

THE EMPLOYEES' STATE INSURANCE ACT, 1948

Employees' State Insurance Scheme of India, is a multidimensional social security system tailored to provide socio-economic protection to worker population and their dependants covered under the scheme. Besides full medical care for self and dependants, that is admissible from day one of insurable employment, the insured persons are also entitled to a variety of cash benefits in times of physical distress due to sickness, temporary or permanent disablement etc. resulting in loss of earning capacity, the confinement in respect of insured women, dependants of insured persons who die in industrial accidents or because of employment injury or occupational hazard are entitled to a monthly pension called the dependants benefit.

GENERAL INFORMATION

Under Section 2(12) the Act is applicable to non-seasonal factories employing 10 or more persons.

Under Section 1(5) of the Act, the Scheme has been extended to shops, hotels, restaurants, cinemas including preview theatres, road-motor transport undertakings and newspaper establishments employing 20* or more persons

Further under section 1(5) of the Act, the Scheme has been extended to Private Medical and Educational institutions employing 20* or more persons in certain States/UTs.

**Note: 14 State Govts. / UTs have reduced the threshold limit for coverage of shops and other establishments from 20 to 10 or more persons. Remaining State Governments/UTs are in the process of reducing the same.*

The ESI Scheme is being implemented area-wise by stages. The Scheme has already been implemented in different areas in the following States/Union Territories of Indian Union.

ESI Act is applicable to all the States except Manipur, Sikkim, Arunachal Pradesh and Mizoram.

It is applicable to union territories of Delhi and Chandigarh

Applicability of the Act & Scheme: Is extended in area-wise to factories using power and employing 10 or more persons and to non-power using manufacturing units and establishments employing 20 or more person upto Rs.15,000/- per month with effect from 01-May-2010. It has also been extend-ed upon shops, hotels, restaurants, roads motor transport undertakings, equipment maintenance staff in the hospitals.

Applicability to Employees:-Section 2(9) 'employee' under ESI means any person who is engaged/employed for wages/salary in connection with the work of the establishment to which this Act applies. But does not include any person whose wages (excluding OT) exceed the limit prescribed by the Central Govt. (which is 15000 pm now with effect from 1 May 2010).

Coverage of Employees

Drawing wages upto **Rs. 15000.00** per month engaged either directly or through contractor

Rate of contribution of the wages

Employer's **4.75%**

Employee's **1.75%**

Total **6.50%**

Payment of Contribution :

Monthly contribution to be paid on or before 21st day from the last day of wage period.

Benefits to Employees

Medical, sickness, extended sickness for certain diseases, dependents maternity, besides funeral expenses, rehabilitation allowance, medical benefit to insured person and his or her spouse

To be deemed as wages

- Basic pay
- Dearness Allowance
- House Rent Allowance
- City Compensatory Allowance
- Overtime Wages (but not to be taken into account for determining the coverage of employee)
- Payment for day of rest
- Production Incentive
- Bonus other than statutory bonus
- Night shift Allowance
- Heat, Gas & Dust Allowance
- Payment for unsubstituted holidays
- Meal / Food Allowance
- Suspension Allowance
- Lay off Allowance
- Children Education Allowance (not being reimbursement for actual tuition fees)

Not to be deemed as Wages

- Contribution paid by the employer to any pension / provident of under ESI Act.
- Sum paid to defray special expenses entailed by the nature of employment – Daily allowance paid for the period spent on tour.
- Gratuity payable on discharge
- Pay in lieu of notice of retrenchment compensation

- Benefits paid under the ESI Scheme
- Encashment of leave
- Payment of Inam which does not form part of the term of employment
- Washing Allowances for livery
- Conveyance amount towards reimbursement for duty related journey

Contribution Period

- 1st April to 30th September
- 1st October to 31st March

Cash Benefit Period

- 1st July to 31st December
- 1st January to 30th June

Section 85-B:

Provides that the corporation may recover damages from the employer by way of penalty under this section if any employer fails to pay contribution payable under the Act within the specified time-limit or pays contribution belatedly provided that before recovering such damages, the employer shall be given a reasonable opportunity of being heard. The amount of damages may not exceed the amount of contribution paid / payable.

