

## Wages

### **WASHING ALLOWANCE:**

It is a sum paid to defray special expenses entailed by the nature of employment and as such this amount does not amount to wages.

(In lieu of old instructions issued vide Memo No.Ins.III/2/1/65 dt. 8.2.1967)

### **SUSPENSION ALLOWANCE/SUBSISTENCE ALLOWANCE**

During the suspension period the employee is not allowed to actually work and he is not given full remuneration but the permissible subsistence allowance is paid to the employee by way of remuneration for remaining attached to the services of the employer as per the relevant service regulations governing his contract of service, therefore, the subsistence allowance is part of wage as defined under Sec.2(22) of the ESI Act and consequently on the amount of subsistence allowance paid to the suspended employee, contribution is payable.

Supreme Court has also held in the case of RD, ESIC Vs.M/s.Popular Automobiles etc.in its judgement dt. 29.9.97 in Civil appeal no.3850 of 1993 that 'suspension/subsistence allowance is wage and contribution is payable under Sec.2(22) on the said amount'.

(In lieu of earlier instructions were issued vide Memo No.3(2)-1/67 dt. 3.6.67 & letter No.Ins.III(2)-2/71 dt. 10.8.1971)

### **OVERTIME ALLOWANCE**

In the case of the employer as and when the employer finds the need to have work done expeditiously, in addition to the normal work during the course of the working hours, the employer offers to the employee to do the overtime work after the working hours. When employee does overtime work it amounts to the acceptance for the same, hence there emerges concluded implied contract between the employer and the employee. Both the remuneration received during the working hours and overtime constitutes a composite wage and thereby it is a wage within the meaning of Sec.2(22) of the ESI Act. Therefore, the contribution is payable on the overtime allowance. However, overtime allowances will be considered as wage for the purpose of charging the contribution only and will not be considered for the purpose of the coverage of the employee under the Scheme.

The same view was held by the Supreme Court in its judgement delivered on 6.11.96 in the case of Indian Drugs & Pharmaceuticals Ltd. Vs. ESIC, in Civil Appeal No.2777 of 1980. (Old instructions issued vide memo No.3-1(2)/3(1)/68 dt. 31.5.68).

### **ANNUAL BONUS:**

Bonus paid to the employees could not be treated as wage for the purpose of charging of contribution under Sec.2(22), provided the periodicity of the payment is more than 2 months. The said issue was also considered in the meeting of the ESI Corporation held on 19.12.1968 and the Corporation agreed to the recommendations of the Standing Committee that bonus may not be treated as wage. Hence no contribution is payable on annual Bonus.

(Earlier instructions were issued vide memo No.Ins.III/2(2)-2/67 dt. 8.2.1967).

### **INCENTIVE BONUS:**

As per the decision of the Supreme Court delivered on 8.3.2000 in the case of M/s.Whirlpool India Ltd. Vs. ESIC in civil appeal No.1903 of 2000, additional remuneration to become wages has to be paid at intervals not exceeding two months as distinguished from being payable. Thus, there has to be actual payment and the payment of production incentive does not fall either under the 1st part or last part of the definition of the term wages as defined in Sec.2(22) of the Act, hence no contribution is payable on the incentive bonus, provided the periodicity of payment is more than 2

months.

(Earlier instructions were issued by this office vide Memo No.T-11/13/53/19-84-Ins.IV dt. 19.9.84, Memo No.Ins.III-2(2)/2/69 dt,. 26.12.73, Memo No.T-11/13/54/18/82-Ins.IV dt. 14.7.82 & Memo No.D/Ins.5(5)/68 dt. 18.9.88.)

#### **PRODUCTION BONUS:**

Production Bonus like incentive bonus is paid to the workers as additional remuneration and hence like incentive bonus such additional remuneration in order to become wages has to be paid at intervals not exceeding 2 months as distinguished from being payable. Thus, there has to be actual payment and hence no contribution is payable, provided periodicity of the payment is more than 2 months.

