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## 249. What are considered as 'Wages' and 'Not Wages' under the ESI Act, 1948?

The definition of wages under the Employees' State Insurance (ESI) Act, 1948 is covered under Section 2(22). It states that "wages" include all remuneration paid or payable in cash to an employee if the terms of employment (express or implied) are fulfilled. Additionally, it includes certain payments and excludes specific allowances.

Here is a detailed table differentiating Wages and Not Wages under the ESI Act, 1948 (Section 2(22)):

Sl. No.	Component	Considered as Wages?	Remarks
1	Basic Salary	<input checked="" type="checkbox"/> Yes	Regular remuneration paid for work
2	Dearness Allowance (DA)	<input checked="" type="checkbox"/> Yes	Forms part of salary
3	House Rent Allowance (HRA)	<input checked="" type="checkbox"/> Yes	If paid in cash
4	Overtime Allowance	<input checked="" type="checkbox"/> Yes	Forms part of wages under ESI
5	Leave Encashment	<input checked="" type="checkbox"/> Yes	Considered wages
6	Layoff Compensation	<input checked="" type="checkbox"/> Yes	ESI contributions applicable
7	Attendance Bonus	<input checked="" type="checkbox"/> Yes	If paid <b>within 2 months</b>
8	Incentive Bonus	<input checked="" type="checkbox"/> Yes	If periodicity <b>≤2 months</b>
9	Production Bonus	<input checked="" type="checkbox"/> Yes	If paid <b>≤2 months</b>
10	Night Shift, Heat, Gas, Dust Allowance	<input checked="" type="checkbox"/> Yes	Paid for tough working conditions
11	Interim Relief (during wage revision)	<input checked="" type="checkbox"/> Yes	Treated as wages
12	Subsistence Allowance (during suspension)	<input checked="" type="checkbox"/> Yes	Employee remains in service
13	Commission (if paid monthly)	<input checked="" type="checkbox"/> Yes	Considered part of remuneration
14	Conveyance Allowance (Fixed)	<input checked="" type="checkbox"/> Yes	If part of salary package
15	Food/Tiffin/Lunch Allowance (Cash)	<input checked="" type="checkbox"/> Yes	If paid as a fixed allowance

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16	Wages for Unsubstituted Holidays	<input checked="" type="checkbox"/> Yes	Treated as wages
17	Education Allowance	<input checked="" type="checkbox"/> Yes	If paid as part of salary
18	Employer's PF Contribution	<input checked="" type="checkbox"/> No	Not included in wages
19	Employer's ESI Contribution	<input checked="" type="checkbox"/> No	Statutory contribution
20	Travelling Allowance (Reimbursement)	<input checked="" type="checkbox"/> No	Not a wage unless paid as a fixed allowance
21	Gratuity	<input checked="" type="checkbox"/> No	Paid upon retirement or death
22	Annual Bonus	<input checked="" type="checkbox"/> No	If paid <b>at intervals &gt;2 months</b>
23	Ex-Gratia Payment	<input checked="" type="checkbox"/> No	If <b>not contractual</b>
24	Service Charges (collected from customers)	<input checked="" type="checkbox"/> No	Not a wage under ESI
25	Gazette Allowance	<input checked="" type="checkbox"/> No	Not a wage under Section 2(9)
26	Employer's Contribution to Savings Scheme	<input checked="" type="checkbox"/> No	Not treated as wages
27	Payment to Rickshaw Pullers/Truck Operators	<input checked="" type="checkbox"/> No	No direct wage component
28	Strike Period Allowance	<input checked="" type="checkbox"/> No	Not considered for ESI
29	Medical Reimbursement	<input checked="" type="checkbox"/> No	If paid against bills
30	Bonus Linked to Performance	<input checked="" type="checkbox"/> No	If paid <b>&gt;2 months</b> interval
31	Food/Lunch Subsidy (in-kind)	<input checked="" type="checkbox"/> No	If provided via canteen or vouchers
32	Drivers' Allowance (if paid to hired driver)	<input checked="" type="checkbox"/> No	Not a direct wage component

### Key Takeaways:

- Wages include** all regular, contractual, and incentive-based payments.
- Not wages include** reimbursements, one-time payments, and statutory employer contributions.

