

## 9. Other Laws

What other laws affect NGOs? A basic introduction is given here. Does a particular law apply to you? In many cases, it is difficult to say without a detailed study. Therefore, please consult your auditors or lawyers before taking any important decisions in this matter.

People often ask: Where do we get the money to pay PF, gratuity etc.? When a grant-making agency agrees on a budget, the salary figures are total figures. These include all employee benefits. Therefore, you may not be able to get additional funds for these. In most cases, you will end up rearranging the salary packet to pay for these.

### a) Provident Fund

Provident Fund<sup>1</sup> (PF) applies mainly to factories. However, Government has also extended it to some other organisations<sup>2</sup>, which are not factories. In either case, PF becomes applicable<sup>3</sup> only if there are 20 or more employees. NGOs or charitable organisations are also covered<sup>4</sup>, if they fall within the norms.

Who is an employee? Any person who receives wages for work is an employee. Renaming wages as 'honorarium' does not change things. The relationship of employee and employer is important for this purpose<sup>5</sup>. Part-time employees are also covered<sup>6</sup> under PF. However, casual labour and people employed for short durations are not counted<sup>7</sup>.

Generally speaking, employees drawing more than Rs.6,500 per month are excluded from the EPF scheme<sup>8</sup>.

#### (1) Activities covered under PF

If you are manufacturing one of the following things<sup>9</sup>, then you may be covered under PF. Remember, you should be employing at least 20 persons:

- Printing, including screen printing
- Medical and pharmaceuticals, including *ayurvedic* medicines
- Agarbatti*, Textiles, coir or leather items

<sup>1</sup> Employees' Provident Funds & Miscellaneous Provisions Act, 1952

<sup>2</sup> Under sec. 1(3)(b)

<sup>3</sup> PF continues to apply later also, even if number of employees becomes less.

<sup>4</sup> Venkataramana Dispensary v. Union of India (1986) 2 LLN 942 (Mad)

<sup>5</sup> Sri Varadarajaswami Transports (P) Ltd. V. R.P.F. Commissioner AIR 1966 Mad 466

<sup>6</sup> T.I. Cycles of India v. E.S.I.C., Madras, 1977 Lab IC 1335; Railway Employees' Co-operative Banking Society Ltd. V Union of India, 1980 Lab IC 1212 Raj.

<sup>7</sup> P.F. Inspector, Guntur v. T.S. Hariharan, AIR 1971 SC 1519; R.P.F. Commissioner, A.P. v. T.S. Hariharan, (1971) 2 SCC 68

<sup>8</sup> They can apply to the PF commissioner for inclusion. Also, they are counted as normal employees for working out the number of employees in an organization.

<sup>9</sup> Full list is given in Schedule 1 to the PF Act.

- ❑ Bottling or canning of fruits and vegetables
- ❑ Stationery items
- ❑ Milk and milk products

Some other types of activities are also covered. Once again, you should be employing at least 20 persons. Relevant examples are:

- ❑ Processing or manufacture of wooden furniture, sports goods, cane or bamboo products
- ❑ Wood workshops
- ❑ Societies, clubs or associations which provide boarding, lodging or other services to members
- ❑ Societies, clubs or associations which stage plays or other performances, on the basis of a ticket.
- ❑ Societies, clubs or associations which provide services to their members on subscription or membership fees
- ❑ Hospitals run by any individual, society or institution
- ❑ Schools, training centres, scientific or research associations
- ❑ NGOs running credit-based lending programs for earning interest

## (2) Monthly deductions

Once PF becomes applicable, you have to deposit some amount each month. This amount comes both from employee and the employer (NGO).

- ❑ 12% of employee's monthly salary is deducted<sup>1</sup>.
- ❑ Additional 3.67% is contributed by the employer (NGO).
- ❑ The NGO also has to deposit 8.33% for the Pension Fund.

Calculate contribution on the basis of actual salary drawn during a month. Salary means basic wages, dearness allowance (including food concession allowed) and retaining allowance (if any). Round it off to the nearest rupee.

