

## **Contract Labour (Regulation & Abolition) Act, 1970**

The Contract Labour (Regulation & Abolition) Act, 1970 aims at to regulate the employment of contract labour in certain establishments and also to prohibit such employment in certain circumstances. This Act is applicable throughout the country. Every establishment and Contractor employing 20 or more persons has to follow the Act and the Rules.

### ***Frequently Asked Questions***

#### ***What is the utility of contract labour system?***

- The contract labour will ensure speedy completion of the assigned work according to the specifications.
- The employment of contract labour would relieve the principal employer from the burden of looking after the non-essential things.
- The employment of contract labour would be comparatively cheaper with lesser liability for supervision and control.
- There will be lesser industrial labour unrest in respect of such contract labour.
- The employment of contract labour is very common for the following jobs:
  - (i) Construction, addition/modification to the structures of the factory or an establishment,
  - (ii) Breakdown of machinery,
  - (iii) Requiring periodical maintenance of machinery and equipment like the service contracts for maintenance of air conditioners, electrical gadgets and computers, etc.

#### ***Does contract labour system differ from outsourcing?***

“Outsourcing” conveys more or less similar meaning. 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 the Act. When the jobs and services are outsourced and are carried out in some other premises not being premises under control and management of the principal employer, the 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 Act.

#### ***When an employer is required to obtain registration under the Act?***

When there are 20 or more employees either from one contractor or more than one contractor.

#### ***Can the work of perennial nature be carried on through the contractor?***

As long as there is no prohibition by notification issued by the appropriate government under the Act, such work can be carried on.

#### ***What are the legal provisions regarding wages to contract labour?***

Rule 25(2) of the Act provides that where the type of work done by the workmen engaged by the contractor is the same as done by the workmen directly employed by the principal employer, the workmen employed by the contractor would be entitled to the same wages.

#### ***Will contract system be abolished if the contract workers are working for a long time?***

No. Length of service is no criterion for regularisation of the contract workers.

#### ***When an agreement between the principal employer and the contractor would be construed as sham?***

There are various factors and it is desirable to read carefully the precautions to be taken by the principal employer while engaging contract labour. Notwithstanding that the principal employer or its representative(s) should not have direct control and supervision over the contract labour.

***Can the workers of the contractor become the employees of the principal employer when he fails to seek registration and the contractor fails to obtain licence under the Act?***

No. If a principal employer, who does not have its registration under section 7 of the Act, does employ the persons through the contractor who is having no licence under section 12 of the Act, then only penal provisions of sections 23 and 25 of the said Act are attracted, hence it is no-where provided that such employees employed through the contractor would become employees of the principal employer.

***What are the principles for determination of relationship of employer and employee?***

The Karnataka High Court in *Management of V.I.S.L. vs. P.O.*, 1994 (69) FLR 536 has given the tests to be applied for determining the existence of master and servant relationship and as to when it can be termed as a sham contract.

- a) Who pays?
- b) For whose benefit the workmen work?
- c) Under whose supervision?
- d) Whether disciplinary action can be taken?
- e) If so, by whom?
- f) Has the employer the right to reject the end product?

***Whether by deposit of provident fund contributions by the principal employer for the workers of the contractor would justify regularisation of the contract workers?***

No. Merely that a principal employer has deposited the provident fund contributions on its Code Number for the workers of the contractor, it cannot entitle them for seeking their regularization.

***Can Courts abolish the contract labour system?***

No. Only the appropriate government can abolish the contract labour system and its decision can be challenged before Industrial Tribunal. It is for the appropriate Government to consider whether it is necessary to prohibit contract labour in any process.

***Will a worker, engaged through contractor working for 240 days in the preceding 12 months, claim to be regularised?***

Merely working 240 days in a year would not entitle contractual workers to claim regularization.

***Can the workers of the contractor possessing licence under the Act be treated as employees of the principal employer?***

There will be no relationship of employer and employee between the worker of the contractor and the principal employer.

