No.43/5/2001-3GS-II

From

The Chief Secretary to Government of Haryana.

To

1. All the Additional Chief Secretaries/ Principal Secretaries to Government, Haryana.
2. All Heads of departments, Haryana.
3. The Commissioners, Ambala, Hisar, Rohtak and Gurgaon Divisions.
4. The Registrar, Punjab and Haryana High Court, Chandigarh.
5. All Deputy Commissioners & Sub Divisional Officers (Civil) in Haryana.
6. All the Managing Directors of Boards/Corporations/Public Undertakings in Haryana.

Dated, Chandigarh the 20th February, 2014.

Subject:- Policy for engaging/outsourcing of services/activities- Guidelines for compliance of labour laws.

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Sir/ Madam,

I am directed to invite your attention to the Haryana Government circular letter No. 43/5/2001-1GSI, dated 1.9.2006 and Circular bearing same No. dated 16.2.2009 and to say that with these circulars, a draft of the service agreement with the service providing agencies was also given. It was inter alia specified that the compliance of various Labour Laws and Rules etc relating to the workers employed for the services will be the sole responsibility of the Service Provider/Agency.

It has been observed that in the past some time, that labour laws are not followed by Government Departments and other Govt. Bodies/Corporations/Public Undertakings while engaging manpower under outsourcing through service provider/agency; it is not being ensured that the service providers comply with all the labour laws; which in the event of any litigation/dispute etc can result in an uncalled for/embarrassing situation for the principal employer/ department. It is felt necessary to impress upon all concerned to ensure the compliance of the various labour laws. For the sake of convenience, the following points are given for compliance:-

1. Primarily it has to be ensured that the contract for service with the service provider should be such, on paper and in practice that it may not be construed or proved as a sham contract or exercise of name lending of the contractor. The formalities of registration and license under the Contract Labour (Regulation & Abolition) Act, 1970 have to be essentially complied with if there are 20 or more workers employed in an establishment. The principal employer has to obtain a Registration from the Registering Authority and the Contractor/ Service provider must obtain a license for that particular contract for service as per the said Act. Non compliance of these provisions can invite punitive proceedings under the said Act.

2. It is important to note that the facilities for welfare and Health under section 16 to 19 of the above Act ibid, wherever applicable have to be provided by the Contractor and in the event of deficiency, the Principal Employer is liable to provide the same at the cost of Service provider. Therefore, the Principal employer is ultimately responsible for the compliance of the law by the service provider/contractor.

3. It is important to note that the contractor is responsible for the payment of wages but in the event of default, it is the specific liability of the Principal employer under section 21 of the Contract Labour (Regulation and Abolition) Act 1970. Therefore, as per law the disbursement of wages has to be supervised by the principal employer, it should be a deliberate decision to ensure the payment of wages to the employees of the Contractor through cheque.

4. The service provider must pay at least minimum rates of wages notified by the Government under the Minimum Wages Act, 1948, without any illegal deduction as specified in the Payment of Wages Act, 1936. The minimum wages notified by the Government under the Minimum Wages Act comprises of a basic rate revised from time to time and the DA which is recalculated after every six months on the basis of increase or decrease of consumer price index-this minimum rate of wages is not permitted to be segregated further in any other manner. It is clarified that bonus is payable to the workers of the contractors as per the Payment of Bonus Act 1965. The payment of wages by cheque as mentioned above will ensure the proper payment of wages.

5. The service provider must maintain record of wages and leave etc., not only for compliance of the wage laws but also as a proof which can be audited by the Principal Employer/Department. If the worker is made to work overtime by the service provider then the overtime wages have to be paid extra/other than normal wages at double the rate of the wages as per section 14 of the Minimum Wages Act, 1948. The Principal employer is legally responsible for any deficiency in this regard.

6. It has been observed that the Service providers are not implementing the provisions of Employees provident Fund & Miscellaneous Provisions Act, 1952. Service providers are not depositing the money deducted along with employees share in the relevant account. This is a very serious offence under the Act. It should be ensured at the time of contract that the service provider is registered with the department and has been allotted a proper code number. The copy of the said registration and code number must be obtained for record. It is very necessary that the contractor deposits the PF contribution with the Authorities regularly every month. He must deposit the amount necessarily along with the list of workers in whose account it has to be deposited. The principal employer must obtain the copy of the deposit and the corresponding list of workers every month for record; this is besides the copy of the half yearly return in form 3A and annual return in form 6A. It must also be noted that in the event of non deposit of the amount by the contractor it will be the liability of the principal employer to do so. The non deposit of the amount deducted entails criminal liability under law. It must be ensured by the principal employer that the statement of deposits are given to the workers regularly by the contractor.