The percentage of Damages leviable are as under:

i) If delay is less than 2 months	@ 5% per annum
ii) If delay is for 2 months & above but less than 4 months	@ 10% per annum
iii) If delay is for 4 months & above but less than 6 months	@ 15% per annum
iv) If delay is more than 6 months	@ 25% per annum

There is also a provision to reduce or waive damages recoverable under this section in respect of a Factory / Establishment which is a Sick industrial Unit and in respect of which Rehabilitation Scheme has been sanctioned by BIFR, under Regulation 31-C. of ESI (General) Regulations, 1950.

Interest on Delayed Payment of Contribution :

Under Section 39(5)(a) of the ESI act, read with Regulation 31(A) of the ESI (General) Regulations 1950, the employer is liable to pay simple interest at the rate of 15 percent per annum in respect of each day of default or delay in payment contributions.

Penalties: Different punishment have been prescribed for different types of offences in terms of Section 85: a. six months imprisonment and fine Rs.5000, b. one year imprisonment and fine

- i. 85-A: (five years imprisonment and not less to 2 years)
- ii. 85-C (2) of the ESI Act, which are self explanatory.
- iii. Besides these provisions, action also can be taken under section 406 of the IPC in cases where an employer deducts contributions from the wages of his employees but does not pay the same to the corporation which amounts to criminal breach of trust.

Casual Workers employed for the maintenance of an establishment:

- Once the establishment is covered by the Act, the employer is liable to pay contribution in respect of the employees in respect of repairs and maintenance of the establishment. The casual workers are employees under Section 2(9) of the Act.

Meaning of Factory:

- any premises whereon 10 or more persons are employed and in any part of which a manufacturing process is carried on with the aid of "power"; or
- any premises whereon 20 or more persons are employed and in any part of which a manufacturing process is carried on without the aid of power {Section 2(12)}

The section 46 of the Act envisages following six social security benefits :-

(a) **Medical Benefit** : Full medical care is provided to an Insured person and his family members from the day he enters insurable employment. There is no ceiling on expenditure on the treatment of an Insured Person or his family member. Medical care is also provided to retired and permanently disabled insured persons and their spouses on payment of a token annual premium of Rs.120/- .

System of Treatment

Generally, the allopathic system of medicine is used for providing Medical Benefit. However, where a substantial number of workers demand treatment by Indian system of medicine and Homoeopathy (ISM & H) other than Allopathy and where the State Government has recognised the qualifications in such system, treatment facilities may be provided under the ISM & H as well. The various ISM & H systems of treatment in vogue are: Ayurvedic, Unani, Sidha, Yoga therapy and Homeopathy.

Certificates required for the purpose of Cash Benefits in respect of persons treated by ISM &H should be issued by IMO /IMP having recognised qualifications in such system and duly appointed by the State Government. The issue of certificates under ISM &H is possible only where dispensaries in systems other than allopathic medicine are functioning independently with IPs and their family units attached to them and not functioning merely as referral units. In places where ISM &H units function only as referral centres, certificates will have to be issued by the Allopathic dispensary to which the IP is attached.

Scale of Medical Benefit

The scale of Medical Benefit under section 57 of Act to be provided to the IPs and members of their families is to be prescribed by State Government in consultation with the Corporation under Section 58(1 & 3) of Act under State Medical Benefit Rules. An IP and/or a member of his family does not have the right to claim Medical Services over and above those which have been so prescribed. The beneficiaries are entitled to reasonable medical, surgical and obstetric treatment.

