

Prohibition of engagement of Contract Labour in Core Activities under the OSHWC Code, 2020

The Occupational Safety, Health and Working Conditions Code, 2020 ('the Code' for brevity) has brought a significant regulatory focus on the engagement of contract labour in the "Core Activities" of an establishment. The intent of the law is to ensure that in the core job, the contract labour are not engaged.



The general rule for engagement of contract labour on core activities

A blanket prohibition is imposed by Sec 57 of the Code on engagement of Contract Labour in the core activities of the Principal Employer's establishment.

Definition for 'core activity'

The term 'core activity' is defined under Sec 2(1)(p) of the Code. This would mean any activity for which the establishment is set up. This would also include any activity which is necessary or essential to perform the core activity. Certain activities are considered non-essential as per the definition which are listed hereunder :

1. Sanitation works, including sweeping, cleaning, dusting and collection and disposal of all kinds of waste;
2. Watch and ward services including security services;



3. Canteen and catering services;
 4. Loading and unloading operations;
 5. Running of hospitals, educational and training Institutions, guest houses, clubs and the like where they are in the nature of support services of an establishment;
 6. Courier services which are in nature of support services of an establishment;
 7. Civil and other constructional works, including maintenance;
 8. Gardening and maintenance of lawns and other like activities;
 9. Housekeeping and laundry services, and other like activities, where these are in nature of support services of an establishment;
 10. Transport services including, ambulance services;
- Any activity of intermittent nature even if that constitutes a core activity of an establishment
In case, if an establishment is set up for carrying out any of the above activities, such activity would then be considered as core activity for that establishment.



When, a Principal Employer can engage Contract Labour for core activities :

The proviso to Sec 57(1) lays down three exceptions where the principal employer can engage contract labour in the core activities. These are –

- (a) if the normal functioning of the establishment is such that the activity is ordinarily done through contractor;
- (b) if 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;
- (c) if any sudden increase of volume of work in the core activity which needs to be accomplished in a specified time.



Determining whether an activity is core or not

To reiterate, as per the Code, 'core activity' means an activity for which the establishment is set up. This would also include any activity essential or necessary to perform the core activity. We can say, any activity which is integral and indispensable to the principal activity. In case if it is difficult to determine, the authority's (labour department) say would be final. It would only be pertinent to understand the relevant clauses in the Code and the rules made thereunder in this regard.

Sec 57 (2) of the Code reads as follows :

(a) The appropriate Government may, by notification, appoint a designated authority to advise that Government on the question whether any activity of an establishment is a core activity or otherwise;



(b) if a question arises as to whether any activity of an establishment is a core activity or otherwise, the aggrieved party may make an application in such form and manner as may be prescribed, to the appropriate Government for decision;

(c) the appropriate Government may refer any such question suo motu or refer the application to the designated authority, which on the basis of relevant material in its possession, or after making such an enquiry as it deems fit, shall report to the appropriate Government, within such period and thereafter the appropriate Government shall decide the question within such period as may be prescribed.

Rule 101 of the Occupational Safety, Health and Working Conditions Code (Central) Rules:



If a question arises as to whether any activity of an establishment is a core activity or otherwise, the aggrieved party may make an application to the Central Government, which may refer such application to the designated authority, notified by the Central Government. The form of application, manner and time period shall be as per general or special order by the Central Government issued from time to time.

Conclusion

Therefore, engagement of contract labour on the core activities is clearly prohibited under Sec 57 of the Code, of course, except for certain specific situations given in the Code. Contravention of Sec 57 would invite huge penalty / punishment. The Principal Employer could even end up absorbing those contract workers as regular workers.





While engagement of contract labour is legally permissible in many operational areas, outsourcing of core and perennial functions is intended to remain an exception and not the norm. Establishments should therefore exercise utmost caution and undertake careful legal and operational evaluation before deploying contract labour in activities closely connected with their primary business operations which are considered as Core activities.