

Important Clarifications On Contract Labour

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Q. What is the difference between contract labour and outsourcing? Which is better option and why?

Ans. Neither the term "Contract Labour" nor the term "outsourcing" has been defined under Contract Labour Act. The intention of ultimate net result of both the terms appears to be same. Term "outsourcing" has been coined very intelligently to create confusion between the two.

"Contract Labour" is a term which is applied to man power engaged by somebody else to produce a given result to principal employer where this man power has no direct relationship of employer-employee with the principal employer. This includes the simple supply of manpower to principal employer by contractor where contractor is not involved in specified activity.

"Outsourcing" conveys more or less same meaning. When an employer engages somebody else to deliver a specified result where employer is not involved with the man power engagement or supervision or control activity over such man power. If any activity which is outsourced to someone and carried outside the premises of the principal employer, such manpower engaged will not be termed as "workman" under Contractor Labour Act.

It is not the nomenclature of the term but the real intent to decide when it is a Contract Labour or outsourcing. It can also be said like contract labour reflect manpower where as outsourcing reflects the job or the activity.

Bombay High Court in the case of Sudhir Kondiram Jadhav (2002 I CLR 97) has held that workers employed by agencies will be the Contract Labour under the Act.

Q. Is Contract Labour Act applicable when jobs and services are outsourced?

Ans. When the jobs and services are outsourced and are carried out in some other premises not being premises under controlled and management of the principal employer, Contract Labour Act will not apply. For all other jobs and services outsourced which are carried out in the premises of the principal employer will be covered under the Contract Labour Act.

Q. What are the non-perennial and non-permanent jobs which can be assigned to contract labour?

Ans. Neither the "perennial" nor the "permanent" term has defined under the Act. The word

"perennial" has been used under sec. 10(2)(b) where it is said that if the job exists for sufficient duration will be considered as of "perennial" nature. The act no where prohibits engagement of contract labour on any job or activity or service unless it is prohibited by the Appropriate Govt. under the provisions of the Act. Andhra Pradesh State Govt. has amended the CL Act in 2003 and clarified the jobs / activities on which contract labour can be deployed but no other state has moved in this direction to bring clarity on this point. At present contract labour can be engaged on any permanent nature of job in strict legal sense but yes, it should be avoided as this may become a basis for the state Govt. to prohibit employment of contract labour on that particular job / activity / service in the industry.

Q. Can we have permanent employees and contract labour working side by side on the same job?

Ans. Yes! As explained above unless it is prohibited by the Govt.

Q. What is the best ratio between permanent and contract labour? Can we engage 100% contract labour?

Ans. There is no guide line provided under the Act about this ratio. The concept of engagement of contract labour or giving job on contract basis originated to get the things done in a given time frame to be paid on the basis of net result and not on the number of manpower involved and this can always be applied to those areas of the industry where activities are such that they do not require full time workers for the major portion of the working hours or any sudden increase of volume of work which needs to be accomplished in a specified time. So 100% contract labour can't be engaged unless the whole industry is leased out to someone else, who ultimately becomes the principal employer for the manpower engaged by him. In my view ideal ratio of contract labour, to keep the healthy industrial relations should be around 70/30 (70% to be engaged by principal employer and 30% through contract labour).

Q. Can we have different wages and other terms for permanent employees and contract labour doing the same or similar job?

Ans. Though, rules framed under Contract Labour Act by Central Govt. as well as State Govts. carry a condition [central rule 25 (2) (v)(a) & (b)] that where the workmen employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holidays, hours of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by principal employer of this establishment on the same or similar kind of work but if, there is an disagreement with regard to the type of work, shall be decided by the concerned labour commissioner.

But recently Supreme Court in the case of U.P. Rajya Vidyut Utpadan Board case (2010 LLR 453) has clarified that nature of work, duties and responsibilities, attached to the job of permanent workmen and contract labour are relevant in comparing and evaluating as to whether the workmen employed through contractor perform the same or similar kind of work as the workmen directly employed by the principal employer. Degree of skills and various dimensions of a giving job have to be gone into to reach a conclusion that nature of duties of the workmen in two categories are on par or otherwise. Often the difference may of a degree. It is well settled that nature of work can't be judged by mere volume of work;

there may be qualitative difference as regards reliability and responsibility.

However, Madhya Pradesh High Court in the case of Steel Authority of India Ltd. case (2007 LLR 79) has held that the workers through contractor under CL Act will be entitled to equal wages which were being paid to regular employees.