- To Insured Persons:- IPs are entitled to avail treatment in ESI Dispensary/Hospital/Diagnostic Centre and recognised institutions, to which he is attached such as:-
 - Outpatient treatment
 - Domiciliary treatment by visits at their residences.
 - Specialists Consultation.
 - In-patient treatment(Hospitalisation)
 - Free supply of drugs dressings and artificial limbs, aids and appliances.
 - imaging and laboratory services.
 - Integrated family welfare, immunisation and MCH Programme and other national health programme etc.
 - Ambulance service or re-imburement of conveyance charges for going to hospitals, diagnostic centres etc.
 - Medical Certification and
 - Special provisions.
- To Family Members of Insured Persons:- While in all implemented areas, IPs are entitled to medical care as detailed above, members of a family of an IP are entitled to one or other of the following scales of Medical Benefits:-
 - "FULL" Medical Care i.e., all facilities as for IPs including hospitalisation.
 - "EXPANDED" Medical Care i.e., all facilities as for IPs except hospitalisation. A small number of IPs in the States of Gujarat and Bihar fall under this category.
 - The Corporation aims at providing uniform scale of Medical Care to the Family members in all implemented areas as the rates of the contribution paid by the employees and the employers are the same throughout the country.

Benefits to Retired IPs

On payment of Rs.10/- P.M. in lump sum for one year in advance, Medical Benefit can be provided (under Section 56 of the Act) to:

- An Insured Person and his or her spouse who leaves insurable employment on attaining the age of superannuation after being insured for not less than five years, till the period for which contribution is paid.

An Insured Person and his/her spouse who ceases to be in insurable employment on account of permanent disablement due to employment injury shall be entitled to medical benefit.

Domiciliary treatment

- An Insured Person and his family members are entitled to free medical attendance by IMO/IMP at their residence when the condition of the patient is such that he/she cannot reasonably be expected to attend the dispensary/clinic.
Conveyance allowance for Domiciliary visit
- For the domiciliary visit, the IMO's are paid conveyance allowance. The quantum of this allowance is decided by the State Government in consultation with the Corporation.
- The IMPs are not paid any domiciliary conveyance allowance. In their case, it is included in the capitation fee upto a distance of 5 km. between the Clinic of IMP and IP's residence.
- The IMOs/IMPs are required to maintain record of domiciliary visits in a register month-wise. The columns in this register are given under the Chapter "Sickness Absenteeism and Recording".
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Specialist consultation

The standard of Medical Care under the E.S.I. Scheme provides for specialist consultation to IP in all cases and to members of their families in areas with "Expanded" and "Full" Medical Care. Arrangements for specialist consultation may be provided at Specialist/Diagnostic Centres, E.S.I. Hospitals or at such other institutions by appointing Specialists/Super Specialists on full time/part-time basis where suitable arrangements exist. Such consultation is provided in the following specialities:-

1	General Medicine	14	Critical Care Services
2	General Surgery	15	Cardiology
3	Pulmonary Medicine (Tuberculosis and Chest Diseases)	16	Neurology
4	Obstetrics and Gynaecology	17	Urology and Nephrology
5	Pathology	18	Gastro-enterology
6	Paediatrics	19	Endocrinology
7	Eye	20	Oncology
8	Ear, Nose and Throat Diseases	21	Burns and Plastic Surgery
9	Skin and STD	22	Cardio Thoracic Surgery
10	Radiology	23	Neurosurgery
11	Orthopaedics Rehabilitation Services (Physiotherapy and Occupational Therapy)	24	Occupational Medicine
12	Dental	25	Laboratory Services
13	Psychiatry	26	Blood Transfusion Services
		28	Haematological Services
		29	Anaesthesiology

It may not be necessary to appoint specialists in all specialities at all centres. However, specialists in the first 13 specialities mentioned above may be made available in each diagnostic Centre and emergency centres as far as possible. The other specialities may be provided as per disease profile of the area/as per requirement.

In-Patient treatment

Under the E.S.I. Scheme, IPs in all areas and their family members in areas with "Full" medical care facility are entitled to hospitalisation.

In-patient treatment is provided at hospitals constructed by E.S.I.C or by reservation of beds in the hospitals owned by the State Government, local Fund Organisation or Private Bodies or by constructing annexes to such institutions. The E.S.I. Scheme pays for these beds on the basis of occupied bed days. The Corporation has framed standard plans for construction of different sizes of hospitals/annexes mainly with a view to achieving uniformity and standardisation all over the country.