The NGO also has to deposit additional amounts as 'Employee's Deposit Linked Insurance' and as 'administrative charges'.

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<sup>1</sup> For some activities, a higher rate of 12% is applicable.

**(3) Depositing the amount**

After deducting the PF amount, you have to deposit it within 15 days:

- ❑ Prepare separate cheques or bank drafts for contribution and administrative charges. Pension Fund amount should also be paid by separate cheque.
- ❑ Cheque / draft should be in the name of P.F. Commissioner.
- ❑ Use separate PF challans for depositing each type of contribution.
- ❑ Deposit the cheques in State Bank of India or Reserve Bank of India.

**Provident Fund**

- 12% from employee
- 3.67% from employer

**Pension Fund**

- 8.33% from employer
- 1.16% from Government

**(4) Filing Returns**

PF involves a lot of paperwork. Some organizations tie up with a retired employee from PF Department to complete this. **Some of the forms are:**

- ❑ Monthly Return of contributions should be filed in Form No. 12A.
- ❑ Annual Return of contributions should be filed in Form No. 6-A.
- ❑ Contribution card of members should be maintained in Form No. 3A.
- ❑ If an employee leaves, inform the PF Department in Form No. 10.
- ❑ Form No. 2 should be filled by the members for nomination.
- ❑ When a new employee joins, file Form No. 5.

**(5) Penalties**

**Some of the penalties for violating PF Act are:**

Offense	Prison	Fine
Not depositing employee's contribution	One year - three years	Rs.10,000
Not paying inspection fees or administration charges	Six months - three years	Rs.5,000
False statement to avoid PF payments	Up to one year	Rs.5,000

**b) Gratuity**

Gratuity was extended to NGOs<sup>1</sup> on 6<sup>th</sup> September 1997. **The NGO should have ten or more employees. All employees are covered<sup>1</sup>.** Employee means any person who is

<sup>1</sup> Trusts or societies. S.O. 2218 dtd. 20-Aug-97

employed on salary or wages. Renaming wages or salary as honorarium does not change this.

### (1) Compulsory Insurance

The concerned NGO should also take out an insurance policy for this. Premiums are paid annually. The insurance company will calculate the premium on the basis of likely liability. If you have more than 500 employees, you can establish an approved Gratuity fund instead of taking out the policy.

### (2) Eligibility

An employee becomes entitled to gratuity if he or she has worked with you for 5 years or more. Gratuity is payable when an employee leaves<sup>2</sup>, retires or dies during service. Gratuity must be paid within 30 days of this. If a person dies, then the minimum service requirement of 5 years does not apply. In some cases, a person's gratuity can be forfeited or reduced.

### (3) How much

You should pay at least 15 days' salary for each year of service. Maximum gratuity under the Act is Rs.3.50 lakhs. However, you can pay more also. Gratuity received by an employee as per limits is exempt from Income Tax.

For calculating gratuity, the last pay drawn is used as the basis. For example, Venkat joined Lok Jagran Manch in January 1987 @ Rs.1,000 per month. He resigned from his job in August 1999<sup>3</sup>. In 1999, he was drawing Rs.8,000 per month. How much gratuity is payable to him? Rs.60,000.

$$\frac{15 \text{ days}}{26 \text{ days}} \times 13 \text{ years} \times \text{Rs.8,000} = \text{Rs.60,000}$$

Why do we take 26 days as the base? The law assumes that there are 26 working days in a month. If a person is being paid salary on a daily basis, then the daily rate (multiplied by 15 days) will be used, instead of the 15/26 formula. Also, while calculating gratuity, we ignore allowances like overtime, HRA, bonus etc. Only basic salary and DA<sup>4</sup> are considered.

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<sup>1</sup> Regardless of their post or salary

<sup>2</sup> Some cases of disablement are also covered.

<sup>3</sup> Period of six months or more is counted as full year.

<sup>4</sup> Dearness Allowance