(Earlier instructions issued vide letter dated 4(2)/13/74-Ins.IV dated 2.9.85)

#### **INAM/EX-GRATIA PAYMENT:**

Inam represents a payment made by the employer to any employee as a reward for the services rendered by him for which he is/was not under obligation to render the same under the contract of service which is expressed or implied but does not include the payment which have been made to an employee in fulfillment of contract of service. This may include exgratia payment.

Where Inam is being paid for special skill or higher responsibilities/additional duties, it may be taken as remuneration and contribution is payable.

Where the employer has introduced the scheme of Inam but according to terms and conditions the employer has no right to withdraw it or revise it, the same may be treated as wages and contribution is payable.

Where the employer has introduced the scheme of Inam and he has right to revise or withdraw it at his discretion, the payment of Inam under such scheme may not be treated as wages and contribution is not payable provided the payment is made at an interval exceeding two months..

Where there is no scheme of Inam in writing but still employer might be making payment under the head Inam on the basis of some understanding between the parties, in such cases, the nature of payment and its periodicity may be ascertained and whether payment of Inam is an exgratia payment which is not covered by the contract of service. In case the periodicity is more than 2 months, no contribution may be charged.

(Last instructions were issued vide letter No.D-Ins.5(5)/68 dated 21.2.1975).

#### **WAGES PAID DURING LAYOFF:**

During the period of layoff though the employee is not given actual work and is also not given full remuneration but certain wages are paid to the employee by way of remuneration for remaining attached to the factory/establishment of the employer, therefore, such payments paid for the period of layoff are also wages for the purpose of Sec.2(22) of the ESI Act and hence contribution is payable on such payments.

(Earlier instructions were issued in 1968).

#### **ANNUAL COMMISSION**

Sales Commission would fall within the 3rd category of wages as defined under the Act as additional remuneration and there has to be actual payment as the word used is paid and not payable, at intervals not exceeding two months. The question as to why the period of 2 months is fixed was debated in Supreme court in the case of Handloom House, Ernakulam Vs. RD,ESIC in Civil Appeal

No.2521 of 1999 when it was held that no employer shall have the permission to draw the payment of contribution on the premise that annual payments have to be work out. Normally, the wage period is one month, but the Parliament would have thought that such "wage period" may be extended a little more but no employer shall make it longer than two months. This could be the reason for fixing a period of two months as the maximum period for counting the additional remuneration has to make it part of 'wage' under the Act. Therefore, the annual commission is excluded from the definition of the wages and hence no contribution is payable on the annual commission.

( Earlier instructions were issued vide Hqrs.letter No. Ins.III(2)-2/71 dated 10.8.71).

### **HOUSE RENT ALLOWANCE**

House Rent Allowance is wage in cases where it is being paid. Notional amount of house rent can not be presumed as wages for deciding the coverage. In cases where an employee is being paid house rent allowance, the same will be included both for coverage and contribution. In cases where the staff quarters have been allotted the amount of salary and wages paid will count for coverage and contribution and no notional house rent allowance is to be presumed in such cases.

In the cases of Braithawait & Co. Vs. ESIC and M/s.Harihar Polyfibres Vs. ESIC, Bangalore, Supreme Court has also held that house rent allowance is a 'wage' under Sec.2(22) of the ESI Act. (Earlier instructions were issued vide memo No.T-11/13/11/15-Ins.III dt. 28.9.75, No.Ins.III(2)/15/15/74-Ins.Desk.I dated Dec.,76, No.T-11/13/53/19-84/Ins.IV dt. 19.9.84 & No.D.Ins.II/11/3087/303 dated 1.3.1985).

