly dependent on the insured person's earnings, in which case payment shall be made until the infirmity lasts)
Widowed mother	2/5th of the Full Rate	During life

If the total relief as set out above exceeds the Full Rate, the share of each of the dependants mentioned above would be proportionately reduced. The Scheme also envisages payment of benefit to other eligible relatives of the deceased insured person if the latter does not leave behind a spouse / legitimate or adopted child / widowed mother.

d) *Procedure for filing a claim*: In order to claim relief, the eligible dependant will be required to submit Form CRS-I appending (i) insured person's COVID-19 positive report, (ii) insured person's death certificate, and (iii) dependant's Aadhaar or birth certificate (for verification of age and identity), in the nearest branch office of the ESIC. The claim, if filed in proper form, will be settled within 15 days of its receipt. ESIC has also notified a list of public grievance officers for the purposes of the Scheme.

Comments

The Scheme is indeed a step in the right direction. Few practical aspects may, however, need to be ironed out. For instance, manner of dealing with a situation where the claimant is unable to furnish COVID-19 positive report of the insured person. This situation is particularly relevant in the context of the second wave of the COVID-19 pandemic in India, when several persons despite being symptomatic of COVID-19 received a COVID-19 negative report, thereby prompting the Central Government to announce that a COVID-19 positive report would not be required for admission to a hospital. Further, while the Scheme also allows relief in cases where the insured person died after recovering from COVID-19 within 30 days of recovery (upon the decision of the Regional Director / Sub-Regional Office-in-Charge), it is unclear if the Scheme would cover instances where the death is attributable to other potentially COVID-19 related causes such as mucormycosis or 'black fungus' (a fungal infection that targets a weakened immune system).

There are concerns that with the reduction in the rate of contributions to the employees' state insurance fund from 6.5% to 4% in 2019 and the measures such as the one under discussion, there may be a dent in ESIC corpus which may impact the provision of other benefits to beneficiaries in the future. It is hoped that the Central Government would address these concerns soon.

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