

Draft labour rules: No licence for contractors with criminal history

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The central government has proposed bare minimum eligibility norms for manpower agencies or contractors to get a first-of-its-kind pan-India licence for hiring contract workers for a period of five years.

The government has proposed just two conditions for contractors to get a common licence valid across all Indian states.: That they should not have been convicted of a crime or been insolvent in the past two years.

“For the purposes of obtaining licence, the contractor as an entity or as an individual should not be an 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,” state the draft Occupational Safety, Health and Working Conditions Code (Central) Rules, 2020. The Union labour and employment ministry made the draft rules public on Friday for inviting comments.

The norms, say industry experts, are not sufficient to weed out fly-by-night contractors.

“The government’s move to release the draft rules in a short span of time with the right balance for workers and industry is welcome. But we need to strengthen the eligibility criteria to ensure that fly-by-night contractors can stand exposed,” said Teamlease Co-founder and Executive Vice-president Rituparna Chakraborty. “If you are aspiring to be a national-level contractor, it’s important to validate your ability to commit to your workers.”

In China, temporary workers -- known as “dispatch employees” -- can be employed only by contractors who have a minimum capital of 2 million yuan (\$200,000), a fixed office and relevant management rules regarding such workers. And in Vietnam, from January 2021, outsourcing firms will have to make an escrow deposit of two billion Vietnamese dong (\$85,000) and the firm’s bank will pay salaries to contract workers as a safety net.

However, in India, the government has shied away from extending any such financial condition on contractor seeking a five-year countrywide India licence. Earlier, it was considering a turnover threshold for manpower agency firms, but has not made up its mind on the issue yet. “The government feels that monitoring turnover or any other financial parameter may lead to micromanagement as the process has to be moved online with less paperwork,” said a person privy to the discussions.

At present, firms in India are required to obtain separate licences for each work order that they execute if they want to hire contract workers. The licence is different across states, too. But such a licence is not mandatory as contractors can follow the old system by getting a licence based on separate work orders.

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Also, under the new labour codes, contractors will have to inform the government 15 days in advance every time they receive a work order, failing which the five-year licence will be cancelled.

“Both the new and old system for contractors will run parallel. The government should have had a criterion based on capital, financial position and related to fulfillment of certain conditions with regard to business and workers,” said labour economist and XLRI Jamshedpur professor K R Shyam Sundar. “Where does criminal record come into play and why would an insolvent firm apply for a licence anyway?”

It is also proposed that agencies hiring a minimum of 50 workers will be covered under the new labour laws, instead of those with a minimum of 20 workers, which is the case at present. This means a larger pool of contractors will be out of the legal purview.

Highlighting the lacunae in the existing law, the Second Indian Labour Commission, which had recommended codification of labour laws, had noted in its report submitted in 2002: “There were cases of contractors making deductions from the wages of contract workers as their contribution towards social security, and then absconding without depositing either the contribution realised from the workers or their own contributions into the appropriate social security fund.”