# INDIA EMPLOYEE BENEFITS ROUND-UP 2019

PRUDENT
THE FUTURE OF INSURANCE

## Tax Exemptions Announced in the Interim (July) Budget 2019

### Increase in Standard Flat Deduction

The standard flat deduction on income introduced in the Finance Act, 2018, was raised from INR 40,000 for fiscal year 2018-19 to INR 50,000 for financial year 2019-20 for all salaried employees effective from financial year 2018-19. The standard deduction was introduced while disallowing the Medical Allowance of INR 1,500 per month (INR 15,000 per year) and the Transport Allowance of INR 1,600 per month (INR 19,200 per year). Transport allowance remains available to physically challenged employees and employees of a transport business.

### Increase in Tax-Free Withdrawal from the National Pension Scheme

India's National Pension Scheme (NPS) is a voluntary retirement investment mechanism which enables employees to make systematic investments to their pension savings both through an individual investment account (Tier 2) and an employer-sponsored pension account (Tier 1). In Budget 2019, the Central Government increased the tax-free withdrawal limit at age 60 or retirement age from 40% to 60% of the corpus in the Tier 1 pension account. This step will make the National Pension Scheme even more attractive as a voluntary retiral saving scheme.

# Employees’ Provident Fund Organization (EPFO)

## Provident Fund to be Paid on Allowances

The Supreme Court issued a judgement on 28th February 2019 mandating that all allowances which are not part of special incentive or production bonus will form part of basic wages and thus are subject to Provident Fund contribution. House Rent Allowance is exempted.

Employees whose Basic wage is less than INR 15,000 per month will have to contribute on Allowances such as Supplementary Allowance, Special Allowance, and Conveyance Allowance that now form part of wages while the employer’s contribution and administrative charges will increase. If Basic wages and allowances are more than INR 15,000 per month, the employer can limit the contribution to the ceiling of INR 15,000.

Though the judgement was delivered on 28th February 2019, it is applicable from the inception of The Employees‘ Provident Fund and Miscellaneous Provision Act, 1952. Thus, companies that have contributed to the EPFO on the basis of Basic wage that was below the wage threshold may have a significant financial liability.

## Declaration of Interest Rate for Financial Year 2018-2019

The EPFO issued notification No. Invest. I/3(2)133/ROI/2018-19/5516 dated 27th September 2019 declaring a rate of interest of 8.65% for financial year 2018-19 for Employees’ Provident Fund Members Accounts. The rate of interest was 8.55% for financial year 2017-18 and 8.65% for 2016-17.

## Karnataka Leads in Implementing the Creche Rules

On 8th August 2019, Karnataka notified The Karnataka Maternity Benefit (Amendment) Rules 2019[1] (Rules) for establishing and running creche facilities, becoming the first state to implement the creche rules, as required under the Maternity Benefit (Amendment) Act, 2017.

The Rules mandate that employers having at least 50 employees must provide a creche onsite or within 500 meters of the entrance gate of the business for children below age 6 years. The Rules require the creche facility to be extended to all employees and refer to parents rather than women or mothers; therefore, they are interpreted to be applicable to both male and female employees, whether permanent, temporary, regular, daily wage or contract.

Creche facilities must be provided in a ratio of one creche for every thirty children and must be operational during all work shifts, both day and night, when the mother or parents are working.

The Rules address other areas, such as building construction, the need for an open-air playground, as well as the provision of equipment, food and toys. Staff designations are defined, and the Teacher cum Warden and Creche Attendant must have minimum qualifications. Medical examinations must be conducted before a child is admitted and every two months thereafter, and medical records must be maintained.

[1] Karnataka State Government vide Gazette Notification No. LD 127 LET 2018 dated 8th August 2019, notified the Karnataka Maternity Benefit (Amendment) Rules, 2019 (“Karnataka Creche Rules”), wherein new rules relating to crèche facilities are inserted in the Karnataka Maternity Benefit Rules, 1966.

