Employees Provident Funds Act, 1952

As per Preamble to the Act, the EPF Act is enacted to provide for the institution of provident funds, pension fund and deposit lined insurance fund for employees in factories and other establishments. - - The Employees' Provident Funds and Miscellaneous Provisions Act is a social security legislation to provide for provident fund, family pension and insurance to employees. Employee has to pay contribution towards the fund. Employer also pays equal contribution. The employee gets a lump sum amount when he retires, which will be useful to him after retirement. The Act covers three schemes i.e. PF (Provident Fund scheme), FPF (Family Pension Fund scheme) and EDLI (Employees Deposit Linked Insurance scheme).
The EPF Act contains basic provisions in respect of applicability, eligibility, damages, appeals, recovery etc. The three schemes formed by Central Government under the Act make provisions in respect of those schemes.

Applicability of the Act – This Act applies to whole of India except the state of Jammu & Kashmir.

Establishment to which act applies:

1. Every establishment which is a factory engaged in industry specified in Schedule- I to the Act and in which 20 or more persons are employed and
2. any other establishment or class of establishment employing 20 or more persons which may be specified by Central government by notification in official gazette. - - Central Government can also apply provisions of the Act to any establishment even if it employs less than 20 persons. [section 1(3)].

In *RPFC* v. *T S Hariharan* 1971 Lab IC 951 (SC), it was held that temporary workers should not be counted to decide whether the Act would apply.
Even if the provisions of PF Act are not applicable in a particular establishment, if employer and majority of employees agree, the Central Provident Fund Commissioner can apply the provisions to that establishment by issuing a notification in Official Gazette. [section 1(4)]. Once the provisions of Act become applicable, it continues to be applicable even if number of employees fall below 20. [section 1(5)].

Coverage of Act - The Act has been extended to * Factories * Mines other than coal mines * Hotels and restaurants * Plantation of tea, coffee, rubber [Tea factories in Assam have been excluded vide para 1(3)(a) of EPF Scheme] * Trading and commercial establishments engaged in purchase, sale or storage of goods * Establishments of exporters, importers, advertisers, stock exchanges * Canteens * Establishments of Attorneys, CA, ICWAs, Engineers and Contractors, architects and medical practitioners * Hospitals * Travel agencies * Banks doing business only in one State * General Insurance * Expert services * Clubs and societies rendering services to their members * Agricultural farms * Financial Establishments other than banks * Building and construction Industry * Poultry farming * University, college or schools. - - The Act has been extended w.e.f. 1.4.2001 vide notification dated 22.3.2001, to * courier services * Aircraft or airlines other than aircraft or airline owned or controlled by Government * Establishment engaged in rendering cleaning and sweeping services.

Once an establishment is covered under PF, all its departments and branches wherever they are situated are also covered.

Other Non-Factory Establishments Covered - Besides factories, other establishments employing 20 or more persons can be covered under the Act u/s 1(3)(b). Various notifications have been issued extending the provisions of PF Act to non-factory establishments. Some major among them are - plantation, mines, coffee, hotels and restaurants, cinema and theatres, trading and commercial establishments, laundry, canteens, establishments of attorneys/CA/ ICWA/engineers/ architects/medical practitioners, hospitals, financial establishments (other than IFCI, UTI, IDBI, SFC), building and construction industry, poultry, university, college, schools, scientific institutions etc.

Transitory Provisions When Act Is Extended **-** It is possible that when PF Act is extended to certain establishment, some PF scheme may be already in existence. Such scheme will continue and the balance amount in such scheme to credit of the employee will be transferred to the Provident Fund under statutory scheme of PF Act. [section 15].

Establishment to include all departments and branches **- W**here an establishment consists of different departments or has branches, whether situate in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment. [section 2A]. - - Thus, if factory is covered, the head office and branches will also be covered under the Act.

Voluntary Coverage

The establishments are allowed the coverage under the provision of the Act on voluntary Basis under Section 1(4) of the Act on an application with the consent of majority of the Employees in case the same is not otherwise coverable the above conditions.

The establishments covered on voluntary basis are required to comply with the provisions Of the Act uniformally at par with other covered establishments and there is no scope for Opting out on a subsequent date.