***Is principal employer liable to pay bonus or gratuity to the workers of the contractor?***

No. There is a direct ruling of Kerala High Court in *Cominco Binani Zinc Ltd. vs. Pappachan*, 1989 LLR 123 wherein it has been held that neither the Contract Labour (R&A) Act nor the Payment of Bonus Act or the Payment of Gratuity Act provides that the principal employer will be liable to pay bonus or gratuity to the workers of the contractor.

***Does principal employer become liable to pay wages to the workers of the contractor if the latter fails to pay?***

The Principal Employer is responsible and under legal obligation to pay wages to the workmen employed by contractor in the premises in case contractor fails to pay [section 21(4) of the Act].

***What should be an ideal agreement between principal employer and the contractor?***

The principal employer should execute well drafted agreement and other documents to establish the relationship of principal employer and contractor. It should be stated that the agreement is between principal to principal.

***Precautions be taken while engaging Contractors***

- While engaging contract labour through contractor, the following precautions be taken by the principal employer under the Act.
- At the first instance, it must be ensured that there is no notification prohibiting contract labour system by the appropriate government for the employment of contract labour in any process, operation or any work of the establishment.
- The work for which contract labour is engaged is preferably not of perennial nature;
- However, in the absence of notification by the appropriate government prohibiting or abolishing such type of contract system, then there is no bar in engaging contract labour.
- Before identifying a contractor, it is desirable to advertise in the local newspaper inviting offers from the contractors.
- The principal employer gets the registration certificate and the contractor obtains the licence from the competent authority as provided under section 7 of the Act before proceeding to engage the contract labour.
- The establishment must ensure that it issues certificate in Form V to the contractor for obtaining licence as provided under section 12 of the Act;
- The payment of wages to the employees employed by the contractor is disbursed to his employees by the contractor himself or his nominee and principal employer has to depute his representative to be present and sign the payment register in token of having disbursed the salary in his presence by the contractor; [Rule 72 & 73]
- There should not be any supervision and control by the principal employer in respect of employees employed through the contractor to fulfill the obligation of the contract;
- Amongst other workers as provided by the contractor, there must be at least one supervisor through whom the officials of the principal employer shall communicate, preference be given to a contractor who has such type of work at other locations also.
- Discipline of the employees of the contractor in the discharge of duties must be regulated by the contractor and not by the principal employer;
- If possible, the contract should not specify the number of persons required but must quantify the work itself;
- Leave to the employees of the contractor must be sanctioned by the contractor or by his authorised person and not by the principal employer;
- No advance should be paid by the principal employer to the contractor's employees directly. Only contractor must regulate the same;
- Maintenance of all types of record in respect of the employees employed by the contractor should be his own responsibility and principal employer should not intervene in such matters;
- Dictum of the Supreme Court judgment in *Hussain Bhai's* case (contractor not to be termed as middle man) must be adhered to in drafting the agreement for the contract;
- If the establishment is covered by the EPF Act and ESI Act then preference should be given to those contractors who have their own code numbers under these Acts;
- The establishment must ensure compliance of the obligation pertaining to the various provisions regarding amenities and benefits as prescribed under the Act;
- The establishment must ensure the submission of annual return to the prescribed authority in the prescribed form under the Act.

**Certification from Contractor for Compliance of Provisions under various Central Labour Enactments**

Name.....Name of Contractor.....