Complying with the rules is challenging given that most employers are located in commercial or industrial areas that never provisioned to accommodate creches and playgrounds. Employers may have to modify their leases and certainly their insurance contracts to include day care operations. There may not be day care providers within the stipulated 500 meters distance and employees may prefer to leave their children in day care establishments closer to their homes than to their offices. The monthly per child cost of running a creche facility or outsourcing to a third party may actually be higher than an employee's monthly salary in some sectors. While employers may want to contribute to this social welfare program which can alleviate the childcare burden of working parents and have many meritorious outcomes, the Rules do not make providing creche facility either employer- or employee-friendly.

The IT sector in Bangalore, Karnataka, has been proactively addressing the childcare needs of their employees for years prior to the statutory requirement being enacted; thus, they have a head start in complying with the Rules.

The State Government of Haryana (Gurgaon) released its draft crèche rules on 9th July, 2019 and other States are expected to follow, long past the October 2018 due date given by the Government.

## IRDA Guidelines on Standardization of Exclusions in Health Insurance Contracts, 27th September 2019

On September 27, 2019, IRDA issued guidelines standardizing exclusions under health insurance contracts issued in India. These new Guidelines follow the last Guidelines issued in 2016 and specify

1) exclusions that are not allowed in the health insurance contracts, (Chapter II)
2) standard wordings of 18 exclusions, (Chapter III)
3) existing diseases that may be permanently excluded, (Chapter IV)
4) modern treatment methods that must be covered, (Chapter V) and
5) other norms on exclusions (Chapter VI).

These Guidelines become effective from 1st October 2019 for new products filed and must be implemented in all contracts by 1st October 2020.

These guidelines will have some significant impact on individual plans, which cannot be customized. Individual and family plans will now have the benefit of coverage for modern treatment methods that were earlier excluded, as well as for mental health treatment, age related macular degeneration, and behavioural and neurodevelopmental disorders. **However, individuals can be denied lifetime coverage for specified existing diseases such as malignant neoplasms, heart disease, and cerebrovascular disease.** A disease-specific exclusion may be preferable to total denial of coverage, but it leaves policyholders with these specified diseases without coverage for them if the carrier refuses to extend coverage even with premium loading.

Employer contracts are customizable and employers can both benefit from new inbuilt coverage as well as remove or amend exclusions they do not find favourable. While we will not go into all the details of the Guidelines, we will highlight below a few that employers have been most interested in.

## Major Exclusions Removed (Chapter 2)

Some major exclusions are no longer allowed in health insurance contracts. Among these are age related macular degeneration, behavioural and neurodevelopmental disorders, treatment of mental illness, stress or psychological disorders and neurodegenerative disorders, and genetic diseases or disorders.

IRDA seems to have disallowed some of these earlier exclusions in response to legislation. The Mental Health Act, 2017, which became effective in May 2018, requires that

"Every insurer shall make provision for medical insurance for treatment of mental illness on the same basis as is available for treatment of physical illness."

It will be interesting to see how carriers will cover some of these conditions which require outpatient treatment or occupational, behavioural, or physical therapy, rather than hospitalization. Employers will need to have well-worded contract clauses to ensure they have the coverage they want. The pricing implications will have to be seen.

## Standard wordings of 18 exclusions & exclusion codes introduced (Chapter 3)

IRDA has amended or introduced standard wording of 18 exclusions to further the goal of standardization and uniformity across the industry. A code number has been assigned to each defined exclusion and IRDA requires these to be used in the insurer's or TPAs systems to capture exclusion code-specific claim repudiations.

Employers may need to review some of the wordings with their brokers and amend the exclusions to ensure other coverage which is now inbuilt in the contract is not eroded by the exclusions.

IRDA has introduced standardized wordings for Obesity/Weight Control exclusion (code Excl06) creating conditions under which bariatric surgery is payable, viz.,

- the surgery is advised by a doctor
- the surgery is supported by clinical protocols
- the member is 18 years or older
- the Body Mass Index is

  a) greater than or equal to 40 or
  b) greater than or equal to 35 in conjunction with co-morbidities such as

    - Obesity-related cardiomyopathy,
    - Coronary heart disease,
    - Sleep apnea, and
    - Uncontrolled Type 2 Diabetes,

Following failure of less invasive methods of weight loss.

While some doctors laud the wording of this exclusion, saying it permits more patients to undergo this treatment, other medical professionals are concerned that patients not necessarily meeting these conditions may be prescribed surgery, which could result in complications or even death.

