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India: Amendment to The Employee's State Insurance (Central) Rules, 1950

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The Employee's State Insurance (Central) Third Amendment Rules, 2016 ("ESI Rules") were notified by the Ministry of Labour and Employment, Government of India on December 22, 2016, thereby amending the salary or wages threshold for coverage of an employee under the Employee's State Insurance Act, 1948 ("ESI Act") with effect from January 1, 2017. The ESI Act *inter alia* applies to factories and commercial establishments and provides for social security insurance for employees in case of sickness, maternity, and employment injury. In Karnataka, the ESI Act applies to establishments with 10 or more employees.

The eligibility limit of an "employee" has been amended under the ESI Rules, whereby an employee who now earns wages of Rs. 21,000/- (approx. US\$ 309) or under per month should be mandatorily enrolled under employee insurance under the ESI Act. This is an increase from the earlier wage cap of Rs. 15,000/- (approx. US\$ 221) per month, thereby extending the coverage of the ESI Act.

It is relevant to note that the cap mentioned in the ESI Act applies to "wages". The definition of "wages" under the ESI Act refers to "all remuneration" payable other than (i) pension or provident fund contributions; (ii) travel allowance; (iii) allowance to cover special expenses incurred during the course of duty; and (iv) gratuity payable on termination. It also excludes all reimbursable expenses incurred by the employee for the purpose of employment. In our experience, such excluded remuneration

normally covers not more than 20-30% of total remuneration. This means that it could potentially cover employees earning remuneration of Rs 30,000 and below.

The amendment will lead to inclusion of more employees under ESI, who will now be subject to monthly ESI deductions. It will be interesting to see how employees react to the increased coverage, mainly because the quality of government-run hospitals which offer ESI Act services tends to be somewhat poor and even lower-level employees often refuse to use such hospitals. This causes statutorily covered employees to question whether the ESI contributions are actually worthwhile.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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