Act not applicable to certain establishments - As per section 16(1), the PF Act does not apply to (a) any establishment registered under Cooperative Societies Act or State law relating to cooperative societies, employing less than 50 persons and working without paid of power (b) to any establishment belonging to or under Control of Central Government or a State Government and whose employees are entitled to benefit of contributory provident fund or old age pension. (c) to any establishment set up under any Central or State Act and whose employees are entitled to benefit of contributory provident fund or old age pension..

Where PF Act is not applicable - The PF Act is not applicable to certain establishments—* Factories or establishments employing less than 20 employees. *However, once Act becomes applicable, it continues to apply even if subsequently, the* number is lower than 20 * Banks doing business in more than one State * Coal mines * Units established under Cooperative Societies Act employing less than 50 workers and working without aid of power * Other establishments belonging to or under control of Central Government or State Governments and whose employees are entitled to benefits of contributory provident fund or pension. * Tea factories in Assam * Exemption granted by Central Government by a special notification.

Exemption- Under the provision of Section 17 of the Act, the employers can seek exemption from the scheme provided the establishments have formulated their own rules, which are not less favorable than those specified in the statutory scheme.
The employers of the exempted establishments will continue to report compliance with the provisions of the Act and other schemes unless exempted separately and their functioning will be regulated with the conditions of exemption as specified.

Administration of the Fund - Both employer and employee have to pay contribution at prescribed rates.. These amounts are credited to a fund. The fund vests in and is administered by Central Board. [section 5(1A)].

Employee-Definition: "Employee" means any person who is employed for wages in any kind of work manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employers and includes any persons employed by or through a contractor in or in connection with the work of the establishment.

Employees covered under the scheme - As per section 2(f), "employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets his wages directly or indirectly from the employer. It includes any person - (*i*) employed by or through a contractor in or in connection with the work of the establishment (*ii*) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 or under the standing orders of the establishment.
Thus, (a) Persons employed through contractor in connection with work of establishment are covered (b) Apprentices employed under Apprentices Act or under standing orders of establishment are excluded, i.e. they are not employees. [The model standing orders merely state that an 'apprentice' is a learner who is paid an allowance during the period of his training].

Non-Eligible employees under PF - * Employee whose 'pay' is more than Rs. 6,500 per month are not eligible. (It may be noted that limit of pay was Rs 5,000 upto 31.5.2001 and Rs. 3,500 upto 30th Sept., 94) * Apprentices as per certified standing orders or under Apprentices Act * Casual employees. However, employees employed through contractors have also to be covered under PF.

Membership: All the employees (including casual, part-time, daily wages etc.) other than an excluded employee are required to be enrolled as members of the fund from the day; the Act comes into force in such establishment.

Excluded Employee-Definition:

"Excluded Employee" means an employee who having been a member of the fund has withdrawn the full amount of his accumulations in the fund on retirement from service after attaining the age of 55 years; or

an employee whose pay at the time, he is otherwise entitled to become a member of the fund exceeds Rs. 5000-per month.

Employee to become member of Fund immediately on joining **–** Every employee employed in or in connection with work of a factory or establishment to which the Act applies is entitled and required to become member of Provident Fund, unless he is an excluded employee. [para 26(1) of EPF Scheme]. An employee who is drawing 'pay' above prescribed limit (presently Rs 6,500) can become member with permission of Assistant PF Commissioner, if he and his employer agree. [para 26(6) of EPF Scheme].

Contribution by employer and employee - As per section 2(c) "contribution" means a contribution payable in respect of a member under a Scheme or the contribution payable in respect of an employee to whom the Insurance Scheme applies.

As per section 6, contribution shall be paid by employer @ 12% of basic wages plus dearness allowance plus retaining allowance. This amount is defined as 'pay' as per explanation to para 2(f)(ii) of EPF Scheme. Equal contribution is payable by employee also. A person who is already a member continues to be a 'member' even if his 'pay' exceeds Rs 6,500. However, the contribution is limited to Rs 6,500 only. [para 26A(2) of EPF Scheme].

Contribution payable under PF Scheme - The Principal Employer is liable to pay contribution of his own employees as well as employees employed through contractor. Principal Employer can recover from contractor the amount paid by him on behalf of contractor. The contribution is 12% of 'pay' i.e. basic wages, plus dearness allowance, cash value of food concession and retaining allowance. Contribution of both employer and employee is same i.e. 12% each.