### **NIGHT SHIFT/HEAT/GAS & DUST ALLOWANCE:**

It is an additional remuneration paid to the employee for performing duty at night time during the hours of darkness. This amount is paid by way of incentive under the scheme of settlement entered into between the Management and its workmen and hence are wages within the meaning of Sec.2(22) of the ESI Act. This view was observed by the Full Bench of Karnataka High Court in the case of NGEF Ltd. Vs. Dy.Regional Director, ESIC, Bangalore. Supreme Court in the case of M/s.Harihar Polyfibres Vs. RD ESIC, Bangalore has also held the same view. Hence, Night Shift Allowance, Heat, Gas & Dust allowance are wages under Sec.2(22) of the ESI Act and contribution is payable on the said amount paid by the employer to the employees.

(Earlier instructions were issued vide Memo No.T-11/13/53/19/84-Ins.IV dated 19.9.94).

### **CONVEYANCE ALLOWANCE**

Fixed conveyance allowance flowing out of a wage settlement or as per terms and conditions of employment should be treated as wages under section 2(22) for all purposes except:

1. Amount towards conveyance paid or reimbursed to any employee for incurring expenses for specific duty related journey
2. Reimbursement of actual cost of conveyance for coming to work and going from work on production of ticket or season ticket and subject to proof of actual expenditure
3. Payment of certain amount for maintenance of vehicle depending upon cadre of the official and category of vehicle and subject to production of records for actually maintaining the vehicles
4. Fixed allowance paid at an interval exceeding 2 months, unless such payment is made as per contract or agreement.

### **SERVICE CHARGES**

Service charges are collected by management of the hotel on behalf of their employees in lieu of direct tips and the same is paid to their employees at a later date.

Such amount collected as 'service charges' will not constitute wages under Sec.2(22) of the ESI Act. In the case of ESIC Vs. M/s.Rambagh Palace Hotel, Jaipur, the High Court of Jaipur has held that 'service charges' are not wages under Section 2(22) of the ESI Act. This verdict of the High Court of Jaipur was accepted in the ESIC and hence no contribution is payable on 'service charges'. (Earlier instructions were issued vide letter No.P-12/11/4/79-Ins.Desk.I dt. 18.9.79)

### **MEDICAL ALLOWANCE**

The employees working in factories/establishments are being provided medical services in kind by the employer but in certain factories/establishments instead of providing medical services in kind, the amount spent by the employees on medical care is reimbursed while in some other organisations, employees are being paid monthly cash allowance in lieu of medical aid/reimbursement of medical expenses. Where such payments are made by the employer in lieu of the medical benefit, the same are to be treated as wages under Sec.2(22) of the ESI Act and the contribution is chargeable.

(Earlier instruction were issued vide letter No.Ins.5(5)/68-Ins.III dt. 21.8.71 & Ins.III/2(2)2/68 dated 24.6.71)

### **NEWSPAPER ALLOWANCE**

In certain factories/establishments the employees are reimbursed the cost of Newspapers while in some other factories/establishments the employees are paid monthly newspapers allowance instead of reimbursement of the cost of the Newspapers. Where the amount is being paid regularly to the employees by the employer as Newspapers allowance the same will be treated as wages under Sec.2(22) of the ESI Act and the contribution is chargeable. However, where the cost of Newspapers is reimbursed to the employees, no contribution is to be charged on such payments.

### **EDUCATION ALLOWANCE:**

Employees are being paid monthly Education allowance for the children studying in the Schools/Colleges. Where such education allowance is being paid monthly, the same is to be considered as wages under Sec.2(22) of the ESI Act and the contribution is chargeable on the said amount.

However, in such cases where instead of paying the education allowance on monthly basis, the amount spent as fee is reimbursed to the employees and booked under education allowance, in such cases no contribution is payable.

### **DRIVERS' ALLOWANCE**

In some of the factories/establishments the officers employed as employees are being paid drivers' allowance per month. This allowance is being paid to enable the officers to appoint a driver at their own level and such drivers employed are not being paid salary directly by the factories/establishments. Where such allowance is being paid to the employees and the drivers are not engaged by the employees, in such event the allowance paid as such will be considered as wage under Section 2(22) of the ESI Act and contribution will be chargeable provided the employee is coverable under the Scheme..

