

Chapter 6

Case study of good practices in respect of compliance to labour laws

Audit of 463 contracts in nine railway formations showed that there is large scale non-compliance to the provisions of statutory laws regarding contract labour by the Indian Railways. The non-compliance continues to exist despite various changes being brought out by the Ministry of Labour & Employment, Government of India to streamline and simplify the labour laws in the past few years.

The Unified Shram Suvidha Portal⁷⁴ developed (October 2014) by the Ministry of Labour & Employment, Government of India facilitates reporting of inspections, and submission of returns and is a single point of contact between employer, employee and enforcement agencies bringing in transparency in their day-to-day interactions and accountability in inspections. During 2016 and 2017, for ease of compliance of labour laws, the Ministry has introduced online registration on real time basis, with no cost of registration and without any manual intervention. They have further reduced the number of Registers to be maintained to five in place of 56 Registers provided in nine⁷⁵ central labour laws/rules. A single online return would be required to be submitted under the above mentioned nine Acts. There will be a common electronic return cum challan for EPFO and ESIC. Thus, it will be easier to prepare necessary records related to contract labour by the contractors and Principal Employers (PEs), submission of returns besides transparency and accountability in labour inspections by the labour department. However, the opportunity is not being used adequately by the Railways to improve their extent of compliance to labour laws. Audit analysed the efforts required to comply with the provisions of various labour laws by preparing a list of such activities and assessing the periodicity of the same as well as checking whether the same can be done online through Shram Suvidha Portal. Audit also prepared a case study of good practices which are followed in a non-railway organisation, i.e. Delhi Metro Rail Corporation Limited (DMRC) to highlight as to how a control mechanism and supervisory check can be put in place by the Principal Employers to facilitate compliance.

⁷⁴ The objective of Web Portal is to consolidate information of Labour Inspection and its enforcement, which will lead to transparency and accountability in inspections. The compliances would be reportable in Single Harmonized Form which will make it simple and easy for those filing such forms. The performance will be monitored using key indicators thus making the evaluation process objective. It promotes the use of a common Labour Identification Number (LIN) by all Implementing agencies.

⁷⁵ Payment of Wages Act, 1936, Minimum Wages Act, 1948, Contract Labour (Regulation and Abolition) Act, 1970, Maternity Benefit Act, 1961, Building and Other Construction Workers (Regulation of Employment and Condition of Service) Act, 1996, Payment of Bonus Act, 1965, Inter-State Migrant Workmen (Regulation of Employment and Condition of Service) Act, 1979, Industrial Disputes Act, 1947 and Mines Act, 1952

6.1 List of activities to be undertaken to comply with laid down statutory provisions

Audit made a list of various steps/activities, which are required to be followed by the Principal Employers and contractors to comply with the statutory provisions under the four labour laws and checked the time and effort required to follow them. These are detailed below:

S. no	List of activities	Whether the same can be done through Shram Suvidha Portal?	Periodicity of the activity
Primary responsibilities of the Principal Employer			
1	Registration with the labour office under Section 7 of CLRA 1970	Yes	one time
2	Intimation about commencement/completion of work to Labour Commissioner in Form VI B (Form VIII w.e.f March 2017) as per Para 81 (3) of CLRR 1971	Yes	once for every work on each occasion
3	Submission of Annual Returns in Form XXV related to details of engagement of contractors and contract labour to Labour Commissioner as per Rule 82(2) of CLRR 1971	Yes	once annually for every work
4	Nomination of representative for witness of payment as per Section 21(2) of CLRA, 1970 and Rule 72 of CLRR, 1971	Not applicable	once for every work
5	Maintenance of records (Register of contractors in Form XII) as per Section 29(1) of CLRA, 1970 read with Rule 74 of CLRR, 1971	Not applicable	Not applicable
6	To ensure registration of the contractor with EPFO before award of contract as per CAIU/011(332015/Headquarter/Vol.II/28445 dated 2 February 2017	Not applicable	once for every work
7	Liability to pay contribution under Section 40 of ESIA, 1948	Not applicable	once for every work
Primary responsibilities of the contractor (but to be ensured by Principal Employers)			
8	Obtaining license before commencement of work from Labour office under Section 12 of CLRA, 1970 and Rule 21 of CLRR 1971	Yes	once for every work
9	To ensure that the number of Contract Labour employed should not exceed the maximum number specified in the Rule 25(2)(ii) of the CLRR, 1971	Not applicable	once for every work
10	Payment of Wages to the Contract Labour, as per Section 21 of CLRA, 1970 and Rule 71 of CLRR, 1971, a notice showing the wage period and the place and time of disbursement of wages shall be displayed at the place of work and a copy sent by the contractor to the PE under acknowledgement	Yes, details are required to be uploaded	Monthly
11	Payment of wages to Contract Labour through Bank/Cheque, as per Railway Board letter no.E (LL)2015/PNM/AIRF/1 dated 20.10.2015	Not applicable	Monthly