IRDA has introduced a Change-of-Gender Treatment exclusion (Code- Excl07), which excludes treatment, including surgical management, to change characteristics of the body to those of the opposite sex. This was not a standard exclusion prior to these Guidelines. We have seen some corporates include this coverage in their contracts through endorsement in order to advance their global diversity policy in India.

Under the cosmetic or plastic surgery exclusion (code Excl08), IRDA has added an exception for cancer to the exceptions for accident and burns, opening up coverage for cancer patients who may require reconstructive surgery.

IRDA seems to be joining the effort to curtail fraud and malpractices by hospitals by specifically excluding medical expenses incurred at Excluded Providers (code Excl11) where carriers have specifically excluded the medical providers and disclosed the blacklisted providers on their websites or notified the policyholders. An exception is made for life threatening conditions until the patient is stabilised.

While mental health cannot be excluded, IRDA excludes "Treatment for, Alcoholism, drug or substance abuse or any addictive condition and consequences thereof." (Code Excl12). The intent is not only to exclude hospitalization for the addiction but also for any physical ailment arising out of the addiction, such as liver cirrhosis.

Some corporates may want to amend or remove this exclusion if they consider addiction to be a mental illness.

## Existing Diseases Allowed to be Permanently Excluded (Chapter 4)

IRDA has specified certain existing diseases which can be permanently excluded in order to enable individuals who have pre-existing diseases to be given coverage for other diseases rather than be denied coverage altogether. Carriers may load the premium in order to offer coverage for these specified diseases or may deny coverage for the specified diseases altogether, but they may not deny coverage to the proposer. Other pre-existing diseases disclosed by the proposer are subject to the terms and conditions for pre-existing diseases, usually four claims-free years before coverage is given.

## Specific pre-existing diseases which can be permanently excluded under Guidelines 2019

- → Malignant neoplasms
- → Heart ailment, congenital heart disease, valvular heart disease
- → Chronic kidney diseases
- → Cerebrovascular disease
- → Loss of hearing
- → Chronic liver diseases
- → Sarcoidosis
- → Epilepsy
- → Inflammatory bowel diseases
- → Pancreatic diseases
- → Hepatitis B
- → Alzheimer's disease, Parkinson's disease
- → Demyelinating disease
- → HIV/AIDS
- → Papulosquamous disorders of the skin
- → Avascular necrosis

> "When an employee moves from a group plan to an individual plan, these specified diseases exclusions will be applicable. Therefore, employees should be made aware that parents, especially, may not have coverage for these specified existing diseases."

## Modern Treatment Methods and Advancements in Technologies (Chapter V)

Taking cognisance of rapid advancements in medical treatment due to new technologies and drugs, IRDA has mandated that specified new treatments cannot be excluded in health contracts. These procedures must be covered on inpatient basis, or as part of domiciliary hospitalization, or as a Day Care treatment in a hospital. Insurers have the right to impose sub-limits on these procedures and to include other additional new modern treatment methods.

Chapter V is friendly both to the individual and corporate consumer. Individual consumers earlier had no say in adding these covers to their contracts. Corporates had to specify each new cover they wanted, a challenging task. Now these covers will be inbuilt to provide more comprehensive coverage that takes advantage of the use of new technologies in medical treatment.

### The new treatment methods that cannot be excluded are:

- Uterine artery emolization and HIFU
- Balloon sinuplasty
- Deep brain stimulation
- Oral chemotherapy
- Immunotherapy – monoclonal antibody to be given as injection
- Intra vitreal injections
- Robotic surgeries
- Stereotactic radio surgeries
- Bronchial thermoplasty (therapeutic radiofrequency treatment for severe asthma)
- Vaporisation of the prostrate (green laser treatment or holmium laser treatment)
- IOMN (Intra Operative Neuro Monitoring)
- Stem cell therapy: hematopoietic stem cells for bone marrow transplant for haematological conditions

## Sources


https://novojuris.com/2019/08/23/creche-rules-notified-in-karnataka-for-establishments-with-50-or-more-employees/

https://www.irdai.gov.in/ADMINCMS/cms/LayoutPages_Print.aspx?page=PageNo3916