

Wages: Provident Fund Act Vs. Minimum Wages Act

This article aims to provide clarity on the difference in the meaning of 'wages' between The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act) and The Minimum Wages Act, 1948 (MW Act). These two pivotal pieces of legislation in India's labour law framework are designed to safeguard the financial well-being of employees. The EPF Act mandates employers to contribute to a savings scheme for employees, ensuring a financial cushion upon retirement or unexpected employment disruptions. In contrast, the MW 1948 aims to prevent exploitation by stipulating the minimum remuneration employees should receive for their labour, thereby ensuring a basic standard of living. While both laws are integral to employee protection, they address different aspects of employee welfare: long-term financial security through the Provident Fund and immediate economic needs through minimum wage standards.

1) What are all the key objectives of these two legislations?

The MW Act, aims to establish and revise minimum wages in specified employments, ensuring fair compensation and preventing employees' exploitation. It sets standards for daily working hours, addresses under payment issues, assigns duties to inspectors and labour commissioners, and empowers the government to create necessary rules, ultimately safeguarding the interests of employees and the public.

The objectives of the EPF Act, aimed at providing security to employees, include ensuring financial stability post-retirement, offering support to dependents in case of premature death, establishing social security measures, granting retirement and old age benefits, facilitating risk-free deposit acceleration, and promoting a culture of saving among workers, thereby enhancing their overall well-being and economic security. Hence, the meaning of wages cannot be looked at one and same.

2) What components need to be considered as 'Wages' for the purpose of MW Act?

The Honorable Supreme Court has clarified the definition of wages for compliance with 'minimum wages' as follows :

In the case of Airfreight Ltd, wages were paid as a single component without bifurcation of Basic, DA, etc., which exceeded the sum of prescribed minimum wages. Employees

contended that VDA should be paid based on a notification issued by the Karnataka Govt under section 3 with section 5 of the MW Act. In general, the Minimum Wages notification included DA as a separate component. The question arises as to whether it is mandatory to pay the minimum wages exactly as prescribed in the notification, not only adhering to the nomenclature of components (Basic, DA) but also the specified amount in each component. The Court held that for compliance with payment of Minimum Wages, the competent authority is not required to bifurcate each component of costs as a lump sum amount is determined to provide adequate remuneration to the workman. Hence, Minimum Wages can be paid in other allowances as well, not necessarily only in Basic + DA (Airfreight Ltd vs. State of Karnataka & Ors, SC 1999).

Similarly, in another recent case (Hindustan Sanitaryware & Industries vs. The State of Haryana, SC 2019), the apex court reaffirmed the same points regarding the definition of wages under Minimum Wages. Authorities under Minimum Wages notified that the Minimum rates of wages notified are basic rates of minimum wages that aren't permitted to be segregated into components in the form of allowances by the employer. The Supreme Court held that the prohibition on segregation of wages into components under the notification isn't a valid exercise of power by the Authority under the Minimum Wages Acts.

As a result, it is absolutely clear that as per the definition and clarification given by the apex court, Minimum Wages can also be paid in Basic + DA + All other Allowances (conditional allowances should be excluded along with the exclusion components given in the definition).

3) Which components are to be considered for deduction of contribution under EPF Act?

As per Section 6, the contribution shall be 12% of the basic wages, dearness allowance, and retaining allowance (if any) for the time being payable to each of the employees.

a) What is mean by 'Basic Wages' under EPF Act? What is special about it?

It is unique to notice that this is the only labour legislation which defines 'Basic wages' instead of 'Wages'. In general, HR professionals have a practice of calculating the Basic component of wages as a percentage of Gross / CTC. So, it goes unnoticed by many of us that there is an exclusive definition



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From Case laws, and deliberations, it is evident that the concept of wages differs between the MW Act and EPF Act, each serving distinct purposes. The clarification provided by the apex court underscores that Minimum Wages can encompass Basic wages along with Dearness Allowance (DA) and all other allowances, with conditional allowances being excluded.

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The respondent, an unaided school, was giving Special Allowance as an incentive to their staff. The Authority under the act contended that the special allowance was to be included in basic wage for the deduction of PF. Supreme Court held that when an expression isn't defined, wages which are universally, necessarily, and ordinarily paid to all employees across the board are 'basic wage'.

for 'Basic Wages' under this Act which is not the same as what we arrive at 'Basic' in our pay slips / offer letters / CTC working sheets. Also, we should note that this is not the only component to be considered for the purpose of contribution to EPF.

b) What is UNO Allowance? When an expression is not defined in EPF Act, how do we decide?