Employer has to pay his contribution to EPF. He cannot deduct his contribution from wages of the employee. However, he has to deduct employee's share from his salary and pay the same in EPF scheme. This deduction can be only from the wages pertaining to period for which contribution is paid. However, if there is accidental omission, the amount can be recovered later. Amount deducted from salary of employees is held in trust by the employer or contractor.

Out of employer's contribution of 12/10%, the Employer's contribution of 8.33% will be diverted to Employees' Pension Scheme. The balance will be retained in the EPF scheme. Thus, on retirement, the employee will get his full share plus the balance of Employer's share retained to his credit in EPF account. [This diversion is only w.e.f. 16th November, 95. Earlier Employer's contribution to their credit will continue to remain to their credit].

Lower contribution in certain cases - The employer's and employee's contribution is 12% each. This is applicable to many of industries and establishments. However, this contribution is not applicable to - * any establishment employing less than 20 persons * any establishment registered with Board for Industrial and Financial Reconstruction

(BIFR) as a sick company - the lower rate of contribution continues till its net worth is positive * any other establishment which has accumulated loss equal to or more than its assets and has also suffered cash loss in last two years. * Jute industry * Beedi industry * Brick industry * Coir industry other than the spinning sector * Guar gum factories. In these cases, the contribution is 10%.

Employees Provident Fund Scheme - This is the main scheme under the Act. Both employer and employee have to pay contribution to Provident Fund. The employer has to deduct contribution of employee from the salary of employee and has to pay both employees' contribution as well as employer's contribution by a challan in prescribed form. The amount has to be paid in approved bank.
EMPLOYEE CAN PAY HIGHER CONTRIBUTION - Employee has to contribute 12% of his 'pay' as contribution. The employee can voluntarily pay higher contribution above the statutory rate. However, employer does not have to match the voluntary contribution, over and above the statutory rate. [para 26(2) of EPF Scheme].

Contribution as percentage of wages

S. No.	Name of the Scheme	Employer	Employee	Central Govt.
1	Provident fund Scheme	12%	3.67% (amount in excess of 8.33%)	NIL
	(In case of certain establishment as per details given earlier)	10%	1.67% (amount in excess of 8.33%)	NIL
2	Insurance Scheme	NIL	0.5%	NIL
3	Pension Scheme	NIL	8.33%	1.16%

Basic Wages
"Basic wages" means all emoluments: -
(a) which are earned by an employee
(b) while on duty or on leave or on holidays with wages in either case
(c) in accordance with the terms of the contract of employees and
(d) which are paid or payable in cash to employee.

Basic Wages does not include:

a. The cash value of any food concession.
b. Any dearness allowance
c. Any present made by the employer.

Meaning of Dearness Allowance (Section 2(b):
All cash payment by whatever name called paid to an employee on account of:

a. A rise in the cost of living
b. House Rent Allowance
c. Overtime Allowance

d. Bonus
e. Commission or
f. Any other similar allowance payable to the employee in respect of his employment or of the work done in such employment.

Mode Of Payment:

The employer shall pay both the contributions payable by himself and on behalf of the member employed by him directly or through a contractor along with the administrative Charges and his own contribution towards Employees Deposit Linked Insurance Scheme,1976 within 15days of the close of every month by Bank Draft or Cheques, provided that if the payment is made by Cheques, it should be drawn only on the Local bank of the place in which deposits are made.

Provided further that where there is no branch of the Reserve Bank or the State Bank of India at the station where the covered establishment is situated, the employer shall pay the amount by means of Reserve Bank of India (Governmental drafts at par).

The employer has to recover the amount of member's contribution paid by him by means of deductions from the wages of the member. No such dedcution is to be made from any wages other than that which is paid in respect of the period or part of the period in respect of which the contribution is payable.

Duties Of Contractors:

Every contractor shall within 7 days of the close of every month submit to the principal employer statement showing the recoveries of contributions in respect of employees employed by or through him and shall also furnish to him such information, as the principal employer is required to furnish under the provisions of the Scheme to the Commissioner.