Q. Can we transfer casuals/temporaries on the rolls of contractor?

Ans. As principal employer one should not do it. Transfer from the rolls of principal employer the rolls of contractor establishes that contract is sham and camouflage and the real control and supervision is of principal employer. Even if one wants to do this, better way would be to first clear full and final accounts, sever the relationship of principal employer and casual /temporary workmen by proper documentation. Then contractor can engage / employ such casual / temporary workmen on his rolls. In this whole process documentation is the key to establish whether the arrangements are genuine or fake.

Q. Liability of principal employer for injury, illness, disability, death etc.

Ans. Principal Employer is fully responsible in case of injury, illness, disability or death unless the contract labour is covered under ESI with his contractor employer.

Q. Can and should the employer has a say in the number and selection of contract labour?

Ans. No! Once the job / services / activities are allocated to a contractor under proper agreement, principal employer should not have a say in number and selection of contract workmen, at least on documents. If the principal employer is selecting the contract labour, appointing them under the name of contractor, it is sufficient to establish the relationship employer-employee between the principal employer and the so called contract labour.

Q. Who is to take disciplinary action against contract labor? Under what rules? Are standing orders applicable to contract labour?

Ans. Contractor as employer in relation to contract workman should take disciplinary action against such errant workman under the service rules of his organization / terms of employment. Standing Orders are not applicable to contract labour as the definition of the workman under Industrial Employment Standing Order Act does not cover contract labour unless your Standing Orders cover this category.

Q. Is it necessary and desirable to issue employment card/gate pass/identity card to contract labour? If so under whose authority/signature? Safeguards?

Ans. Yes! It is very much desirable. Issue of employment card / identity card is an obligation under the provisions of contract labour act and rules. Employment card / Gate pass / identity card should be issued by and under the seal of contractor because he is their employer. Management of principal employer should not involve themselves in this activity.

Q. Each contractor engaging less than 20 but together they engage more than 20. Will the provisions of registration, licensing and other statutory provisions apply?

Ans. In this situation, principal employer will be under legal obligation to obtain registration under the contractor labour act but individual contractors having less than 20 workmen will not be required to obtain license under the act as the same does not apply to them. However,

there is a catch. If a contractor employs 20 persons on any day during the preceding 12 months, act will apply.

Q. Statutory requirements and precautions in awarding contract for safeguarding managements interests.

Ans. Principal Employer should execute well drafted agreement and other documents to establish the relationship of principal employer and contractor. Principal employer should not establish the supervision and control over the contract labour for carrying out any activity. It is advisable to have the expert services for this whole process. Because any minute lacunae in drafting of various documents may land principal employer and the organization in trouble in case of dispute. I strongly discourage the growing habit of copy paste exercise normally concerned managers do while engaging contractor for their organization in terms of various documents. This should not be done because each organization has its own specifications, limitations, nature of work and requirements etc.

Q. License not renewed but contractor continues to work – legal implications including permanency?

Ans. Even if the license of the contractor is not renewed but continues to work, contractor labour can't claim permanency with the principal employer merely on this ground. However contractor can be prosecuted for the violation of the provisions of the act for not getting his license renewed. Karnataka High Court in the case of Steel Authority of India Ltd. (1990) 64 FLR 573 has held that licensing is only a regulatory measure and it does not create any privilege. Bombay High Court in the case of General Labour Union (Red Flag) has held that the employees engaged by a contractor to run a canteen for a company does not become employees of the company if the contractor fails to register the contract with the appropriate authorities. Supreme Court in the case of Deena Nath (1992 LLR 46) has held that consequence on non compliance with the provisions related to registration and license is penal.

Punjab & Haryana High Court in the case of Food Corporation of India (2008 LLR 391) has held that when the contractor does not possess valid license only penal provisions would be attracted and it is no where provided that such contract labour would become the employees of principal employer.

Q. Contractor changing but contract labour not changing – implications, precautions required?

Ans. The situation where contractor in changing but contract labour remain same may be viewed against the principal employer as it reflects against the spirit of the act unless the shift of labour from one contractor to other is properly documented. This may lead to declaration of sham contract. Supreme Court in R.K. Panda case (1994 LLR 634) has held that workers working under different contractor for last 10 years will be absorbed by the principal employer.

Q. Contract terminated due to unsatisfactory performance of the contractor, contractor leaves – can contract labour claim permanency? What should employer do?