The Corporation has also laid down norms for equipment and staff for hospitals of different bed strengths.

Drugs and Dressings

All drugs and dressings (including vaccines and sera) that may be considered necessary and generally in accordance with the E.S.I.C drug formulary are supplied free of charge. There are two parts in E.S.I.C Drug Formulary, 1998 as follows:-

Part-I:- List of medicines for emergency kit for Dispensary hospital

Part II:-List of medicines to be supplied by dispensaries in Service Areas or by approved chemists or depots on prescription in panel areas.

Imaging Services

Imaging Services and Laboratory Investigations

Imaging and investigations including CT Scan, MRI, Echocardiography and laboratory facilities are provided free of cost to IPs and their families at state level speciality hospitals or other institutions having tie up with E.S.I. Scheme.

Artificial Limbs & Aids

Insured Persons and their family members are provided following artificial limbs, aids and appliances as part of medical care under the E.S.I. Scheme.:-

Artificial limbs

Hearing Aids

Spectacles (Frame costing not more than Rs.100/- and replacement of frames not to be made earlier than 5 years) (To insured persons only)

Artificial Dentures, teeth (To insured persons only)

Artificial Eye (To insured persons only)

Wigs (replacement not earlier than 5 years) to female beneficiaries only

Cardiac pacemaker

Wheel Chair/tricycle

Spinal supports (jackets, braces etc.)

Cervical collars

Walking callipers, surgical boots etc.

Crutches

Hip prosthesis, total hip

Intra ocular lens (IOL)

Any other aid or appliances prescribed by the specialist as part of treatment.

The expenditure on artificial limbs, aids and appliances is met from the shareable pool of expenditure on medical care

Special Provisions

Benefits received by Insured Person- Not assigned or attachable	Sec 60
Bar on benefits under other enactments	Sec 61
No reduction of wages during sickness	Sec 72
No termination/Dismissal/Discharge/ Reduction during sickness	Sec 73
Medical Board- Medical appeal tribunal employees' Insurance Court	Sec 54-A

Appeal can be filed within 3 months but this period can be extended

Members of medical appeal tribunal

- Judicial member
- Doctor of concerned speciality
- Labour Leader
- Medical Board- Medical appeal tribunal employees' Insurance Court

Reimbursement

Under Regulation 69, every employer has to arrange for First-aid Medical care and transport of accident cases till the injured IP is seen by the IMO/IMP and such employer is entitled to reimbursement of expenses incurred in this regard upto the maximum of scale prescribed from time to time. However, reimbursement is not permissible, if the employer is required to provide such medical aid free of charge under any other enactment.

The cost of provision of such emergency treatment would be reimbursed to the employer by the Director/AMO (ESI Scheme) of the respective State and, therefore, all claims duly supported by relevant receipts and vouchers should be sent to him for verification and payment.

Reimbursement of expenses incurred in respect of medical treatment under regulation-96 A. Regulation-96 A reads as follows:- Claims for reimbursement of expenses incurred in respect of medical treatment of IP and his family may be accepted in circumstances and subject to such conditions as the Corporation may by general or special order specify.

The following conditions have been laid down under this Regulation :-

Full authority is vested with the State Government concerned to reimburse expenditure in respect of medical treatment of IP and his family.

It may be left to the discretion of the State Government to decide the Authority within their machinery who will approve the expenditure in question; and

Time limit for submission of the claims for reimbursement is one year

The State Government has to keep in view the following points while considering the cases of reimbursement of expenditure on Medical Care:

Whether such facilities for which reimbursement is recommended are not available with the State.

Whether the hospital where the IP was sent or proposed to be sent was/is the nearest hospital having required facilities/services.

A List of Types of cases for which reimbursement is permitted is given below:-

Reimbursement is permissible in case of failure of the mobile dispensary van due to technical defects or otherwise to adhere to its schedule timings or where IP attached to such a dispensary sustained serious injuries or suffered from serious illness during off hours of the dispensary.

IPs and their family members had to resort to private treatment during the off hours of ESI dispensary/Emergency Centre due to unavoidable circumstances.