However, where the services of the drivers are being utilised, in such event the drivers so engaged will be covered as employee and contribution will be payable on the amount paid to the drivers as salary and booked in the ledgers of the employer under the heading 'Drivers' Allowance'.

**FOOD/MILK/TIFFIN/LUNCH ALLOWANCE:**

Each case of payment of Food, Milk, Tiffin and Lunch Allowance has to be examined on its merits depending on the following conditions under which the allowance is payable: -

Tiffin/Food/Milk/Lunch Allowance paid in cash at a fixed rate irrespective of whether the person is absent or on authorised leave etc. may be treated as wages.

Tiffin/Food/Milk/Lunch allowance paid in cash with deduction for leave or absence etc. may not be treated as wages.

Tiffin/Food/Milk/Lunch allowance paid in kind i.e. canteen subsidy/food subsidy etc. may not be treated as wages.

(Earlier instructions were issued vide letter No.P-11/13/97-Ins.IV dated 2.2.1999)

**GAZETTED ALLOWANCE**

Certain factories/establishments are paying gazetted allowance to its employees in lieu of duties performed by them on gazetted holidays. Such gazetted allowance is not wage for the purpose of Sec.2(9) of the ESI Act. However, it will be wage for the purpose of Sec.2(22) of the ESI Act and the contribution are to be recovered on such payments.

**WAGES AND DEARNESS ALLOWANCE FOR UNSUBSTITUTED HOLIDAYS:**

Such wages and dearness allowance paid to the employees for the unsubstituted holidays are to be treated as wages under Sec.2(22) of the Esi Act and the contribution is payable. High Court of Gujarat in the case of ESIC Vs. New Assarw Manufacturing Co.Ltd. held the same view.

**EXGRATIA PAYMENT DURING STRIKE FOR TRAVELLING EXPENSES**

Like conveyance allowance if any exgratia payment is made during the period of strike to some of the employees to incur certain travelling expenses such amount will neither be considered as wage under Sec.2(9) nor under Sec.2(22) of the ESI Act and no contribution is payable on such amount. High Court of Bombay in the case of ESIC Vs. Willman (India) (P) Ltd. in case No.210 of 1976, held the same view.

**INTERIM RELIEF:**

Interim relief paid to the employees is normally paid when either the wage is under revision or when the payment of Dearness Allowance is delayed due to any reason. Whatsoever may be the case, if the interim relief is paid to the employees by any employer, the same will amount the wages within the meaning of Sec.2(22) of the ESI Act and contribution is payable thereon.

**SAVING SCHEME**

Certain factories/establishments are contributing towards the saving scheme for the welfare of the workers. Such amount paid by the employer as his contribution to the saving scheme, will not constitute wages under Sec.2(22) of the ESI Act and the contribution is not payable.

(Earlier instructions were issued vide Memo No.P-12/11/4/77-Ins.IV dt. 15.11.80)

## **ATTENDANCE BONUS**

It is a special allowance being paid by certain employers to their employees to discourage the workers from absenting from the job. Any amount paid by the employer to its employees as Attendance Bonus will constitute wages under Sec.2(22) of the ESI Act and the same opinion was held by Bombay High court in the case of ESIC Vs. Indian Dyestuff Industries Ltd.. However, the periodicity aspect has to be kept in mind. In case the periodicity is more than 2 months, the same will not constitute wages and no contribution will be payable as in the case of incentive bonus.

## **PAYMENT MADE TO RICKSHAW PULLERS, HATHRAIRY PULLERS AND TRUCK OPERATORS (INCLUDING LOADING & UNLOADING CHARGES WHEN THE LOADERS/UNLOADERS ARE THE EMPLOYEES OF THE TRUCK OPERATORS:**

Rickshaw pullers, Hathrairy pullers and Truck Operators (who bring labour with them) no contribution is payable on the amount paid by the employer if the amount paid is lumpsum amount including loading/un-loading charges and no separate wages are paid by the employer.

