

## Topic of this week

It is a general practice across the industries that many or all non-core activities of the industry is outsourced, for many reasons. Though there are advantages for the Principal Employer, there is a Financial Liability attached to it.

Henceforth it is going to be added financial liability (to the Principal Employer):

1. Management FEE (Already paying)
2. GST for outsourcing (Already paying except for Security services)
3. After the OSH & WC Code is going to be notified, the extra burden is going to be: Taking care of all Amenities – Health, Safety & Welfare of Contract Labourer too

So, Employers... do make provisioning for Liabilities in your Books of Accounts for the Financial Year 2022-23..... For details of liabilities.... Scroll down the pages.

## **Inside this Issue**

( Series.... III )

**A General Guide on Preparedness**

**Code on Occupational Safety, Health and Working Conditions**

**Impacts & Duties of the Employer, A Detailed ANALYSIS**

**(Related to CLRA)**

**Employers FYKI.. Unlike current Legislations, many Code provisions are specific to Worker only (and not to Employee)**

## For info only....

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# THE INSIGHT

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## Section 57 of Occupational Health Safety and Working Conditions Code, 2020

**Prohibits the Principal Employer to engage manpower in the CORE activities, through contractor**

**Provided that the following shall not be considered as essential or necessary activity, if the establishment is not set up for such activity, namely: —**

- ⇒ sanitation works, including sweeping, cleaning, dusting and collection and disposal of all kinds of waste;
- ⇒ watch and ward services including security services;
- ⇒ canteen and catering services;
- ⇒ loading and unloading operations;
- ⇒ 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;
- ⇒ courier services which are in nature of support services of an establishment;
- ⇒ civil and other constructional works, including maintenance;
- ⇒ gardening and maintenance of lawns and other like activities;
- ⇒ housekeeping and laundry services, and other like activities, where these are in nature of support services of an establishment;
- ⇒ transport services including, ambulance services;
- ⇒ any activity of intermittent nature even if that constitutes a core activity of an establishment;

**Prohibition & Exception**

**But, the same proviso gives a relief to the Principal Employer, to engage contract labour, on the following reasons:**

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

**RELIEF**

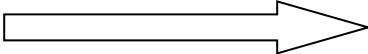
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## Comparison of current Contract Act and New provision in OSH & WC Act

	CLRA Act	Provisions under OSH & WC Code, 2020
Slight Change	<p>Contractor</p> <p><i>“means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods of articles of manufacture to such establishment, through contract labour or who <u>supplies contract labour for any work of the establishment and includes a sub-contractor;</u>”</i></p>	<p>Same definition with a slight improvement in the definition ....</p> <p><u>supplies contract labour for any work of the establishment as mere human resource</u></p>
Major Insertion	<p>Contract Labour</p> <p>a workman shall be deemed to be employed as “contract labour” in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer;</p> <p>In addition to the above, a new insertion in the definition </p>	<p>.....and includes <u>Inter-State migrant worker</u> but does not include a worker (other than part time employee) who is <u>regularly employed by the contractor for any activity of his establishment and his employment</u> is governed by mutually accepted standards of the conditions of employment (including engagement on permanent basis), and gets periodical increment in the pay, social security coverage and other welfare benefits in accordance with the law for the time being in force in such employment</p>
No Change	<p>Principal Employer</p> <p>“principal employer” means—</p> <ul style="list-style-type: none"> <li>in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the Government or the local authority, as the case may be, may specify in this behalf,</li> <li>in a factory, the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, 1948 (63 of 1948), the person so named,</li> <li>in a mine, the owner or agent of the mine and where a person has been named as the manager of the mine, the person so named,</li> <li>in any other establishment, any person responsible for the supervision and control of the establishment.</li> </ul>	<p>"literally no change"</p>

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## Major Changes in the provisions of OHS & WC Code (CLRA provisions)

