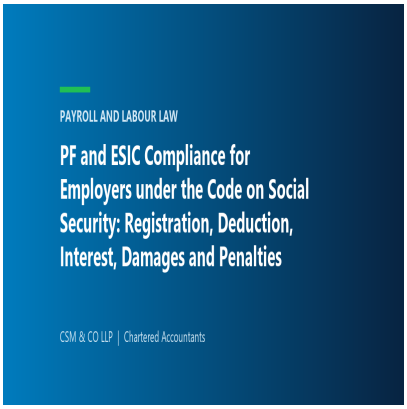

PF and ESIC Compliance for Employers under the Code on Social Security: Registration, Deduction, Interest, Damages and Penalties

Description

Last updated: 09 October 2026 · Written and reviewed by CA Meet Dhrangadhariya, CSM & Co LLP

Quick summary

- The Code on Social Security, 2020 (in force from 21/11/2025) replaced the EPF Act, 1952 and the ESI Act, 1948. PF applies to establishments with 20 or more employees and ESI to establishments with 10 or more persons.
- An establishment already registered under an earlier labour law need not register again; that registration is treated as registration under the Code.
- An employer who deducts the employee share from wages and does not deposit it faces imprisonment of at least one year (up to three years) and a fine of Rs 1 lakh. Other defaults carry two months to six months and Rs 50,000.
- Delay attracts simple interest at the notified rate and damages up to the amount of arrears, after a hearing.

Since 21/11/2025 an employer's PF and ESI duties come from the Code on Social Security, 2020. The Code repealed the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the Employees' State Insurance Act, 1948 (and seven other laws). The schemes, rates and wage ceilings continue as notified, but the penalty and procedure rules below are now from the Code itself.

When does each scheme apply?

The First Schedule to the Code says:

Scheme	Applies to
Employees' Provident Fund (Chapter III)	Every establishment in which twenty or more employees are employed

Scheme	Applies to
Employees' State Insurance (Chapter IV)	Every establishment in which ten or more persons are employed, other than a seasonal factory. A notified hazardous or life threatening occupation is covered even with a single employee

For the head count, employees earning above the notified wage ceiling are also counted. An employer and the majority of employees can agree to bring a smaller establishment under the PF chapter by applying to the Central Provident Fund Commissioner, and the Government can extend the Code to establishments above a notified size.

Registration

Every establishment to which the Code applies registers electronically or otherwise, within the time and in the manner prescribed (section 3). An establishment already registered under any other Central labour law does not have to register again, and that registration is treated as registration under the Code. An establishment that is closing down can apply to cancel the registration.

Wages: what the contribution is calculated on

The Code defines "wages" in section 2(88) as basic pay, dearness allowance and retaining allowance, with listed exclusions (statutory bonus, house rent allowance, conveyance allowance, overtime, commission, the employer's PF contribution, gratuity and retirement payments). If the exclusions add up to more than one-half of total remuneration (or the percentage notified), the excess is added back to wages. Check your pay structure against this cap, because it can raise both PF and ESI contributions.

Who pays what

- The employer pays both the employer's and the employee's contribution for every employee, whether employed directly or through a contractor.
- The employer may recover the employee's contribution only by deduction from wages, only for the period it relates to and not more than the employee's share.
- The employer's contribution cannot be deducted from wages or recovered from the employee in any way.
- Sums deducted from wages are deemed to be entrusted to the employer for the purpose of paying the contribution.
- For contract workers, the principal employer pays and recovers the amount from the contractor, who in turn may recover only the employee's share from the worker's wages.
- Employees must establish identity through Aadhaar for registration and for claiming benefits or withdrawing funds (section 142).

If you pay late or do not pay

Consequence	What the Code says
Interest (section 127)	Simple interest at the rate notified by the Central Government, from the date the amount became due till actual payment

Consequence	What the Code says
Damages (section 128)	Up to the amount of arrears, levied by the PF Commissioner or ESIC Director General (or authorised officer), after giving the employer an opportunity of being heard
Failure to pay employee share that was deducted (section 133(i)(a))	Imprisonment of at least one year, up to three years, and a fine of Rs 1 lakh
Failure to pay any other contribution (section 133(i)(b))	Imprisonment of at least two months, up to six months, and a fine of Rs 50,000
Deducting the employer's share from wages, or failing to file a return	Fine up to Rs 50,000
Obstructing an inspector, or failing to produce records	Imprisonment up to six months or fine up to Rs 50,000, or both
Repeat offence (section 134)	Imprisonment up to two years and fine of Rs 2 lakh; for repeat non-payment of contributions, at least two years, up to three, and fine of Rs 3 lakh

In the case of a company, every person directly in charge of the conduct of its business, as well as the company, is deemed guilty (section 135). The court can impose a lesser jail term for adequate and special reasons recorded in the judgment, and offences can be compounded as the Code provides.

A practical checklist

1. Count employees, including those above the wage ceiling, to see whether PF (20) and ESI (10) apply.
2. Keep the registration number from the old law in your records; it carries over.
3. Recalculate wages under the Code definition and check the one-half rule.
4. Deposit both shares on time, every month, for contract workers too.
5. File returns and keep registers ready for the inspector.

Points to check

- This post follows the Code as published on India Code. Rates, the wage ceiling, interest rate and filing dates are fixed by rules, regulations and notifications issued under the Code, so check those before relying on a figure.
- Penalty amounts and imprisonment terms are the maximums and minimums written in the Code; the actual order depends on the court.

Frequently asked questions

When does PF apply to an establishment?

Chapter III (Employees' Provident Fund) applies to every establishment in which twenty or more employees are employed. Employees earning above the wage ceiling are counted for this head count.

When does ESI apply?

Chapter IV applies to every establishment in which ten or more persons are employed, other than a seasonal factory, and to a notified hazardous establishment even with one employee.

Do I have to register again under the Code?

An establishment already registered under any other Central labour law is not required to register again; its registration is deemed to be registration under the Code. A new establishment registers electronically as prescribed.

Can I deduct the employer share from wages?

No. The employer can recover only the employee's contribution, by deduction from wages for the period it relates to, and the employer's contribution cannot be recovered from the employee in any way.

What if the deducted employee contribution is not deposited?

The sum deducted is treated as entrusted to the employer. Failure to pay it is punishable with imprisonment of at least one year, up to three years, and a fine of Rs 1 lakh.

What are the interest and damages for late payment?

Simple interest at the rate notified by the Central Government from the due date to the date of payment, and damages up to the amount of arrears, levied after the employer has been heard.

Can the employer use a contractor to pay PF and ESI?

The principal employer pays the employer's and employee's share for contract workers and then recovers the amount from the contractor.

Official sources

- India Code: The Code on Social Security, 2020 (sections 1, 3, 17, 31, 127, 128, 133, 134, First Schedule)
- Ministry of Labour and Employment

Related reading

- Gujarat Minimum Wages Revised (01 April 2026 to 30 September 2026): What Employers Must Do
- ESIC Applicability, Wage Limit and Contribution Rates (3.25% + 0.75%)

Disclaimer

This article is for general informational purposes only and should not be considered professional advice. Please consult a qualified expert for advice tailored to your specific situation. The author and website owner are not liable for any errors or actions based on this content.

Date
11/10/2026
Date Created
18/06/2026
Author
meetsoni