

India's extensive and low-cost workforce presents an attractive proposition for foreign businesses with overseas expansion plans, as well as for organisations looking to outsource business-support requirements. It is not uncommon for personnel-heavy industries (such as IT/ITeS, BPOs etc.) and support functions in a company (like HR, finance, legal etc.) to engage external contractors to hire additional personnel for their requirements.

For instance, Company XYZ will contractually engage an external contractor to supply workers (i.e. 'contract labour') for a certain duration or project. The contract labour may be deployed to render work directly for Company XYZ and may even be based on Company XYZ's premises. However, the contract labour will formally be hired by the external contractor and not directly by Company XYZ (i.e. these workers will be maintained on the employment rolls of the contractor, who will also be responsible for payments and labour compliances on their behalf).

The rights of contract workers in India are legally regulated by the Contract Labour (Regulation and Abolition) Act, 1970 ("CLA"). The premise of the CLA is to ensure that contract labour is accorded all benefits and protections that regular employees enjoy under Indian law.

Under the CLA, the entity engaging the contractor (i.e. Company XYZ in the example above) is termed 'principal employer'. The CLA imposes obligations on both the principal employer and the contractor including registration requirements, statutory pay, benefits and access to industry-standard working conditions for contract labour. Applicability and compliances under the CLA are triggered by certain thresholds which may vary based on location and the number of contract workers engaged.

Engaging contract labour allows for hiring flexibility and cost benefits, and also eases the administrative and compliance burden on the company. However, businesses must be mindful of certain legal risks under the CLA in engaging temporary workers, to avoid such contract labour ending up as an expensive line item on their financials.



Legal risks for principal employers

» Misclassification:

Contract workers could be misclassified as direct employees of the principal employer, pursuant to a claim by the workers or upon independent labour authority finding. This would entitle the workers to all benefits and privileges as regular employees of the company, despite not being on the rolls of the company.

» Statutory non-compliances by the contractor:

Under the CLA, the principal employer steps into the shoes of the contractor, if the contractor defaults on its legal obligations. Consequences include the principal employer taking over payment of wages and social security contributions, labour registrations, provision of specified facilities such as canteens, creches, first aid facilities, toilets etc. The law entitles the principal employer to recover these amounts from the contractor, but effective recovery would depend on the contractor's financial capacity to meet its commitments.





Mitigation measures

The risks identified above can be limited to an extent via the following measures:

» Limiting control:

The principal employer should not control (directly/indirectly) employment terms of the contract labour. For instance you should not:

- > pay wages directly to the contract labour. All payments of wages/benefits should be paid by the contractor;
- > approve days of leave or make salary decisions concerning the contract workers; or
- > participate in decisions involving their hiring and firing.

The risk of misclassification is also lower where the contract labour are not exclusively working for the principal employer.

» Contractor due diligence:

Conduct due diligence at the time of on-boarding contractors to ensure they are compliant with applicable laws and hold required licenses. Antecedents checks may also help uncover any past non-compliances and sanctions. If feasible, also consider pre-contractsite visits to assess provision of required facilities at the contractor's premises, as well as ongoing "spot checks" for high risk and sensitive sectors such as food.

» Robust services agreement:

Engage contract labour through a services agreement with the contractor and clearly capture the contractor's role and responsibilities (including timely payments and renewal of statutory registrations, with proof to be submitted to the company). Include warranty and indemnity provisions requiring compliance with Indian laws, and other mechanisms to speedily recover costs, such as performance bonds, LDs, quick dispute resolution etc., as appropriate. Use the services agreement as a conduit to get the right contract labour but do not participate directly in their selection and management.

» Monitor compliance:

User your rights under the services agreement to monitor the contractor's compliance with applicable labour laws such as payment of wages, statutory dues, institution of anti-sexual harassment policies etc.

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