

Employees State Insurance (Amendment) Act, 2010

18 of 2010

[24 May 2010]

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Employees State Insurance (Amendment) Act, 2010

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An Act further to amend the Employees' State Insurance Act, 1948.
Be it enacted by Parliament in the Sixty-first Year of the Republic of
India as follows:--

1. Short Title And Commencement :-

(1) This Act may be called the Employees State Insurance (Amendment) Act, 2010.

(2) Section 18 shall be deemed to have come into force on the 3rd day of July, 2008 and the remaining provisions of this Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Amendment Of Section 1 :-

In the Employees State Insurance Act, 1948(34 of 1948) (hereinafter referred to as the principal Act), in section 1, in sub-section (5), for the words "six months", the words "one months" shall be substituted.

3. Amendment Of Section 2 :-

In section 2 of the principal Act, --

(A) in clause (6A),--

(a) for sub-clause (i), the following sub-clause shall be substituted, namely.--

"(i) a widow, a legitimate or adopted son who has not attained the age of twenty-five years, an unmarried legitimate or adopted daughter,";

(b) in sub-clause (ii), for the words "eighteen years", the words "twenty-five years" shall be substituted;

(B) in clause (9), for the words "or under the standing orders of the establishment;", the words "and includes such person engaged as apprentice whose training period is extended to any length of time" shall be substituted;

(C) in clause (11), for sub-clause (v), the following sub-clauses shall be substituted, namely:--

"(v) dependant parents, whose income from all sources does not exceed such income as may be prescribed by the Central Government;

(vi) in case the insured person is unmarried and his or her parents are not alive, a minor brother or sister wholly dependant upon the earnings of the insured person;";

(D) for clause (12), the following clause shall be substituted, namely:--

(12) "factory" means any premises including the precincts thereof whereon ten or more persons are employed or were employed on any day of the preceding twelve months, and in any part of which a

manufacturing process is being carried on or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952(35 of 1952) or a railway running shed;

4. Amendment Of Section 10 :-

In section 10 of the principal Act, in sub-section (1), for clauses (a) and (b), the following clauses shall be substituted, namely:--

"(a) the Director General, the Employees State Insurance Corporation, ex officio as Chairman;

(b) the Director General, Health Services, ex officio as Co-chairman;"

5. Amendment Of Section 12 :-

In section 12 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:--

"(3) A person referred to in clause (i) of section 4 shall cease to be a member on becoming a Minister or Speaker or Deputy Speaker of the House of the People or Deputy Chairman of the Council of States or when he ceases to be a member of Parliament."

6. Amendment Of Section 17 :-

In section 17 of the principal Act, in sub-section (2), in clause (a), after the proviso, the following proviso shall be inserted, namely:--

"Provided further that this sub-section shall not apply to appointment of consultants and specialists in various fields appointed on contract basis,"

7. Amendment Of Section 37 :-

In section 37 of the principal Act, for the words "five years", the words "three years" shall be substituted.

8. Amendment Of Section 45 :-

In section 45 of the principal Act,--

(a) for the words "Inspectors" and "Inspector", wherever they occur, the words "Social Security Officers" and "Social Security Officer" shall respectively be substituted;

(b) after sub-section (3), the following sub-section shall be inserted, namely:--

"(4) Any officer of the Corporation authorised in this behalf by it

may, carry out re-inspection or test inspection of the records and returns submitted under section 44 for the purpose of verifying the correctness and quality of the inspection carried out by a Social Security Officer."

9. Amendment Of Section 45A :-

In section 45A of the principal Act, in sub-section (1),--

(i) for the word "Inspector", the words "Social Security Officer" shall be substituted;

(ii) after the proviso, the following proviso shall be inserted, namely:--

"Provided further that no such order shall be passed by the Corporation in respect of the period beyond five years from the date on which the contribution shall become payable."

10. Insertion Of New Section 45Aa :-

After section 45A of the principal Act, the following section shall be inserted, namely:--

"45AA. Appellate authority.--

If an employer is not satisfied with the order referred to in section 45A, he may prefer an appeal to an appellate authority as may be provided by regulation, within sixty days of the date of such order after depositing twenty-five per cent. of the contribution so ordered or the contribution as per his own calculation, whichever is higher, with the Corporation:

Provided that if the employer finally succeeds in the appeal, the Corporation shall refund such deposit to the employer together with such interest as may be specified in the regulation."

11. Amendment Of Sections 51A And 51B :-

In the principal Act, in sections 51A and 51B, for the words "an insured persons", the words "an employees" shall be substituted.

12. Amendment Of Sections 51C And 51D :-

In the principal Act, in sections 51C and 51D, for the words "insured person", the word "employee" shall be substituted.

13. Insertion Of New Section 51E :-

After section 51D of the principal Act, the following section shall be

inserted, namely:--

"51 E. Accidents happening while commuting to the place of work and vice versa.--

An accident occurring to an employee while commuting from his residence to the place of employment for duty or from the place of employment to his residence after performing duty, shall be deemed to have arisen out of and in the course of employment if nexus between the circumstances, time and place in which the accident occurred and the employment is established."

14. Amendment Of Section 56 :-

In section 56 of the principal Act, in sub-section (3), for the third proviso, the following proviso shall be substituted, namely:--

"Provided also that an insured person who has attained the age of superannuation, a person who retires under a Voluntary Retirement Scheme or takes premature retirement, and his spouse shall be eligible to receive medical benefits subject to payment of contribution and such other conditions as may be prescribed by the Central Government."

