

Contract Labour Reforms under the OSH Code

Introduction

The Occupational, Safety, health and Working Conditions Code, 2020 (“**OSH Code**”) received the assent of the president on September 28, 2020. The OSH Code will subsume several acts formulated to focus on health, safety and working conditions of the persons employed in an establishment. The OSH Code will also subsume the Contract Labour (Regulation and Abolition) Act, 1970 (“**CLRA**”) and will govern the employment of the contract labour in the country once it comes into force.

This article focuses on some of the major reforms to be implemented with regard to contract labour and changes introduced with respect to prohibition of employment of contract labour in an establishment.

Applicability of OSH Code

The OSH Code shall be applicable on every establishment employing fifty (50) or more than fifty (50) contract labour through a contractor in any establishment. The CLRA, subject to state specific amendments, applies to establishments employing twenty (20) or more contract labour through contractors. States like Maharashtra, Telangana etc. have increased this threshold of twenty (20) contract labour to fifty (50) contract labour. The OSH Code focuses on bringing uniformity with respect to application of the chapter related to contract labour in all the states across the country.

Inclusion of Migrant Worker

The definition of contract labour under the code now includes the inter-state migrant workers to ensure that the benefits provided to the contract labour are also provided to the inter-state migrant workers. Earlier, under the CLRA the definition of contract labour did not include inter-state migrant workers.



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One Registration for One Establishment

The OSH Code provides for a single registration of every establishment employing ten (10) or more workers and every establishment to whom the OSH Code applies shall apply for such registration within sixty (60) days from the date of applicability of OSH Code. This one registration concept will now allow every principal employer who has obtained registration under the OSH Code to engage contract labour in his establishment without taking any separate registration for the same.

License of Contractors

As per the OSH Code, every contractor, who is employing fifty (50) or more contract labour and placing them to work for some other establishment will need to obtain a single license. The license will be valid for a period of five (5) years. Under the CLRA the contractors are bound to obtain multiple licenses with respect to each establishment where the contract labour is being placed by the contractor. The OSH Code will provide relief to the contractors from obtaining multiple licenses.

Prohibition on Employment of Contract Labours

The OSH Code restricts employment of contract labour in the core activities of an establishment. However, the OSH Code provides that the principal employer may engage contract labour through a contractor in any core activity in the following situations, where:

1. The normal functioning of the establishment is such that the activity is ordinarily done through contractor; or
2. The activities are such that they do not require full time workers for the major portion of the working hours in a day or for longer periods, as the case may be; or
3. Any sudden increase of volume of work in the core activity which needs to be accomplished in a specified time.

Under the OSH Code, core activities shall mean any activity for which the establishment is set up and includes any activity which is essential or necessary to such activity. Further, it is provided that the following shall not be considered as essential or necessary activity, if the establishment is not set up for such activity, namely:—

- (i) sanitation works, including sweeping, cleaning, dusting and collection and disposal of all kinds of waste;
- (ii) watch and ward services including security services;
- (iii) canteen and catering services;
- (iv) loading and unloading operations;

- (v) running of hospitals, educational and training Institutions, guesthouses, clubs and the like where they are in the nature of support services of an establishment;
- (vi) courier services which are in nature of support services of an establishment;
- (vii) civil and other constructional works, including maintenance;
- (viii) gardening and maintenance of lawns and other like activities;
- (ix) housekeeping and laundry services, and other like activities, where these are in nature of support services of an establishment;
- (x) transport services including, ambulance services; and
- (xi) any activity of intermittent nature even if that constitutes a core activity of an establishment.

Under CLRA, the appropriate government after consultation with the central board has the powers to issue notification to prohibit employment of contract labour in any process or activity in any class of establishment. This however, does not provide for whether the contract labours can be engaged by a principal employer in his establishment for certain kind of work.

The OSH Code provides for a comprehensive list of activities which shall not be considered as the core activity of an establishment and hence provides for better clarity on the subject. Further, the OSH Code also provides clarity regarding prohibition on employment of contract labour and situations when contract labour can be appointed unlike the CLRA.

Conclusion

The OSH Code provides a larger scope to the regulation of contract labour by increasing the threshold limit from twenty (20) to fifty (50). Also, the OSH Code provides for single registration for the employers under the code and hence, no separate registration is to be obtained by the employer for the purpose of employing contract labour. In case of contractors, the need to obtain different licenses to provide contract labour to different establishments has been eradicated and therefore, the OSH Code provides better clarity for prohibiting employment of contract labour by providing a separate list of activities that does not qualify as core activity. Overall, the OSH Code has reduced the compliance requirements and provides better clarity of law.

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