Duties Of Employer:

(i) The employee shall furnish the particulars concerning the member and his family in Form No. 2 to the Commissioner.
(ii) The employer shall prepare a contribution card in Form No. 3A in respect of every employee/member in his employment.
(iii) Every employer shall send to the Commissioner within 15 days of the extension of the Scheme a consolidated return in Form No.9
(iv) Every employer shall send within 15 days of the close of each month a return in Form No. 5/10 of the employees who become members of the fund for the first time during the preceding month/leaving service of the employer during the preceding month. If there is no employee to become a member of the fund for the first time or there is no employee leaving service of the employer during the preceding month, the employer shall send a NIL Return.
(v) Every employer shall maintain an inspection notebook for an inspector to record his observations on his visit to the establishment.
(vi) Every employer of a covered establishment shall furnish in duplicate a return in Form No.5A containing particulars of all the branches and departments and owners, occupiers, directors, manager, or any other person or persons who have the ultimate

control over the affairs of such establishment. Any change from time to time has to be intimated within 15 days of such change.

(vii) The employer shall forward to the Commissioner within 25 days of the close of the month a copy of the wages payment register for the month showing the amount recovered from the wages of each employee towards the Provident Fund the account number thereof, the amount contributed by the employer to such fund. In case no such recoveries have been made from an employee, the employer shall show 'NIL' and reasons thereof.

(viii) The employer shall also submit to the Commissioner within one month of the close of the period of currency, a consolidated annual contribution statement in Form No. 6A showing the total amount of recoveries made during the period of currency from the wages of each member and the total amount contributed by the employer in respect of each such member for the said period.

Administrative Charges:

The employee of a covered establishment is required to pay the administrative charges as fixed By the Government of India from time in consultation with the Central Board of Trustees The Rate of Administrative charge is 1.1% of the wages/salary of the employees per month at the present.

Inspection Charges:

The employers of the exempted establishments are required to pay inspection charges at the rate of 0.01% of the wages/salary of the employees per month at the present.

RPFC is liable under Consumer Protection Act - The Regional Provident Fund Commissioner is providing service under the Act and hence he is liable under Consumer Protection Act. - *RPFC* v. *Shiv Kumar Joshi* (1996) 4 CTJ 805 = 1996 LLR 641 (NCDRC 5 member bench) - confirmed in *RPFC* v. *Shiv Kumar Joshi* 1999 AIR SCW 4456 = 1999(7) SCALE 453 = 2000 LLR 217 = AIR 2000 SC 331 = 99 Comp Cas 347 = (2000) CLA-BL Supp 26 = 24 SCL 46 (SC).

Interest on account **–** PF Commissioner shall maintain account of each member of EPF scheme. [Para 59 of Scheme]. Interest is credited to the account of employee. The Interest is calculated on monthly running balance basis. Amount standing to credit at end of the month is considered for calculation of interest for the following month. The interest rate is declared every year by Central Government in consultation with Central Board of Trustees of Provident Fund. [Para 60 of EPF Scheme].

Employees' Pension Scheme - This scheme has been introduced w.e.f. 16th November, 95. The Scheme is applicable to all subscribers of Employers' Provident Fund. It is also compulsory to persons who were subscribers as on 16.11.95.

CONTRIBUTION - The employer's contribution of 8.33% will be diverted to the fund of Pension Scheme. Employee does not have to make any contribution. Employer's contribution is 12%/ 10%. In such cases, 8.33% is diverted to Pension scheme and balance 1.67%/3.67% as the case may be, will be in credit of employee's name in Provident Fund account. The 8.33% is on maximum salary of Rs. 6,500. If some

employers are paying contribution on salary in excess of Rs. 6,500, the excess contribution will be credited to Provident Fund account and not to Pension scheme.
No separate administration charges or inspection charges are payable, as these are already paid along with Provident Fund contribution.

Benefits Under The Scheme - Members will get pension on superannuation or retirement from service and upon disablement during employment. Family pension will be available to widow/widower for life or till he/she remarries. In addition, children will be entitled to pension, upto 25 years of their age. In case of orphans, pension at enhanced rate is available upon death of widow/widower or ceasing payment of widow pension. Benefit of pension to children or orphan is only restricted for two children/orphans.
If the person is unmarried or has no family, pension is available to nominee for a specified period.

Commutation Of Pension - The member can commute 33.33% of the pension, so as to receive hundred times the monthly pension so commuted as commuted value of pension. Balance will be paid on monthly basis.

***Employees Deposit Linked Insurance Scheme* -** The purpose of the scheme is to provide life insurance benefits to employees who are already covered under PF/FPF. The employer has pay contribution equal to 0.50% of the total wages of employees In addition, administrative charges of 0.1% of total wages. [Notification No. AO 503(E) dated 28-7-1976 issued u/s 6C(2) of PF Act].
The employee does not contribute any amount to the scheme. The salary limit for coverage of employees is same as that of Provident Fund.
Exemption from the scheme can be obtained from RPFC if LIC Group Gratuity scheme is adopted by employer. If exemption is granted, only inspection charges @ 0.005% are payable to PF authorities.