7. Similarly, it has been observed that very often the provisions of Health Insurance under the Employees State Insurance Act, 1948 are not being implemented. The Service Provider is not depositing the money deducted along with employees share in the relevant account. This is a very serious offence under the Act. The copy of the said registration must be obtained for record. It is very necessary that the contractor deposits the ESI contribution with the Authorities regularly every month. He must deposit the amount necessarily with the list of workers in whose account it has to be deposited. The principal employer must obtain the copy of the deposit and the corresponding list of workers every month for record. It must be noted that in the event

of non deposit of the amount by the contractor it will be the liability of the principal employer to do so. The non deposit of the deducted amount entails criminal liability under law. It must be ensured by the principal employer that the ESI identity card is given to the workers by the contractor.

8. It has been observed that some of the service providers are offering services at zero margins which is practically not possible and they indulge in malpractice of not paying minimum wages and also not depositing the ESI and PF contributions of workers to make up for their margins. A Service provider, who offers services at zero margins, should not be given the contract. As mentioned above, it is necessary that the payment of wages be ensured by cheque to reduce these malpractices and similarly the ESI and PF contributions should be paid by the Department/principal employer in the relevant account or verified physically; besides verifying the delivery of PF statements/ESI Cards to the workers. The provident fund is to be deducted @ 12% and the Employer's contribution is 13.61%; similarly the ESI deduction from wages is @ 1.75% and the Employer's contribution is @ 4.75%. Therefore, as mentioned above, if any Service provider is submitting a tender for less than these amounts besides his service charges and service tax @ 12% and TDS @ 2% then the tender is liable to be rejected.

9. The Maternity Benefit Act, 1961 will apply in every establishment where ten or more persons are employed or were employed on any day of the preceding twelve months and a woman must have actually worked in establishment of the employer for a period of not less than eight days in the twelve months immediately preceding the date of her expected delivery to enable her to claim the benefit from the said employer.

<u>Guidelines to follow the procedure regarding payment to the contractors and their workers</u>

Procedure for making payment of EPS/ESI/Wages/Service Tax/Premium etc:-

- Separate ESCROW accounts be got opened by all.
- Deposit of ESI and PF should be validated only if the dossier of workers and their account numbers is provided as per the performa circulated by the State Government Department/Corporation/Board/ Public undertaking as to verify the

respective deposits. No bill of the contractor should be paid unless he has provided a copy of such dossier of details of payments.

Payment of Service Tax

i) **In case amount exceeds Rs. 10 lac per annum-**

Contractor is depositing the service tax through net banking/ e-payment from their current account and get it re-imbursed from the concerned department/Board/Corpn/ public undertaking, as the deposit of service tax through e-payment for more than Rs. 10 lacs per annum is mandatory. The reimbursement is being verified by the concerned office before releasing the payment of service tax.

ii) **In case account remains less than Rs. 10 lac per annum-**

- Demand Draft is being issued office-wise through ESCROW account for the service tax to service tax department.

Payment of ESI:-

Single challan will be generated by the contractor is respect of all the persons supplied by him to various organization in a month as separate challan is not possible in case of ESI.

Payment of EPF:-

i) The contractor will submit the generated challan alongwith the bills for verification by the concerned office.

ii) The concerned office will verify the details as per record before processing the bill for making advance payment to the engaged Contractor.

iii) Payment will be made office -wise through ESCROW account for the EPF payment to the EPF department.

Payment of Wages:

i) The contractor will submit the details of each and every workers indicating the wages, EPF and ESI nos. etc. as per the performa issued by the State Government vide letter dated 12.01.2011.

ii) The concerned office will verify the details as per the record before making advance payment to the engaged Contractor.

iii) Thereafter, the cheque will be issued in favour of the contractor by the division office indicating the ESCROW account for depositing in the ESCROW Account for making payment of wages to the workers through their saving accounts.

It is requested that the above guidelines be strictly adhered in addition to the guidelines issued by the Government vide Circular letter Nos. as mentioned above.

Yours faithfully,

sd/-
(Bhim Singh Negi)
Under Secretary, Protocol,
for Chief Secretary to Govt., Haryana.

20/02