Medicines prescribed by IMO/Specialist were out of stock in the ESI Dispensary/Approved Chemist thereby compelling the IPs to make purchases from the market.

Medicines prescribed by Specialist and not provided by the IMO/IMP and where specialist considered such special Medicines absolutely necessary for the treatment of the beneficiaries as no substitute medicine was considered equally efficacious whether as an out patient or in patient.

Special appliances prescribed by Specialist such as Spinal supports, Cervical Collars, Walking Callipers, and Crutches, etc. if considered necessary as part of the treatment.

Where an IMO/IMP failed to make domiciliary visit requested by an IP thereby compelling the IP to make private arrangement for treatment. Under the panel system such cost is recoverable from the IMP if recommended after investigation by the Medical Service Committee.

Serious cases of accident or illness admitted directly into recognised hospitals where owing to the clinical

condition of the patient, being unconscious or otherwise, it was not possible to reveal his identity as an ESI patient and the hospital authorities recovered hospital expenses directly from the patient or the employer. Serious cases of accident/illness where a beneficiary was admitted directly at a private hospital or in a non-recognised hospital where admission in a hospital recognised under the scheme would have seriously jeopardised his health like sudden heart attacks, fracture of the spine, cerebral haemorrhage, etc. Expenditure incurred on investigation for blood transfusion.

Mental cases that may have incurred expenditure either as an out patient on specialised Therapy such as ECT etc.

Serious cases of accident and illness admitted to recognised hospitals where all the reserved ESI beds were occupied.

Reimbursement of conveyance charges incurred by IP where ambulance or any other transport under the scheme is not available owing to some reason or the other and where in the opinion of the IMO/IMP such a patient was non-ambulatory.

In respect of Specialised examination, laboratory test, X-ray, other imaging services etc., recommended by specialist, but where the IP either due to the break down in the machinery or where the nature of the examination of the Laboratory Tests was such that it was beyond the scope of the facilities available in the recognised laboratory/hospital.

In addition to above types of cases, reimbursement may also be allowed in other cases depending upon the merits of each case and the circumstances under which expenditure was incurred.

Reimbursement of Conveyance Charges

In the absence of availability of an ambulance and where needed in an emergency, any other quick form of transport may be used and amount so spent subject to the maximum rate prescribed by the Government/Transport authority (both ways) is reimbursed to IPs. To avoid hardship to IP and his family who have to go to any hospital or medical institution for admission, specialist consultation or investigation, but whose condition is not such as to need an ambulance, provision has been made for the payment of conveyance charges, if hospital/medical institution to which the case is referred to, is at an out-station or is at a distance of more than 8 kms from the ESI Dispensary or the clinic of the panel doctor. The charges are restricted to actual IInd class railway fare or cost of a single seat in public conveyance both ways whichever is feasible. If the beneficiary is not in a fit condition to travel without escort for reasons to be recorded and so certified by IMO/IMP, the conveyance charges are also allowed for an escort. The IMO/IMP should keep a separate account of such payments in the prescribed Register and send a quarterly statement of this expenditure to the Director/AMO by the 15th of the month following the quarter ending in March, June, Sept. and December. The returns received from different areas in the State may be consolidated area-wise by the Director/ AMO and quarterly statement sent to the Corporation. The expenditure on conveyance charges forms part of the Medical Care under the E.S.I. Scheme and hence shareable between the Corporation and the State Government in the usual ratio within ceiling prescribed.

(b) Sickness Benefit(SB) : Sickness Benefit in the form of cash compensation at the rate of about 50% of wages is payable to insured workers during the periods of certified sickness for a maximum of 91 days in a year. In order to qualify for sickness benefit the insured worker is required to contribute for 78 days in a contribution period of 6 months.

Extended Sickness Benefit(ESB) : SB extendable upto two years in the case of 34 malignant and long-term diseases at an enhanced rate of 80 per cent of wages.

Enhanced Sickness Benefit : Enhanced Sickness Benefit equal to full wage is payable to insured persons undergoing sterilization for 7 days/14 days for male and female workers respectively.

