

Chapter 4

Compliance of Employees' State Insurance Act, 1948 and Employees' State Insurance (General) Regulations, 1950

The ESIA, 1948 was enacted to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto. The Act and the rules are applicable on the establishments where 10 (20 in some States/Union territories) or more persons are employed on any day of the preceding 12 months. The applicability of the Act and Rules are required to be ensured by Principal Employer/Contractor. Subject to the provisions of this Act, all employees in factories and establishments to which this Act applied, shall be insured in the manner provided by this Act.

4.1 Registration of the employer (contractor) with ESIC

4.1.1 Application by the Employer (contractor) for Employer Code for the first time

Rules⁶⁰ provide that, the employer in respect of an establishment to which the Act applies for the first time and to which an Employer's Code Number is not yet allotted, and the employer in respect of the establishment to which the Act previously applied but has ceased to apply for the time being, shall furnish to the appropriate Regional Office not later than 15 days after the Act becomes applicable, as the case may be, a declaration of registration in writing.

Out of 463 contracts reviewed in audit,

- In respect of 112⁶¹ contracts, contractors were registered with concerned Regional offices of ESIC and had been allotted Employer's Code Number.
- In respect of 116⁶² contracts, contractors were not registered with concerned Regional offices of ESIC, and had not been allotted Employer's code number.
- In respect of 235 contracts, relevant records were not made available to audit.

4.1.2 Allotment of ESI Account Number to the Contract labour

Regulation⁶³ provide that, on receipt of the return from employer along with declaration of employees the appropriate offices shall promptly allot an insurance number (ESI Account Number) to each person in respect of whom declaration form has been received. Out of 463 contracts reviewed in audit,

⁶⁰ Rule 10 B of notification issued by ESIC on 17 October 1950

⁶¹ NCR (13), CR (20), ER (10), NR (33), NWR (19), SWR (11), RPU/Metro (6)

⁶² NCR (51), CR (14), NR (32), NWR (11), RPU/Metro (2), DLW (4), CLW (2)

⁶³ Regulation 15 of Employees State Insurance (General) Regulations, 1950

- In respect of 49⁶⁴ contracts, ESI Account numbers were obtained by the contractors,
- In respect of 148⁶⁵ contracts, ESI Account numbers were not obtained; and
- In respect of 266 contracts, relevant records were not made available to audit.

4.2 Payment of deduction from employee and contribution by the employer under ESIA, 1948

As per laid down provisions⁶⁶, the contribution payable under this Act in respect of an employee shall comprise of the employers' contribution @4.75 *per cent* of wages and the employees' contribution @ 1.75 *per cent* of wages and shall be paid to the Employee State Insurance Corporation (ESIC).

Out of 463 contracts reviewed in audit,

- In respect of 81 contracts, ESI deduction from 4423 contract labour and its deposit with ESIC were done by the employer which included 12 contracts where an amount of ₹ 0.02 crore was short deducted from 503 contract labour as assessed by Audit,
- In respect of 80 contracts, ESI deduction from 1385 contract labour for an assessed sum of ₹ 0.22 crore was not made at all; and
- In respect of 302 contracts, relevant records were not made available to Audit.

Annexure 4.1

- In respect of 2797 contract labour in 40 contracts, ESI contribution of employer and its deposit with ESIC were done by the employer (contractor) which included 10 contracts where the ESI contribution made by employer was short by ₹ 0.01 crore for 367 contract labour, as assessed by audit,
- In respect of 88 contracts, employers' contribution towards ESI for an assessed sum of ₹ 0.71 crore for 1911 contract labour, was not made at all, and
- In respect of 335 contracts, relevant records were not made available.

Annexure 4.2

- It was also seen that out of 257 contract labour deployed in one contract, names of 157 contract labour did not match with the names on the ESIC portal. No action was taken by the Railway Administration to get the same rectified.

⁶⁴ NCR (2), CR (5), ER (7), NR (17), NWR (11), SWR (4), RPU/Metro (3)

⁶⁵ NCR (54), CR (22), ER (2), NR (41), NWR (19), RPU/Metro (2), DLW (4), CLW (4)

⁶⁶ Section 39 (1) of ESIA, 1948

4.3 Liability of the Principal Employer to pay contribution under ESIA, 1948

As per provisions⁶⁷, the Principal Employer is liable to pay contribution in respect of all his employees including contract labour engaged through a contractor. Further, Principal Employers are also responsible to deduct the ESI dues from the bills of the contractor, if short/non-deduction/contribution is noticed. Rules⁶⁸ further state that a Principal Employer, who has paid contribution in respect of an employee employed by or through an immediate employer, shall be entitled to recover the amount of the contribution so paid (that is to say the employer's contribution as well as the employee's contribution, if any,) from the immediate employer, either by deduction from any amount payable to him by the Principal Employer under any contract, or as a debt payable by the immediate employer.

It was observed that, out of 463 contracts reviewed in audit, an amount of ₹ 0.96 crore was not deducted/short deducted by the contractor and not deposited to ESIC. Railway administration had not taken any action towards recovery of the same from the contractor's bills and to deposit the same to the ESIC. No internal control system exists for identification and follow up action in such cases of non-deduction/short deduction in any contract.

4.4 Check and monitoring by ESIC

As per laid down provisions⁶⁹, officials of ESIC may conduct inspection of establishments under their jurisdiction for checking the correctness of records relating to deduction/contribution and deposit of ESI amount to ESIC. During the period of audit, no evidence could be found in the records of railway administration to show that inspections were carried out by the officials of the ESIC to check the compliance to laid down rules and provisions towards fulfilment of statutory obligations under the above mentioned Acts and Rules.

In this regard, Audit observed that with a view to simplify business regulation, a transparent Inspection Policy⁷⁰ have been formulated in August 2014, for bringing in transparency and accountability in labour inspections. The policy envisages objective criteria for selection of units for inspection. The policy lays down mandatory inspections for new units, units defaulter for six months, units from which closure request received and units where no inspection have been carried out in last three years. In addition, the ESIC would set up a Central Analysis and Intelligence Unit (CAIU) for collecting and analysing field level data for a transparent and accountable labour inspection system. The cases forwarded through CAIU will be based on data and evidence and ESIC would formulate an

⁶⁷ Section 40 of ESIA, 1948

⁶⁸ Section 41 of ESIA, 1948

⁶⁹ Section 44 and 45 of ESIA, 1948

⁷⁰ No. S-11/12/2/2008 – Rev-II, Employees' State Insurance Corporation, Ministry of Labour and Employment, Government of India, New Delhi dated 01 August 2014

objective methodology for selection criteria of the cases by the CAIU keeping in view its priorities and provisions of ILO C-81⁷¹. In respect of certain specific cases, the inspection would be optional and the inspections would be generated through computer using pre-decided number tables taking into account drop in contributions, covered employees etc. The methodology prescribed under the Inspection Policy include employers to feed master data and periodical returns on Shram Suvidha Portal. Thus, by assuring themselves of the applicability of the Act and Rules on the contractors and ensuring his registration with the ESIC would be the basic necessary requirement which the Principal Employer (Railways) has to ensure, in order to follow the provisions of the Act and Rules. This is more so as under the provisions of this Act, the Principal Employer is liable to pay contribution in respect of all his employees including contract labour engaged through a contractor.

⁷¹ Recommendation concerning Labour Inspection of the International Labour Organisation