### Landmark court judgements clarify the interpretation of "wages" under Sec.2(22) of the ESI Act:

#### 1. Suspension Allowance/Subsistence Allowance

Supreme Court has held in the case of RD, ESIC Vs. M/s. Popular Automobiles (Judgement dt. 29.9.97, Civil Appeal No. 3850 of 1993) that suspension/subsistence allowance is wage and contribution is payable under Sec.2(22) on the said amount.

#### 2. Overtime Allowance

Supreme Court in its judgement delivered on 6.11.96 in the case of Indian Drugs & Pharmaceuticals Ltd. Vs. ESIC (Civil Appeal No. 2777 of 1980) held that both the remuneration received during the

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working hours and overtime constitutes a composite wage and thereby it is a wage within the meaning of Sec.2(22) of the ESI Act.

### **3. Incentive Bonus**

As per the Supreme Court decision on 8.3.2000 in the case of M/s. Whirlpool India Ltd. Vs. ESIC (Civil Appeal No. 1903 of 2000), additional remuneration to become wages has to be paid at intervals not exceeding two months as distinguished from being payable. Hence, no contribution is payable on the incentive bonus, provided the periodicity of payment is more than 2 months.

### **4. Annual Commission**

The Supreme Court in the case of Handloom House, Ernakulam Vs. RD, ESIC (Civil Appeal No. 2521 of 1999) debated why the period of 2 months was fixed. It held that no employer shall have the permission to delay the payment of contribution on the premise that annual payments have to be worked out. Hence, annual commission is excluded from the definition of wages and no contribution is payable.

### **5. House Rent Allowance (HRA)**

Supreme Court in the cases of Braithwait & Co. Vs. ESIC and M/s. Harihar Polyfibres Vs. ESIC, Bangalore held that house rent allowance is a wage under Sec.2(22) of the ESI Act.

### **6. Night Shift/Heat/Gas & Dust Allowance**

Karnataka High Court (Full Bench) in NGEF Ltd. Vs. Dy. Regional Director, ESIC, Bangalore held that Night Shift Allowance, Heat, Gas & Dust allowance are wages under Sec.2(22) of the ESI Act.

Supreme Court in the case of M/s. Harihar Polyfibers Vs. RD, ESIC, Bangalore upheld the same view.

### **7. Service Charges**

Jaipur High Court in ESIC Vs. M/s. Rambagh Palace Hotel, Jaipur held that service charges are not wages under Section 2(22) of the ESI Act. This verdict was accepted by ESIC, and hence no contribution is payable on service charges.

### **8. Wages and Dearness Allowance for Unsubstituted Holidays**

Gujarat High Court in ESIC Vs. New Assarw Manufacturing Co. Ltd. held that wages and dearness allowance paid for unsubstituted holidays are wages under Sec.2(22) of the ESI Act, and contribution is payable.

### **9. Ex-Gratia Payment During Strike for Travelling Expenses**

Bombay High Court in ESIC Vs. Willman (India) (P) Ltd. (Case No. 210 of 1976) held that ex-gratia payment during a strike for travelling expenses is neither considered a wage under Sec.2(9) nor Sec.2(22) of the ESI Act, and no contribution is payable.

### **10. Attendance Bonus**

Bombay High Court in ESIC Vs. Indian Dyestuff Industries Ltd. held that attendance bonus constitutes wages under Sec.2(22) of the ESI Act, subject to periodicity (if more than 2 months, it is not considered wages).

### **11. Payment Made to Rickshaw Pullers, Hathrairy Pullers, and Truck Operators**

Bombay High Court (Division Bench) in Raisaheb Tekchand Mohate Mills Vs. R.D. ESIC (1990) held that if the amount paid is a lump sum including loading/unloading charges and no separate wages are paid, no contribution is payable.

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