<i>S. no</i>	<i>List of activities</i>	<i>Whether the same can be done through Shram Suvidha Portal?</i>	<i>Periodicity of the activity</i>
12	Payment of Minimum Wages (fixed by notification from time to time) under Section 12 of Minimum Wages Act, 1948	Not applicable	Monthly
13	Payment of wages for rest day (at normal rates) to employees as per Rule 23(1) of the Minimum Wages Rules, 1950	Not applicable	Monthly
14	Payment of wages for substitute rest day at double the rate of normal wages as per Section 23(4) of Minimum Wages Rules, 1950	Not applicable	Monthly
15	Adherence to prescribed maximum hours (12 hours in a day)/days (10 consecutive working days) of working and payment of wages thereof, as per Section 24(2) of Minimum Wages Rules, 1950	Not applicable	Monthly
16	Payment of overtime for working beyond prescribed hours (more than nine hours on any day or for more than 48 hours in any week), Rule 25 (1)(b) of the Minimum Wages Rules, 1950	Not applicable	Monthly
17	Responsibility of the Principal Employer towards payment of EPF deduction (12 %) from the wages of contract labour and contribution (12% including 3.67% to EPF and 8.33 % towards Employees' Pension Scheme) by the contractors, Para 30 (3) of EPFS, 1952	Yes	in case of default by contractor
<i>Responsibilities of the contractor or Principal Employer</i>			
18	Provisions of drinking water and urinals as per Section 18 and 20 section of CLRA, 1970	Yes, details are required to be uploaded	Not applicable
19	Provisions of First Aid Box as per Section 19 of the CLRA, 1970 and Rule 58 & 59 of CLRR, 1971	Yes, details are required to be uploaded	Not applicable
<i>Responsibilities of the contractor</i>			
20	Display of License at work site	Not applicable	once for every work
21	Renewal of license under Rule 27 of CLRR, 1971	Yes	as and when due
22	Returns (Half yearly) in Form XXIV regarding address of contractor, establishment and PE along with duration of contract, maximum number of contract labour employed on any day, daily hours of works, weekly holiday, amount of wages paid etc. to be submitted to Labour Commissioner as per Rule 82 (1) of CLRR, 1971	discontinued w.e.f March 2017	discontinued w.e.f March 2017
23	Provision of Rest Rooms required to halt at night as per Section 17 of CLRA, 1970	Yes, details are required to be uploaded	Not applicable
24	Maintenance of records (Muster Roll, Register of Wages, Register of Deductions, Register of Overtime, Register of Fines, Register of Advances, Wages Slips etc.) as per Section 29 of CLRA 1970 read with Rule 78 of CLRR, 1971	Not applicable	Registers to be maintained per contract

S. no	List of activities	Whether the same can be done through Shram Suvidha Portal?	Periodicity of the activity
25	Preservation of records for three years as per Rule 80 (3) of CLRR, 1971	Not applicable	Not applicable
26	Registration with EPFO under Section 2 (e) EPF& MPA, 1952 on whom this Act applies through section 1(3)(a) and 1(3)(b) EPF & MPA, 1952 and Para 36 of EPFS, 1952	Yes	one time
27	Process for allotment of Provident Fund Account Number in Form 5 (Return) and Form 2 (Declaration) to Contract Labour as per Para 36 (2)(a) of EPFS, 1952	Yes	once per contract labour
28	Provisions of the Pradhanmantri Rojgar Protsahan Yojana as per OM No. DGE-U-13015/1/2016-MP (G) dated 23.02.2017 of the Government of India, Ministry of Labour and Employment, Directorate General of Employment	Yes	Not applicable
29	Application by the Employer (contractor) for Employer Code for the first time, Rule 10 B of notification issued by ESIC on 17 October 1950	Yes	one time
30	Allotment of ESI Account Number to the Contract labour as per Regulation 15 of Employees State Insurance (General) Regulations, 1950	Yes	once per contract labour
31	Payment of deduction (1.75 per cent) from employee and contribution (4.75 per cent) of wages by the employer under Section 39 (1) of ESIA, 1948	Yes, details are required to be uploaded	Monthly

Most of the above mentioned activities such as obtaining and renewing licenses, filing returns, sending intimation regarding commencement and completion of works and allotment of EPF and ESI account numbers can be done online through Shram Suvidha Portal, and takes very less time on part of the Principal Employers.