15. Amendment Of Section 58 :-

In section 58 of the principal Act, after sub-section (4), the following sub-sections shall be inserted, namely:--

"(5) The State Government may, in addition to the Corporation under this Act, with the previous approval of the Central Government, establish such organisation (by whatever name called) to provide for certain benefits to employees in case of sickness, maternity and employment injury:

Provided that any reference to the State Government in the Act shall also include reference to the organisation as and when such organisation is established by the State Government.

(6) The organisation referred to in sub-section (5) shall have such structure and discharge functions, exercise powers and undertake such activities as may be prescribed."

16. Amendment Of Section 59 :-

In section 59 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:--

"(3) The Corporation may also enter into agreement with any local authority, local body or private body for commissioning and running

Employees State Insurance hospitals through third party participation for providing medical treatment and attendance to insured persons and where such medical benefit has been extended to their families, to their families.".

17. Insertion Of New Section 59B :-

After section 59A of the principal Act, the following section shall be inserted, namely:--

"59B. Medical and para-medical education.--

The Corporation may establish medical colleges, nursing colleges and training institutes for its para-medical staff and other employees with a view to improve the quality of services provided under the Employees State Insurance Scheme.".

18. Substitution Of New Chapter For Chapter Va :-

For Chapter VA of the principal Act, the following Chapter shall be substituted, namely:--

CHAPTER VA

Scheme for other beneficiaries

73A. Definitions.--

In this Chapter,--

(a) "other beneficiaries" means persons other than the person insured under this Act;

(b) "Scheme" means any Scheme framed by the Central Government from time to time under section 73B for the medical facility for other beneficiaries;

(c) "underutilised hospital" means any hospital not fully utilised by the persons insured under this Act;

(d) "user charges" means the amount which is to be charged from the other beneficiaries for medical facilities as may be notified by the Corporation in consultation with the Central Government from time to time.

73B. Power to frame Schemes.--

Notwithstanding anything contained in this Act, the Central Government may, by notification in the Official Gazette, frame Scheme for other beneficiaries and the members of their families for providing medical facility in any hospital established by the Corporation in any area which is underutilised on payment of user charges.

73C. Collection of user charges.--

The user charges collected from the other beneficiaries shall be

deemed to be the contribution and shall form part of the Employees State Insurance Fund.

73D. Scheme for other beneficiaries.--

The Scheme may provide for all or any of the following matters, namely:--

- (i) the other beneficiaries who may be covered under this Scheme;
- (ii) the time and manner in which the medical facilities may be availed by the other beneficiaries;
- (iii) the form in which the other beneficiary shall furnish particulars about himself and his family whenever required as may be specified by the Corporation;
- (iv) any other matter which is to be provided for in the Scheme or which may be necessary or proper for the purpose of implementing the Scheme.

73E. Power to amend Scheme.--

The Central Government may, by notification in the Official Gazette, add to, amend, vary or rescind the Scheme.

73F. Laying of Scheme framed under this Chapter.--

Every Scheme framed under this Chapter shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the Scheme or both Houses agree that the Scheme should not be made, the Scheme shall thereafter have effect only in such modified form or to be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that Scheme..

19. Validation :-

All things done, or, omitted to be done, and all actions or measures taken or not taken during the period beginning on or after the 3rd day of July, 2008 and ending immediately before the date of commencement of the Employees State Insurance (Amendment) Act, 2010, shall in so far as they are in conformity with the provisions of this Act, as amended by the Employees State Insurance (Amendment) Act, 2010, be deemed to have been done, or taken, or not taken, under the provisions of this Act, as amended by the Employees State Insurance (Amendment) Act,

2010, as if such provisions were in force at the time such things were done or omitted to be done and actions or measures taken or not taken during the said period.

20. Amendment Of Section 87 :-

In section 87 of the principal Act, the following provisos shall be inserted at the end, namely:--

"Provided that such exemptions may be granted only if the employees in such factories or establishments are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act:

Provided further that an application for renewal shall be made three months before the date of expiry of the exemption period and a decision on the same shall be taken by the appropriate Government within two months of receipt of such application."

21. Amendment Of Section 91A :-

In section 91A of the principal Act, for the words "either prospectively or retrospectively", the word "prospectively" shall be substituted.

22. Insertion Of New Section 91Aa :-

After section 91A of the principal Act, the following section shall be inserted, namely:--

"91AA. Central Government to be appropriate Government.--

Notwithstanding anything contained in this Act, in respect of establishments located in the States where medical benefit is provided by the Corporation, the Central Government shall be the appropriate Government."

23. Amendment Of Section 95 :-

In section 95 of the principal Act, in sub-section (2),--

(i) after clause (ef), the following clause shall be inserted, namely:--

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"(eff) the income of dependant parents from all sources;"

(ii) after clause (eh), the following clause shall be inserted, namely:--

"(ehh) the conditions under which the medical benefits shall be payable to the insured person and spouse of an insured person who has attained the age of superannuation, the person who retires

under Voluntary Retirement Scheme and the person who takes pre-mature retirement;".

24. Amendment Of Section 96 :-

In section 96 of the principal Act, in sub-section (1), after clause (e), the following clause shall be inserted, namely: --

"(ee) the organisational structure, functions, powers, activities and other matters for the establishment of the organisation;".

25. Amendment Of Section 97 :-

In section 97 of the principal Act, in sub-section (2), --

(i) in clause (xx), for the word "Inspectors", the words "Social Security Officers" shall be substituted;

(ii) after clause (xx), the following clause shall be inserted, namely:--

"(xxa) the constitution of the appellate authority and the interest on amount deposited by the employer with the Corporation.".