S.No.	NAME OF ACT	Y	N	Remarks (if non-compliance)
<b>A</b>	<b>Contract Labour (Regulation &amp; Abolition) Act, 1970</b>			
(a)	Each contractor employing more than 20 workmen is having a valid licence for No. of persons actually employed at works			
(b)	Display an abstract of the Act in English & Hindi			
(c)	Display notices showing in English & Hindi			
	Rates of Wages			
	Hours of work			
	Wages period			
	Date of payment of wages			
	Names & address of the Inspector			
	Date of payment of unpaid wages			
(d)	<b>Returns, forms, records to be maintained &amp; submitted to the Authorities</b>			
	Form-XIII Register of workmen employed by Contractor			
	Form-XIV (Employment Card) being given by the Contractor			
	Form-XV (Service Certificate) being given by the Contractor			
	Form-XVI being maintained by the Contractor-Muster Rolls			
	Wage Register in Form XVII being maintained by the Contractors			
	Form-XVIII (Register of Wage-cum-Muster Roll) being maintained by the contractor- 15 days wage period.			
	Wage Slip IN Form XIX to be given by the contractor			
	Form-XX being maintained by the Contractor-Register of deductions			
	Form-XXI being maintained by the Contractor-Register of fines			
	Form-XXII being maintained by the Contractor-Register of Advances			
	Form-XXIII being maintained by the Contractor-Register of Overtime			
	Form-XXIV Half Yearly return is being sent by the contractor-details of workmen & compliances of provisions laid down			
	Form-XXV Annual Return by the principal employer			
(f)	<b>Welfare facilities</b>			
	Arrangements of hygienic & clean drinking water at sites			
	Provision of urinals/toilets at each site and to keep hygienic clean			
	No workers less than the age of 18 years is engaged at site			
	No female worker is employed after 7.00 PM at site			
	First-aid box with necessary medicines kept at the site			
	Canteen where more than 100 workers are ordinarily employed			
	Rest Room provided			
<b>B</b>	<b>Minimum Wages Act, 1948</b>			
	<i>Applicability:</i> Persons employed in Scheduled Employment on specified class of work			
	All group activities are covered under the Act			
(a)	Payment of minimum wages by the contractor as per notification issued by Government authorities.			
(b)	Display an abstract of the Act			
<b>C</b>	<b>Inter-State Migrant Workmen (Regulation of Employment &amp; Condition of Service) Act, 1979</b>			
	<i>Applicability:</i> Every establishment employing 20 or more interstate migrant workers			

	<i>Modus operandi of recruitment of contract labour determines the status of worker as Inter-state Migrant</i>		
(a)	Workman issued a passbook with photograph		
(b)	Inter-state migrant workman paid displacement allowance equivalent to 50% of monthly wages		
(c)	Journey allowance/fare paid to workman by the Contractor		
	<b>D Employees' State Insurance Act, 1948</b> <i>Applicability:</i> Factories or shops employing 20 or more ( 10 in some States) eligible persons with basic, HRA, Conveyance etc., not more than Rs.15,000 per month		
(a)	Contributions payable to be deposited with ESI Authorities latest by 21st of following month. Payment is online now.		
(b)	Form 01 registration of Factories or Establishments to be uploaded online in time (for code number)		
	Upload details of new joinees and download TIC. Attest signature/family photo of employee on TIC and direct him to go to ESI facility with family for photo session.		
	Pehchan Cards (Smart Cards) being received by authority and distributed to employees		
	Accident book is maintained in Form 15		
	Accident report to be uploaded online		
	Inspection book is maintained		
	<b>E Employees' Provident Funds &amp; Miscellaneous Provisions Act, 1952</b> <i>Applicability:</i> Applies to a factory or estab. employing 20 or more employees either directly or through the contractor		
(a)	Contractor has been allotted PF code number from PF authorities		
(b)	Deposit of deductions by 15th of each month		
(c)	<b>Return, forms, records to be maintained &amp; submitted to the Authorities</b>		
	Form 2 Nomination & Declaration Form to be submitted for new joinees		
	Form 11 (New) Declaration by person taking up employment in an establishment.		
(d)	Upload details of new employees in prescribed format. Upload KYC. Inform UAN numbers received online from EPF portal to employees. upload/register digital signature of authorized signatory(ies). Advise employees to activate their UAN.		
(e)	Inspection Book maintained for observations of the Inspector		
	<b>F Payment of Wages Act, 1936</b> <i>Applicability:</i> Applies to factories, industrial establishments, construction, maintenance, etc. for the employer drawing wages upto Rs.18000/- per month.		
(a)	Payment of wages by 7th of each month		
(b)	Signature of P&A staff certifying the amount in wage register		
(c)	Payment of overtime as per Act		
(d)	Abstract of the Act and Rules in English & Hindi displayed		
	<b>Return, forms, records to be maintained &amp; submitted to the Authorities</b>		
	Form I Register of Fines		
	Form II Register of Deductions for damage & loss		
	Form III Register of advance		
	Wage Slip issued		