Activities such as intimation about commencement and completion of work to the Labour Commissioner, nomination of a representative for witnessing payments by the contractor, ensuring registration of the contractor with the EPF and ESIC etc. are to be ensured by the Principal Employers once for every work, which does not take significant time and can be ensured through standard instructions on the same. Verifying that every contract labour has been allotted an EPF and ESIC number is also an activity Principal Employers can do once for each contract labour through Shram Suvidha Portal. This can be done through verification of details submitted by the contractor, before his bill for payment is being processed.

Responsibilities of the contractor include obtaining relevant licenses, renew them as and when due, obtaining EPF and ESI numbers for contract labour working for him, display of license at the work site, ensuring payments, deductions and contributions as per the laid down provisions, provision of amenities for contract labour and maintenance and preservation of records. While obtaining licenses and allotment of EPF and ESI numbers to contract labour can be done online, ensuring

payments, deductions and contributions as per the laid down provisions can be done by providing for them in the estimates of labour cost and making payment accordingly.

As regards provision of amenities for contract labour, wherever the Principal Employers (Railways) have facilities for their own staff, these can be used by the contract labour as well. Where such facilities for Principal Employers own staff are not available, the contractors have to provide the same, for which cost can be factored in the estimates prepared by the contractors.

Principal Employers are required to maintain only one Register of Contractors, for which the efforts required are minimal. Maintenance of records by the contractors could be insisted upon by the Principal Employers, by ensuring that these are checked and verified from time to time while processing payments to the contractors.

As Railways do not have any mechanism in place to ensure compliance to these provisions consistently across the organisation, audit selected a non-railway organisation as a case study of good practices which facilitates better compliance to labour laws by putting in place a practical and feasible mechanism as discussed below.

6.2 Case study of good practices in respect of compliance of labour laws in Delhi Metro Rail Corporation Limited (DMRC)

Audit reviewed the systems and controls in place in DMRC, which have been put in place to comply and monitor the contract labour laws/acts. The mechanism has the following features:

1. Preparation of estimates

The estimates for labour component (mainly for Operations & Maintenance contracts) for a tender are prepared taking into account the minimum wages fixed by Central/State Government from time to time plus additional amount of contribution required to be made by the contractors towards Employees' Provident Fund (EPF), Employee State Insurance Corporation (ESIC) and an extra five *per cent* for miscellaneous expenses on account of providing uniforms, rest rooms, drinking water, first-aid facilities etc. supposed to be made by the contractors. The tender documents also clearly state that contractors who quote with nil or negative profit percentage would not be selected.

2. Preparation of tender documents

The tender documents include 'General Conditions of Contract' (GCC), 'Special Conditions of Contract' (SCC) and 'Employers requirement'. All the three

documents in detail, include clauses regarding compliance of provisions of statutory laws.

The GCC include the following:

- a. **Compliance with statutes, regulations and laws** – The contractor shall follow and indemnify employer against all penalties and liabilities of every kind of breach of any such enactment law regulation etc.
- b. **Safety of works** – The contractor shall take full responsibility for ensuring safety standards with respect to Safety, Health and Environment (SHE) manual and price of the contract to be inclusive of all necessary costs to meet the prescribed safety standards. In case the contractor fails in the above, the Principal Employer may provide the necessary arrangements and recover the cost from the contractors.
- c. **Rates of wages and conditions of labour** – The contractor shall make himself aware of all labour regulations and their impact of cost and build up the same in the contract price. He will fully comply with statutory requirements and also pay rate of wages and observe conditions of labour no less favorable than those established for the trade or the industry where the work is carried out. In case of default, the Principal Employer may make payment of such claim on behalf of the contractor and recover the same from the contractor.
- d. **Labour laws** – The contractor shall fully comply with all laws and statutory regulations pertaining to engagement, payment and upkeep of labour. The contractor shall have a labour welfare organisation which shall be responsible for labour welfare and compliance with prevalent labour laws statute and guidelines. The contractor has to ensure to open bank account for each worker employed by him and his sub-contractors and payment to workers released through bank accounts.
- e. **Facilities for staff and labour** – The contractor shall provide and maintain at his own expense all necessary accommodation and welfare facilities as per prevailing labour and welfare laws for his and his sub-contractors staff and labour.
- f. **Health and safety** – Precaution shall be taken by the contractor to ensure the health and safety of his staff and labour.
- g. **Claim on account of violation of labour laws** – Contractor shall be solely accountable for violation of any labour law by it, its sub-contractors and will pay any such claim/damage to the authorities concerned. If he fails to do so, the employer shall be entitled to recover the same from the contractor.