Similar view was held by Bombay Division Bench in 1990 in the case of Raisaheb Tekchand, Mohate Mills Vs. R.D. ESIC.

## **HAMALS/COOLIES EMPLOYED AT A PARTICULAR TIME**

Where Hamals & Coolies are employed at a particular place and a particular time, outside the premises of the factory/establishment to perform a specific job on the spot in such cases no contribution is payable on the amount paid to such Coolies/Hamals, however the contribution is payable on the amount paid to the coolies and hamals for services rendered within the premises of the employer.

Bombay High Court in the case of Parley Bottling Co.Ltd. VS. ESIC, Bombay

1989 and Supreme Court in the case of ESIC VS. Premier Clay Products, have held this view.

## **SHORT PERIOD CONTRACT FOR SERVICE – ELECTRICIAN, CARPENTERS, MECHANICS, PLUMBERS ETC./REPAIR WORK DONE ON SHOP**

In such cases also contribution is payable on the amount paid by the Employer if the services are rendered within the premises. This view was also held by Punjab and Haryana High Court vide its judgement dated 29.3.84 in the case of Modern Equipment Vs. ESIC in Civil Appeal No.3218 of 1989.

## **EXPENDITURE ON SERVICING OF MACHINES**

No contribution is payable on the servicing of machines where the job awarded is to the Engineer and instead of contract of service, there is a contract for service for servicing of machines.

## **EXPENDITURE ON ANNUAL/PERIODICAL SERVICE CONTRACT**

In the factories/establishments certain amount is being paid by the employer to the supplier of machines or to the firms of repute for the annual/periodical servicing of the machines and for such purposes the contract is awarded. In such cases no contribution is payable on the amount paid for annual/periodical service contracts.

## **COMMISSION TO DEALERS/AGENTS:**

Where dealers/agents are appointed by the employers but no regular wages are paid and it is not obligatory on the part of such dealers/agents to attend to the factories/ establishments and they are paid commission only on the quantum of sales, in such cases the amount paid by the employer as commission/dealership does not constitute wage under Section 2(22) of the ESI Act and hence no contribution is payable.

### **SERVICE CONTRACT**

Amount paid to an organisation for maintenance of Machinery/Equipments as part of service contract will not attract ESI contribution.

**PAYMENT MADE TO LABOUR CONSULTANTS, LAWYERS, ENGINEERS, COUNSELS, CHARTERED ACCOUNTANTS:**

The amount paid by the employer to labour consultants, lawyers, engineers, counsels, chartered accountants does not constitute wage as per provisions under Section 2(22) of the ESI Act and hence no contribution is payable.

The following items will form part of the wage both under Section 2(9) i.e for considering the employee for the purpose of coverage and Section 2(22) of the ESI Act for the purpose of charging of contribution: -

Matinee allowance which is being paid to employees in Cinema Houses.

Shift allowance paid to employees who work on shift duty at odd shifts.

Location allowance paid, in addition to Dearness Allowance to meet the high house rent.

Compensatory allowance.

Cash handling allowance paid to Cashier.

Supervisory Allowance.

Additional pay paid to training staff.

Charge allowance

Steno/Typist allowance

Plant allowance

Honorarium for looking after the hospital/dispensary

Computer allowance

Gestetner/Photocopier/Printer allowance

Personnel/Special allowance

Machine allowance

Convassing allowance

First-aid allowance

Personnel allowance – Pay over and above the basic wage and Dearness allowance for skill, efficiency or past good records.

Area allowance - given to employees living in a particular area to meet the high cost of living in that area.

Exgratia payment if payment is made within an interval of two months.

The following items will not form part of the wage either under Section 2(9) or under Section 2(22) of the ESI Act: -

Payment made on account of un-availed leave at the time of discharge.

Commission on advertisement secured for Newspapers, if not paid to the regular employee.

Fuel allowance/Petrol allowance

Entertainment allowance

Shoes allowance

Payment made on account of gratuity on discharge/retirement.

Payment made on encashment of leave..

