

Wages – Section 2 (22)

Wages means

1	all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled	(1) Contractual; (2) Exhaustive by using the word 'means';
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and

2	Includes any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or layoff	(1) Non-contractual; (2) Inclusive part; (3) But for this inclusion, the payments covered by this part would not ordinarily fall within the first part; (4) No restrictive interpretation permissible; (5) Not to be interpreted so widely so as to overreach the objects for which the Act was passed; (6) Governed by the relevant statutes also.
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and

3	other additional remuneration, if any, paid at intervals not exceeding two months	(1) Inclusive part; (2) Need not be under the terms of contract of employment.
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but

4	does not include four specific items of payments.	Exclusion clause;
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*[Classification into four categories and analysis done by the Supreme Court in M/s Harihar Polyfibres Vs. ESIC - AIR 1980 SC 1680]
(Also refer to Page 506 & 507 of ESI Act, 1948 by Kharbanda – 1999 Edition.)*

- ❖ Do not just go by the nomenclature of the heads of accounts.
- ❖ Incentive Allowance can be named by the employer as Inducement Allowance or Stimulus Allowance.
- ❖ Attendance Bonus can be written as Turnout Allowance or Punctuality Allowance.
- ❖ There is no limit to the imagination to give variety of names to various heads of accounts.
- ❖ Moreover, it is the narration in the voucher that tells you the real nature and purpose of an expenditure. The nomenclature could be a misleading one.
- ❖ “Even though the Management has chosen to use a self-serving description, namely, as incentive bonus, the E.S.I. Court, on evidence, rightly found it as over-time wages.” (Narasimha Mills Ltd. Vs. ESIC, High Court, Chennai 20.1.2000)
- ❖ “The liability under the Act does not depend upon the nomenclature used by the employer or designation given to the employee” (T.I.Diamond Chains Ltd., T.I. Cycles (India) Ltd and two others Vs. ESIC) – EI OP No, 20/1991, 44/1991, 45/1991 and 57/1991 on 24.3.2000.

Examine the nature of expenditure, with reference to the definition of the term 'Wages'.

The cash benefits payable to the beneficiaries will not be attractive with reference to the real wages earned by the insured person, unless contribution is made payable by the employer on all items of wages paid by him, as per the definition under Sec. 2 (22).

Refer to the Hqrs. Instructions for guidance regarding the principles laid down in respect of various heads.

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