The SCC include the following:

- a. **Labour laws and DMRC Labour Welfare Fund** - The contractor must ensure compliance to all labour laws including obtaining labour license and

registration of workers with Building and Other Construction Workers Board. The contractor shall submit to the Engineer or to his office a return showing the number of labour employed in different categories by him in the entire work.

- b. **Contractors care of works** - It shall be the responsibility of the contractor to adopt all the safety measures and deploy manpower that is adequately trained in safety.
- c. **Insurance** - All the contractor's employees drawing monthly salary up to ₹ 21,000 shall have to be covered under ESI. The contractor shall take insurance policy for those employees not covered under ESI.
- d. **Termination of the contract** - During the course of contract, if the contractor fails to perform works/services as mentioned in the scope of work, duly following the statutory requirements, to the entire satisfaction of DMRC, DMRC shall be entitled to part terminate the contract/limit the scope of work under the contract duly issuing seven days' notice to the contractors in writing.
- e. **Penalties** - Penalty has also been prescribed for delay in payment of dues to any workmen at the rate of ₹ 100 per day per workman, making payment in the absence of PEs representative (for each violated date) at the rate of ₹ 10,000 and non-compliance of any other provision of labour laws pointed out by Employer or their representative at the rate of ₹ 5000 for each non-compliance informed in writing under the contract.

The Employer's Requirements include the following:

- a. **Mandatory documents for release of payment** – For Operations & Maintenance contracts these include salary statement for the bill period months with bank statement/bank transfer details to corroborate the payment, copies of bill period month's contract specific EPF Challan, Electronic Challan-cum-Return (ECR) and ESI challan. The contractor shall ensure that the due and timely payment of wages to all his manpower is being made. For works contracts, the contractor certifies compliance, which is also signed by the PEs representative, before the payment is made.
- b. **Compliances** – For Operations & Maintenance contracts these include
 - i. In the event of default or failing payment by the contractor, the employer shall make such payment to the labour authorities and sums so paid shall be recoverable from the contractor.
 - ii. Salary/payment to the contracted employees shall be made by 7th of every month by the contractor.

- iii. Contractor shall display notices showing the rate of wages, hours of work, wage period, date of payment, name and address of the Inspectors having jurisdiction and the date of payment of unpaid wages in English and Hindi.
- iv. Contractor shall maintain the Statutory Registers viz. Registers of persons employed, Wage Register and Register of Overtime, Deduction Register for damage or loss, Muster Roll Register.
- v. Contractor shall strictly follow the statutory labour laws and ensure
 - Submission of return to the inspector within fifteen days of the commencement or completion of each contract work
 - Allow a day of rest every week
 - Pay minimum wages to his workmen through bank transfer
 - Deposit PF contribution in respect of all employees up to wage ceiling limit of ₹ 15000. PF shall be computed on minimum wages and splitting of wages will not be allowed.
 - Comply to the provisions of ESI Act, 1948 and facilitate benefits under this Act to its workmen.
 - Pay overtime at the rate of double the ordinary rate of wages when a worker works for more than nine hours on any day or for more than forty-eight hours in any week
 - Disburse wages in presence of authorized representative of the Principal Employer
 - Issue wage slips at least one day prior to the disbursement of wages to worker
 - All payment of wages to be made on a working day at the work premises and during working time and on a date notified in advance and in case the work is completed before the expiry of the wage period, final payment shall be made within 48 hours of the last working day.

3. Award of contracts

The contracts are awarded only to the agencies/contractors that/who are registered with the Organisation of Labour Commissioner, EPF and ESIC.