Benefit to nominee of employee - If an employee dies during employment, his nominee or family member gets an amount equal to average balance in the Provident Fund Account of the deceased employee during last 12 months. If such balance is more than Rs. 35,000, the insurance amount payable is Rs. 35,000 plus 25% of the amount in excess of Rs. 35,000, subject to overall limit of Rs. 60,000. If the employees are covered under another life insurance scheme whose benefits are better than this scheme, an exemption from this scheme can be obtained. [Increased to 35,000 and 60,000 w.e.f. 13.6.2000]

Transfer of Accounts (Section 17A)
Case-1: Where act applies to both establishments:
The balance standing to the credit of employee shall be transferred to the provident fund account of the employee in the new establishment.

Case-2: Where act applies to current and does not apply to new establishments:
The amount of accumulation to the credit of such employee in the fund, or as the case may be, in the provident fund of the establishment left by him shall be transferred within such time as may be specified by the central government in this behalf, to the credit of his

account in the provident fund of the establishment in which he is re-employed, if the employee so desires and the rules in relation to that provident fund permits such transfer.

Case-3: Where act does not applies to current but apply to new establishments:
The amount of accumulation to the credit of such employee in the fund, in the provident fund of the establishment left by him may, if the employee so desire and the rules in relation to such provident fund permit, be transferred to the credit of his account in the fund or as the case may be, in the provident fund of the establishment in which he is re-employed.

Liability of employer in case of transfer of establishment (Section 17B)
Where an employer, in relation to an establishment, transfer that establishment in whole or in part, by sale, gift, lease or licence or in any other manner whatsoever, then:-

a. the employer and the person to whom the establishment is so transferred shall jointly and severally be liable to pay the contribution, and
b. other sums due from the employer under any provision of this act or the scheme or the pension scheme or the insurance scheme as the case may be, in respect of the period up to the date of such transfer:

The liability of the transferee shall be limited to the value of the assets obtained by him by such transfer.

Penalties: (Section-14):

S.No	Who is liable	Default	Penalty
1.	Whoever	Knowingly making or causing to be made any false statement or false representation for avoiding any payment under the Act or scheme	Imprisonment for a term which may extend to *one year*, or with fine of *five thousand* rupee, or with *both*
2.	Employer **a.** **b.**	Contravention or defaulting in complying with- the provisions of section 6 or clause a of sub-section 3 of section 17 in so far as it relates to the payment of inspection charges, or para 38 of the scheme in so far as it relates to the payment of administrative charges	Imprisonment for a term which may extend to *three years* but: Which shall not be less than one year and a fine of ten thousand rupees in case of default in payment of the employees' contribution which has been deducted by the employer from the employees' wages; Which shall not less than six months and a fine of five thousand rupee , in any other case. Court may, for any adequate and special reasons to be recorded in the judgment, impose a

			sentence of imprisonment for a lesser term.
3.	Employer	Default in payment of inspection charges [default of section 6C, 17(3A)(a)]	Imprisonment not less than six months and up to one year plus fine up to Rs 1000/- Court may, for any adequate and special reason to be recorded in the judgment, impose a sentence of imprisonment for a lesser term.
4.	Any person	Contravention of the Act, or any of the schemes	Imprisonment for a term which may extend to one year, or with fine which may extend to Four thousand rupees, or with both
5.	Whoever	Defaulting in compliance with any provision or conditions of exemption under section 17	If no other liability is elsewhere provided by or under this act for such contravention or non-compliance, be punishable with imprisonment which may extend to six months, but which shall not be less than month, and shall also be liable to fine which may extend to five thousand rupees

THE EMPLOYERS COVERED UNDER THE PROVISIONS OF THE EMPLOYEES' PROVIDENT FUND AND MISCELLANEOUS PROVISIONS ACT, 1952 SHOULD BE REGULAR IN COMPLICANCE IN THEIR OWN INTEREST AND FOR BETTERMENT OF THEIR EMPLOYEES KEEPING IN VIEW THE ULTIMATE GOAL OF PROVIDING SOCIAL SECURITY TO THEM WHICH WOULD RESULT IN ENHANCED PRODUCTIVITY.