The respondent, an unaided school, was giving Special Allowance as an incentive to their staff. The Authority under the act contended that the special allowance was to be included in basic wage for the deduction of PF. Supreme Court held that when an expression isn't defined, wages which are universally, necessarily, and ordinarily paid to all employees across the board are 'basic wage'. Allowances paid universally, necessarily, ordinarily (UNO) to be considered as 'basic wage' under EPF Act. Hence Special Allowance or any other allowances paid UNO to be considered as 'Basic Wages under EPF Act (RPF vs. Vivekananda Vidyamandir & Ors, SC, 28 Feb 2019).

Contribution under the EPF Act needs to be done from normal monthly gross (excluding HRA, Travelling Allowances, Bonus Commission, or any other similar allowances, Cash value of food concession, OT Allowances & Conditional Allowances). Based on the court judgments, how to decide on few allowances for the purpose of PF contributions is given hereunder :-

Wages for EPF Act :

Held to be Wages	Reference: Case Laws / Statute
Canteen Allowance	Whirlpool of India Ltd vs. RPF, Delhi HC, 2003
Production Bonus	Bridge & Roof Co. (India) Ltd vs. Union of India, SC, 1962
Maternity benefit - paid by employer	Sec 2(b) of EPF Act, Definition covers wages paid in leave

Not wages for EPF Act :

Held not to be Wages	Reference: Case Laws / Statute
Notice Pay	India United Mills Vs RPF, Bombay HC, 1958
Encashment of Leave	Manipal Academy Of Higher Education vs Provident Fund Commissioner, SC, 2008
Subsistence Allowance	EPFO Circular No. E 104 (26-A), 13-Oct 1957
Compensatory Allowance - Paid not as UNO allowances	Kichha Sugar Company Ltd ... vs Tarai Chini Mill Majdoor MANU/SC/0007/2014 (S.C.)

4) Is there any difference in 'Wages' under PF Act & MW Act?

Yes, this question arose due to the order passed under Section 7A by PF authorities connecting the minimum wages with the wages for PF contribution. The order stated that the splitting of minimum wages is a subterfuge to avoid statutory liability of PF contribution. PF is to be paid on the entire minimum wages, and splitting shouldn't be allowed. This led to the question of 'locus standi' for the EPFO authorities to extend the definition of wages along with the minimum wages, which is an exclusive legislation with different authorities to enforce.

5) Definitions under both the laws?

Definition of Wages under MW Act	Definition of 'Basic Wages' under EPF Act
As per Section 2(h), "wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment and includes house rent allowance, but does not include	As per Section 2 (b) of EPF Act, "basic wages" means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include
i. the value of	(i) the cash value of any food concession;
a. any house accommodation supply of light, water, medical attendance, or	(ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;
b. any other amenity or any service excluded by general or special order of the appropriate Government.	(iii) any presents made by the employer;
ii. any contribution paid by the employer to any pension Fund or provident fund or under any scheme of social insurance;	
iii. any travelling allowance or the value of any travelling concession;	
iv. any sum paid to the person employed to deep freeze special expenses and tell them by the nature of his employment or	
v. any gratuity payable on discharge.	

By bare reading of the above definitions, difference visible between two different legislations in terms of 'Wages'.

6) Whether 'Basic Wages' under EPF Act need to be equated with the Minimum Wages under MW Act?

In the case of APFC vs. M/S G4S Security Services (India) Ltd, Punjab & Haryana, HC 2011, the PF authorities issued a notice under section 7A that splitting of Minimum Wages is subterfuge to avoid statutory liability of PF emphasizing that contribution is to be paid on the entire Minimum Wages & splitting should not be allowed. HC concluded that the definition of 'Basic Wages' under the EPF Act need not be equated with Minimum Wages under MW Act.

Conclusion:

From the above definitions, case laws, and deliberations, it is evident that the concept of wages differs between the MW Act and EPF Act, each serving distinct purposes. In conclusion, the clarification provided by the apex court underscores that Minimum Wages can encompass Basic wages along with Dearness Allowance (DA) and all other allowances, with conditional allowances being excluded. Whereas the contribution under the EPF Act, it should be calculated based on the normal monthly gross, excluding various allowances such as HRA, Travelling Allowances, Bonus Commission, and other similar allowances, cash value of food concessions, OT payment, and conditional allowances. These delineations not only provide clarity but also serve as crucial guidelines for employers to ensure compliance with statutory requirements, thereby upholding the welfare and financial security of employees.