(c) Maternity Benefit (MB) : Maternity Benefit for confinement/pregnancy is payable for three months, which is extendable by further one month on medical advice at the rate of full wage subject to contribution for 70 days in the preceding year.

(d) **Disablement Benefit**

Temporary disablement benefit (TDB) : From day one of entering insurable employment & irrespective of having paid any contribution in case of employment injury. Temporary Disablement Benefit at the rate of 90% of wage is payable so long as disability continues.

Permanent disablement benefit (PDB) : The benefit is paid at the rate of 90% of wage in the form of monthly payment depending upon the extent of loss of earning capacity as certified by a Medical Board

(e) Dependants' Benefit(DB) : DB paid at the rate of 90% of wage in the form of monthly payment to the dependants of a deceased Insured person in cases where death occurs due to employment injury or occupational hazards.

(f) **Other Benefits** : Funeral Expenses : An amount of Rs.10,000/- is payable to the dependents or to the person who performs last rites from day one of entering insurable employment.

Confinement Expenses : An Insured Women or an I.P.in respect of his wife in case confinement occurs at a place where necessary medical facilities under ESI Scheme are not available.

What is meant by "Standard Benefit Rate"? : The daily rate at which sickness benefit is payable to an

insured employee during the period of his sickness is called "Standard Benefit Rate". The standard benefit rates are specified in Rule 54, lowest rate being Rs. 14.00 and the highest being Rs. 145.00. {Rule 2(7-A) & Regulation 54}

What is meant by "Sickness Benefit"? : When an insured employee is sick, he is entitled to receive for the period of his sickness, benefit at the daily "Standard Benefit Rate" specified in Rule 54. This benefit is available to the insured employee for sickness occurring during any benefit period if he has paid contributions for not less than seventy eight days of the corresponding contribution period. Sickness benefit is not available for the first 2 days of sickness. The maximum period for which sickness benefit is available is 91 days in one year. {Section 46 & Rule 55}

What is meant by "Maternity Benefit"? : In case of (i) confinement, miscarriage or medical termination of pregnancy; or (ii) in case of sickness arising out of pregnancy, confinement, premature birth of child or miscarriage or medical termination of pregnancy, an insured workman is entitled to receive periodical payments called "maternity benefit". This benefit is available to the insured woman, at such rate and for such period as is specified in Rule 56, for confinement occurring or expected to occur in a benefit period if she has paid contribution for not less than 70 days in the immediately preceding consecutive contribution periods. {Sub-Section 46, 50 & Rule 56}

What is meant by "Disablement Benefit"? : When an insured employee is suffering from temporary disablement as a result on an employment injury, he is entitled to receive for the period of such disablement periodical payment called "Disablement Benefit". When an insured employee is suffering from permanent disablement, whether total or partial, as a result of an employment injury, he is entitled to receive disablement benefit for the whole of his life. The rate of disablement benefit is determined in accordance with the provisions of Rule 57. There is no condition of payment of any contribution for receiving disablement benefit. {Rule 57}

What is the meaning of "Employment Injury"? : "Employment injury" is defined under Section 2(8) of the ESI Act, as a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment. The expression "arising out of employment" means caused by employment or had its origin in the employment. The expression "arising in the course of employment" means occurring during working hours, actual or notional. {Rule 57}

Which family members of an insured employee are entitled to medical treatment where medical benefit is extended to families of insured employees? : Where medical benefit is extended to families of insured employees, medical treatment is available to; (i) the husband or wife of the insured employee, (ii) the minor legitimate or adopted children of the insured employee dependent upon him, and (iii) the dependent parents of the insured employee. {Sub-Section 2(11) & 58}

What is meant by "Funeral Expenses"? : In case of death of an insured employee, the eldest surviving member of his family, and if the employee had no family or was not living with his family at the time of his death, then the person who actually incurs the expenditure on the funeral of the employee, is entitled to receive an payment called "Funeral Expenses". This payment is given to the person concerned to meet the expenditure actually incurred by him on the funeral of the employee and the maximum permissible amount of such payment is Rs. 10000.00. {Section 46 & Rule 59}