LIABILITY TO PRINCIPAL EMPLOYER

CLRA Act	OHS & WC Code
<p>⇒ Section 16(1) (c) wherein contract labour numbering one hundred or more is ordinarily employed by a contractor, one or more canteens shall be provided and maintained by the contractor for the use of such contract labour.</p> <p>⇒ 17. Rest-rooms</p> <p>⇒ 18. Other facilities</p> <p style="padding-left: 20px;">i. sufficient supply of wholesome drinking water for the contract labour at convenient places;</p> <p style="padding-left: 20px;">ii. sufficient number of latrines and urinals of the prescribed types so situated as to be convenient and accessible to the contract labour in the establishment; and</p> <p style="padding-left: 20px;">iii. washing facilities</p> <p>⇒ 19. First-aid facilities</p> <p>⇒ 20. Liability of principal employer in certain cases – if it is not provided by the contractor such amenity shall be provided by the principal employer and expenses recovered from the contractor</p>	<p>⇒ <b>53. Welfare facilities specified under section 23 and section 24 shall be provided by the principal employer of the establishment to the contract labour who are employed in such establishment.</b></p> <p>⇒ <b>Section 23 - Health, Safety and Working conditions</b></p> <p>(i) cleanliness and hygiene;</p> <p>(ii) ventilation, temperature and humidity;</p> <p>(iii) environment free from dust, noxious gas, fumes and other impurities;</p> <p>(iv) adequate standard of humidification, artificially increasing the humidity of the air, ventilation and cooling of the air in work rooms;</p> <p>(v) potable drinking water;</p> <p>(vi) adequate standards to prevent overcrowding and to provide sufficient space to employees or other persons, as the case may be, employed therein;</p> <p>(vii)adequate lighting;</p> <p>(viii) sufficient arrangement for latrine and urinal accommodation to male, female and transgender employee separately and maintaining hygiene therein;</p> <p>(ix) effective arrangements for treatment of wastes and effluents; and</p> <p>(x) any other arrangement which Govt considers appropriate</p> <p><b>Section 24 - Welfare</b></p> <p>(i) adequate and suitable facilities for washing to male and female employees separately;</p> <p>(ii) bathing places and locker rooms for male, female and transgender employees separately;</p> <p>(iii) place of keeping clothing not worn during working hours and for the drying of wet clothing;</p> <p>(iv) sitting arrangements for all employees obliged to work in a standing position;</p> <p>(v) facilities of canteen in an establishment for employees thereof, wherein one hundred or more workers including contract labourers are ordinarily employed;</p> <p>(vi) in case of mines, medical examination of the employees employed or to be employed in the mines, before their employment and at specific intervals;</p> <p>(vii)adequate first-aid boxes or cupboards with contents readily</p>

Henceforth (after Code), it is the **PRINCIPAL EMPLOYER**, who has to Bear all the Expenses

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## Exclusions in the OSH & WC Code

~~(Provision of CLRA Act) Every principal employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.~~

As the payment of wages is to be mandatorily done by Electronic Mode and the Vendor has to electronically inform the same to the Principal Employer.

## Duties of Contractor

- ⇒ Inform the work order to the appropriate authority within due time
- ⇒ Obtain License, if necessary
- ⇒ Pay wages through Bank transfer or Electronic mode and the same needs to be informed electronically to the Principal Employer
- ⇒ On demand, experience certificate, in such form as may be prescribed by the appropriate Government, to the contract labour giving details of the work performed
- ⇒ The contractor shall not charge directly or indirectly, in whole or in part, any fee or commission from the contract labour.

## Principal Employer duties:

- ⇒ Ensure wages are paid before 7th of following month, else the Principal Employer needs to pay the wages within such due date (as per the Code on Wages)
- ⇒ Provide amenities to Contract Labour too – which is provided to the Permanent workmen
- ⇒ Ensure the Contractor has obtained License, otherwise it is deemed to be a contravention of the provisions of the Code
- ⇒ Do not engage a person who is un-discharged insolvent or convicted any time during the last two years of an offence which is criminal in nature involving offences which are liable for punishment for more than three months of imprisonment

**MAJOR RELIEF TO THE CONTRACTOR (and to the PE ... no need to do an Assessment of the same)**

**NO STATUTORY REGISTER MAINTENANCE IS REQUIRED BY THE CONTRACTOR**

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To be continued.....