



☎ Off : 26607167 / 42103360 / 26613091
Fax : 080-26500284
Email : kea@airtelmail.in
Web : www.kea.co.in

KARNATAKA EMPLOYERS' ASSOCIATION

NO.74, SHANKARA ARCADE, VANIVILAS ROAD, BASAVANAGUDI
BENGALURU - 560 004
Reg. No. TU 507 / 20-3-1962

Date : 26-06-2010

CIRCULAR No.40/2010

To
All Members of the Association

Sub: New Amendments to ESI Act brings in Welcome Changes.

The Government of India through its notification in the official gazette dated: 25th May, 2010 has enacted The Employees' State Insurance (Amendment) Act, 2010 to amend the earlier ESIC Act, 1948. The ESIC (Amendment) Act, 2010 has received assent of the President on 24th May 2010.

Further, as per the Government of India Gazette Notification No.S.O.1296(E) dated: **1st June 2010**, the Central Government has appointed the 1st day of June, 2010, as the date on which the said Act, except Section 18 thereof, shall come into force. Amended Section 18 comes into force on **3rd July, 2010**.

Following inter alia, are the salient feature of the Employees' State Insurance (Amendment) Act, 2010.

1. These amendments will substantially improve the medical and other benefits under the Scheme. Emphasis has been given for development and expansion of infrastructure for augmenting the benefits under the Scheme.

2. APPERTICES COVERED:

Benefits under the scheme have also been extended to apprentices and trainees employed under Apprentice Act and Standing Order Act.

3. POWER TO APPROPRIATE GOVERNMENT;

The appropriate Government is empowered to extend the provisions of ESIC Act 1948 to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise after giving one month's notice of its intention of doing so by notification in Official Gazette instead of notice period of six months.

4. DEFINITION OF DEPENDENT EXPANDED:

Definition of "dependents" as contained in clause 6A of section 2 of the Act has

been extended to enlarge the number of beneficiaries under the act such as:

- A widow, a legitimate or adopted son below the age of 25 years and an unmarried legitimate or adopted daughter.
- The age limit of the dependants has been enhanced from 18 to 25.

5. Dependent parents as per definition of “family” has been substituted so as to include;

“A minor brother or sister wholly dependent upon the earnings of the insured person in case the insured person is unmarried and his or her parents are not alive”. It has been also clarified that dependent parents to include “Dependent parents, whose income from all sources does not exceed such income as prescribed by the Central Government”.

6. SMALL FACTORIES ALSO ARE COVERED:

The definition of Factory under Section 2(12) has been amended to expand coverage of smaller factories. The amended Act covers all factories which employ 10 or more persons irrespective of the fact whether the manufacturing process is being carried out with the aid of the power or without the aid of the power.

7. INSPECTORS RE-DESIGNATED AS SOCIAL SECURITY OFFICERS:

The designation of Inspector has been re-designated as “Social Security Officer” to enroll them as facilitator of the Scheme rather than to act as mere inspectors.

8. VRS EMPLOYEES ALSO COVERED:

Medical benefits to the insured person and his spouse have been extended under circumstances where insured person retires under Voluntary Retirement Scheme or takes premature retirement. In the earlier Act the benefit was applicable only on attaining the age of superannuation. Proviso to sub section 3 of section 56 has been substituted to provide the same.

9. NOTIONAL EXTENSION OF PREMISES:

Accident occurring to an insured person while commuting from his residence to the place of employment and vice-a-versa shall be deemed to have arisen out of and in the course of employment for the purpose of benefit under the Act. A new section 51-E has been added for this purpose.

10. UNORGANISED SECTOR EMPLOYEES COVERED:

A new Chapter V-A has been added to enable provision for extending medical care to non insured persons against payment of user-charges to facilitate providing medical care to the below poverty line (BPL) families and other un-organized sector workers covered under the Rashtriya Swasthya Bima

Yojana(RSBY).

11. Exemption of a factory or establishment or class of factories or establishments from the operation of this Act will 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.

12. Section 91 A of the Act is amended to removing retrospective grant of exemption from the provision of the Act.

The Government of India Gazette Notification dated: 25th May, 2010 publishing The Employees' State Insurance (Amendment) Act, 2010 and another Gazette Notification No. S. O. 1296 (E). Dated: 1st June, 2010 giving effect to the said Amending Act are enclosed for kind reference of the members

for KARNATAKA EMPLOYERS' ASSOCIATION

B. C. Prabhakar

(B.C. PRABHAKAR)
PRESIDENT

Members who have **not renewed** their membership for the year 2010 are requested to renew immediately.



