

From

Labour Commissioner, Haryana

To

1. Additional Labour Commissioner (NCR), Gurugram
2. All Deputy Labour Commissioners in State of Haryana
3. All Assistant Labour Commissioners in State of Haryana

No.: 20934-70

Dated:- 24-7-19

Subject: Applicability of Industrial Employment (Standing Orders) Act, 1946 on various establishments covered under the Punjab Shops & Commercial Establishments Act and the Contractor engaged by any establishment including Building and other Construction Sites.

On the subject cited above.

It is submitted that Section 1(3) of the Industrial Employment (Standing Orders) Act, 1946 provides that **it applies to every industrial establishment wherein 50 (in case of State of Haryana) or more workmen are employed, or were employed or any day of the preceding 12 months.**

As per definition of 'industrial establishment' as laid down under section 2(e) of the Act *ibid* to means:-

- (i) **an industrial establishment as defined in clause (ii) of section 2 of the Payment of Wages Act, 1936, or**
- (ii) xxx xxx xxx
- (iii) xxx xxx xxx
- (i) **The establishment of a person who for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen";**

To understand this, we have to peruse section 2(ii) of the Payment of Wages Act, 1936, which is reproduced below:-

"industrial or other establishment" means—

- (a) **tramway service, or motor transport service engaged in carrying passengers or goods or both by road for hire or reward;**
- (aa) *air transport service other than such service belonging to, or exclusively employed in the military, naval or air forces of the Union or the Civil Aviation Department of the Government of India;*
- (b) *dock, wharf or jetty;*
- (c) *inland vessel, mechanically propelled;*
- (d) *mine, quarry or oilfield;*
- (e) *plantation;*
- (f) *workshop or other establishment in which articles are produced, adapted or manufactured, with a view to their use, transport or sale;*
- (g) **establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or**

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- the supply of water, or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on;*
- (h) **any other establishment or class of establishments which the Central Government or a State Government may, having regard to the nature thereof, the need for protection of persons employed therein and other relevant circumstances, specify, by notification in the Official Gazette."**

The Government of Haryana, Labour Department in exercise of powers conferred under above clause (h) of section 2 of the Payment of Wages Act, 1936 vide its notification dated 12.12.2018 **have declared all shops and commercial establishment as 'industrial or other establishments' for the purpose of said clause.**

The above declaration was required to cover all shops and commercial establishments under another notification dated 12.12.2018 issued by the Government of Haryana, Labour Department in exercise of powers conferred under second proviso to section 6 the Payment of Wages Act, 1936 wherein it was **specified that the employers of the industrial or other establishments as defined in clause (ii) of section 2 of the said Act, shall pay the wages to the persons employed therein by crediting the wages in their bank accounts.**

From above, it is clear that in view of notification dated 12.12.2018 of the State Government, the provisions of the Industrial Employment (Standing Orders) Act, 1946 are now applicable to all shops and commercial establishments in case it is employing 50 or more workmen in preceding 12 months being part of the definition as provided under clause (h) of Section 2 of the Payment of Wages Act, 1936.

Section 2(e)(iv) of Industrial Employment (Standing Orders) Act, 1946, further provides that **"The establishment of a person who for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen."** Therefore, as per clause (iv) above, every contractor having 50 or more employees to fulfil a contract is itself an establishment under the Act of 1946.

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It is relevant to submit here that even after coming into force the Contract Labour (Regulation and Abolition) Act, 1970, which is a complete labour legislation and consists of definition of 'contractor', 'establishment', 'principal employer' and other exhaustive provisions relating to service conditions of the contractual employees, the provision of the Act of 1946 i.e. section 2(e)(iv) has not lost its effect for the following reasons:-

- a) Despite the enactment of the Act of 1970 provisions of the Act of 1946 pertaining to contractor i.e. section 2(e)(iv) has not been repealed / omitted,

- b) Model Standing Orders under the Act of 1946 has more comprehensive & inclusive service conditions / rules as compared to the regulations as provided in the Act of 1970.

Therefore, in these circumstances the provisions of Industrial Employment (Standing Orders) Act, 1946 (Section 2(e)(iv)) is applicable on every establishment of a contractor.

Therefore, you are directed to strictly complied with these guidelines while issuing Registration Certificates and Licenses under Contract Labour (Regulation & Abolition) Act, 1970, Inter-State Migrant Workmen (Regulation of Employment and conditions of Service) Act, 1979 and The Motor Transport Workers Act, 1961 etc. An undertaking of the applicants in this regard must be submitted to the Head Office urgently.


for Labour Commissioner, Haryana

Endst. No. 20971-73

O/C

Dated:- 24-7-19

A copy is forwarded to the following for information and necessary action please:-

- 1) Additional Labour Commissioner, HQ
- 2) Deputy Superintendent (IR-2) for strictly compliance of above mentioned guidelines.
- 3) PS to worthy Labour Commissioner, Haryana.

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for Labour Commissioner, Haryana