Ans. No! In this situation contract labour can't claim permanency in the organization. The

moment, contract is terminated, the workers employed by such contractor loses the right to enter into the premises of the principal employer to work as it is the responsibility of the contractor to either keep such labour under his employment or clear their accounts. If principal employer allows such contract labour to work in the premises without any tag / identification, in all probabilities such contract labour will be deemed as the workmen of the principal employer.

Q. Contract labor terminated through a settlement. Should principal employer be a party?

Ans. No! Principal employer should not become a party to such a settlement executed between the contractor and his workman. It is a mutual matter between the contractor as employer and his workman.

Q. When contractor runs away leaving his workforce and supervisor, how to manage work and labor and who is to handle pending conciliation reference?

Ans. It is for the contractor to discharge his responsibility as employer towards his workmen. If he runs away leaving his workforce, in no way principal employer is responsible for taking care of them in strict legal sense except payment of wages, if not paid by the contractor. Principal employer should not involve himself in the conciliation reference.

Q. What to do if the contractor refuses to pay the labour?

Ans. Principal Employer is responsible and under legal obligation to pay wages to the workmen employed by contractor in the premises in case contractor refuses to pay [sec. 21 (4)] of the Act. Kerala High Court in the case of Cominco Benani Zinc Ltd. case (1989 LLR 123) has also held that if the contractor fails to pay wages to his employees engaged by him, principal employer will be liable to pay the same.

Q. Action required to be taken by the management after abolition of contract labour?

Ans. Principal Employer is prohibited to engage contract labour on such job / activity / service which is abolished by the Appropriate Govt. In such situation principal employer should not engage contract labour for such job / activity / service. If he does so, such contract labour would be deemed as the employees of the principal employer.

Q. Can management challenge the decision of Appropriate Govt. regarding abolition of jobs?

Ans. Yes! Management can challenge the decision of the Appropriate Govt. regarding abolition of jobs in High Court through writ.

Q. Should contractor and contract labour be rotated? Why? How often?

Ans. Rotating contract labour and contractor for the same job / activity / service may be held as unfair labour practice unless there are sound reasons and proper documentation exists in favour of principal employer as bonafide action.

Q. How to reduce number of contract labour?

Ans. First, by identifying the jobs / activities / service which are regular and perennial in nature and organization requires constant labour. Secondly replace such contract labour by regular workmen by the company.

Q. Contract labour demanding permanency – How to handle?

Ans. Ensure that your engagement of contract labour system in the organization is genuine. All documentation including appointment, supervision and control should be sufficient to establish that contract is not sham. I suggest to seek expert advice and avail such services as this is very sensitive issue.

Q. Contract labour demanding similar benefits as permanent employees. Is the claim legally valid?

Ans. Yes! Their claim may be legally valid as it is already provided in the Act that contract labour is entitled for equal wage, benefits and facilities doing the same or similar kind of work as employees of principal employer.

Q. Is Minimum Wages Act applicable to contract labour?

Ans. Yes! Rules framed under Contract Labour Act by Central Govt. as well as State Govts. carry a condition [central rule 25 (2) (iv)] that rates of wages payable to the workman by the contractor shall not be less than the rates prescribed under the Minimum Wages Act for such employment where applicable and where the rates have been fixed by agreement, settlement or award not less than the rates so fixed. Moreover all State Govts. have included the category of Contract Labour under their respective MW notifications.

Q. What is the liability of Principal Employer in the case of sub-contracting?

Ans. Same - as in the case of contractor. Because, as per the provisions of the Act sub contractor is covered in the definition of the contractor.

Q. Implications and liabilities of temporary/casual/probationer employees/trainees? Is there any maximum duration? Relevance of 180/240 days? Implication of breaks?

Ans. Contract Labour Act does not provide any where the status of workman as temporary / casual / probationer / trainee. It is for the contractor to employ his workman in his organization as he wants. It is no where going to affect the principal employer.

29. What changes are likely to be made in the contract labour Act as a part of Labour Law reforms?

Ans. Industrial Disputes Act has already being amended recently with reference to definition to workman, introduction of grievance redressal committee, right of workman to approach labour court directly in case of individual dispute etc. Govt. is also considering amending Contract Labour Act which is in terms of providing clear cut equal benefits and wages to contract labour with regular workman but such considerations are at very preliminary stage and no one knows whether it takes shape or not.

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