भारत का राजपत्र The Gazette of India

असाधारण
EXTRAORDINARY

भाग II-खण्ड-3 उप-खण्ड (ii)
PART II - Section-3 Sub-section (ii)
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

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MINISTRY OF LABOUR AND JUSTICE

NOTIFICATION

New Delhi, the 1st June, 2010

S.O. 1296(E).-In exercise of the powers conferred by sub-section (2) of Section 1 of the Employees'-State Insurance (Amendment) Act, 2010 (18 of 2010), the Central Government hereby appoints the 1st day of June, 2010, as the date on which the said Act, except Section 18 thereof, shall come into force.

[F.No.S-38012/01/2008-S.S.-I(Vol.VII)]
S. K. DEV VERMAN, Jt.Secy.



भारत का राजपत्र The Gazette of India

असाधारण
EXTRAORDINARY

भाग II - खण्ड 1
PART II - Section 1

प्राधिकार से प्रकाशित
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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LABOUR AND EMPLOYMENT

(Legislative Department)

New Delhi, the 25th May, 2010/Jyaistha 4, 1932 (Saka)

The following Act of Parliament received the assent of the President on the 24th May, 2010 and is hereby published for general information:—

THE EMPLOYEES' STATE INSURANCE (AMENDMENT) ACT, 2010

(No.18 of 2010)

[24th May, 2010.]

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. (1) This Act may be called the Employees' State Insurance (Amendment) Act, 2010. Short title and commencement.

(2) Section 18 shall be deemed to have come into force on the 3rd 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.

34 of 1948.

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

3. In section 2 of the principal Act,—

(A) in clause (6A),—

Amendment of section 2.

(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-clause 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 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 or a railway running shed;’

35 of 1952.

Amendment of section 10.

4. 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;”.

Amendment of section 12.

5. 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.”

Amendment of section 17.

6. 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,”

Amendment of section 37.

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

8. In section 45 of the principal Act,—

Amendment of section 45.

(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 return submitted under section 44 for the purpose of verifying the correctness and quality of the inspection carried out by a Social Security Officer.”

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

Amendment of section 45A.

(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. After section 45A of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 45AA.

“45AA. 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:

Appellate authority.

Provided that if the employed 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. In the principal Act, in sections 51A and 51B, for the words “an insured person’s”, the words “an employee’s” shall be substituted.

Amendment of sections 51A and 51B.

12. In the principal Act, in section 51C and 51D, for the words “insured person”, the word “employee” shall be substituted.

Amendment of sections 51C and 51D.

13. After section 51D of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 51E.

“51E. 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.”

Accidents happening while commuting to the place of work and vice versa.

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

Amendment of section 56.

“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.”

Amendment of section 58. **15.** In section 58 of the principal Act, after sub-section (4), the following sub-section 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.”

Amendment of section 59. **16.** 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 Employees’ State Insurance hospitals through third party participation for providing medical treatment and attendance to insured persons and where such medical benefit has extended to their families, to their families.”

Insertion of new section 59B. **17.** After section 59A of the Principal Act, the following section shall be inserted, namely:—

Medical and para-medical education.

“59B. 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.”

Substitution of new Chapter for Chapter VA. **18.** For Chapter VA of the principal Act, the following Chapter shall be substituted, namely:—

CHAPTER VA

SCHEME FOR OTHER BENEFICIARIES

Definitions. **73A.** 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. 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.

Power to frame Schemes.

73C. 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.

Collection of user charges.

73D. The Scheme may provide for all or any of the following matters, namely:—

Scheme for other beneficiaries.

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

Power to amend Scheme.

73F. 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.

Laying of Scheme framed under this Chapter.

19. 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.

Validation.

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

Amendment of section 87.

“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.”

Amendment of section 91A. **21.** In section 91A of the principal Act, for the word “either prospectively or retrospectively”, the word “prospectively” shall be substituted.

Insertion of new section 91AA. **22.** After section 91A of the principal Act, the following section shall be inserted, namely:—

Central Government to be appropriate Government. “91AA. 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.”

Amendment of section 95. **23.** In section 95 of the principal Act, in sub-section(2)—

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

“(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;”.

Amendment of section 96. **24.** 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;”

Amendment of section 97. **25.** 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.”

V.K. BHASIN,
Secy. to the Govt. of India.