4. Monitoring by Principal Employers

All the Principal Employers nominate a dedicated staff (Executive) to monitor the compliance/enforcement of labour laws at all the sites of Project and Operations and Maintenance Wing. These nominated executives monitor disbursement of wages, EPF and ESI compliances and all physical compliances under CLRA 1970 and Building and Other Construction Workers Act, 1996.

a) Dedicated Labour Welfare Team - A Labour Welfare Team consisting of one Deputy Head of Department, one Assistant Manager, one Section Officer and three Inspectors is working under Chief General Manager (Human Resources). The

responsibility of the team is principally enforcement of Labour laws compliances in the organisation. Though no specific periodicity for inspection has been fixed, the area of inspections is specified for each Inspector who shall monitor labour law compliances by the contractors in their areas. The Labour Welfare Inspectors of DMRC, representative of PE and contractors' labour officers jointly inspect the sites. The Labour Welfare Inspectors submit their Inspection Reports to Principal Employers mentioning the deficiency and penalty, if any, to be imposed against the Contractors for non-compliance of rules. Also, before finalizing the payment of Contractor Final Bills, 'No Objection Certificates' is also taken from this cell.

b) Checklist - Checklist for Labour Welfare Inspectors and Principal Employers' staff are provided for ensuring compliance of Contract Labour Acts/Laws while making payment to the contractor/s.

The checklist for Labour Welfare Inspectors includes the following:

- Labour license taken for
- Registration under BOCW Act has been taken for
- Total number of workers covered under insurance policy
- Number of workers whose EPF is being deducted
- Number of workers whose ESI is being deducted
- Compliance of minimum wages
- Payment of wages through cash/bank transfer
- Have notice board regarding wage rates, inspectors etc. displayed and sent to the Labour department
- Have occupational health centers at sites
- First – Aid, Doctors/first aiders, ambulance etc. are available at site
- Tie-up with two Super Specialty Hospitals
- Canteen, if canteen is 200 meters away from work-site whether tea & light refreshment are provided at site
- Drinking water, latrines and urinals, bathing and washing facilities, rest room are available
- Labour Accommodation, condition of Accommodation
- Working hours, weekly rest, overtime payment, wage slip in Form XIX of CLRA
- Register of fine, advances under CLRA
- Payment of last month made etc.

The following are checked before passing bills of the contractors:

- Insurance policies along with premium receipt as per Letter of Acceptance/Notice Inviting Tender/GCC
- If insurance policy is not available or lapsed, whether recovery proposed or not
- Standard certificates for compliance of minimum wages
- Standard certificates for compliance of EPF/ESIC or EPF/exemption certificate
- EPF/ESIC challan
- Other labour compliance certificates duly verified by Dy. HOD and above etc.

Thus, by preparation of proper estimates, award of contract only to eligible contractors, comprehensive terms and conditions of contracts, ensuring checks while making payment and monitoring the compliances through dedicated Labour Welfare Teams, a system can be put in place for monitoring and compliance to statutory provisions. During 2017-18, total cost of work done in DMRC was ₹ 8940 crore and an amount of ₹ 3.22 crore was spent on manpower deputed for ensuring compliance of labour laws, which was only 0.036 *per cent* of the total cost of work done by the contractors during the year.

6.3 Ensuring compliance to statutory provisions relating to labour laws by the railways

Further, the following issues have not been addressed adequately in the existing system of the railways:

- Award of contracts should be done to only those contractors who have been registered with the Organisation of Labour Commissioner, EPFO and ESIC. The present eligibility conditions for contractors in the railways does not ensure the same.
- A large number of checks to be exercised by the Principal Employers such as ensuring payment of wages as due and within the prescribed time, can be ensured through preparing estimates to cover the correct cost of labour keeping in view various conditions prescribed in the MWA and checking the same while processing payments to the contractor. Similar checks can be exercised for deduction and contributions of EPF and ESIC as well. In Railways, preparation of estimates is not done keeping in view the requirements as per the statutory provisions. Further, a mechanism to verify the compliance to statutory provisions during payment does not exist.
- The primary as well as supervisory responsibilities of Principal Employers could be clearly delineated in the form of a checklist and adherence to the same can be ensured. Though the Railways issued instructions long back for nomination of Principal Employers for all the departments, the same are not being followed. The responsibilities of Principal Employers have not been delineated so far. The General Conditions of Contract in the railways only states that the contractor should follow the statutory laws such as CLRA, 1970 and MWA, 1950, but do not bring out the role of Principal Employers to exercise oversight and control to ensure adherence to these provisions by the contractors. Clear-cut instructions are not in place detailing duties and responsibilities of Principal Employers, his designated nominee and paying authorities.

Thus, from drafting the conditions of contract, preparation of estimates to processing payments of the contractors, PEs can put a mechanism in place to ensure compliance of labour laws and safeguard rights of contract labour.