

OUTSOURCING NORMS AND GUIDELINES

Rules Governing Outsourcing employees:

Employment through outsourcing is covered by the Contract Labour (R&A) Act and Rules. In addition to the statutory provisions, the departments employing through outsourcing should also follow the following government orders.

Important G.Os and circulars on outsourcing procedure, issued by the Government:-

1. G.O. Rt. No 2501 dated 13-07-2006 of Finance (SMPC) Dept.
2. G.O. Rt. No. 4459 dated 27-12-2006 of Finance (SMPC) Dept.
3. Circular memo No. 8999-A/319/A2/SMPC/2007 dated 21-04-2007 of Finance (SMPC) dept.
4. G.O. Rt. No. 2246, Finance (SMPC) dept, dated 07-06-2007 of Finance (SMPC) dept.
5. Circular memo No. 14863-F/547/A2/SMPC/2007 dated 14-06-2007 of Finance (SMPC) dept.
6. Circular memo No. 17944/668/A2/SMPC/2007 dated 06-10-2007 of Finance (SMPC) dept.
7. Circular Memo No. 28346-C/958/A2/SMPC/2008 dated 30-09-2008 of Finance (SMPC) dept.
8. Circular memo No. 30766/A/896/A1/BGI/2008 dated 23-10-2008 of Finance (SMPC) dept.
9. G. O. Rt. No. 4271 dated 01-11-2008 of Finance (SMPC) dept.
10. G.O. Rt. No. 3 dated 12.01.2011 of Finance (SMPC) Dept.

Government vide G.O. Rt. No. 2501 finance (SMPC) dept, dated 13-07-2006 have fixed remuneration payable to the employees engaged on outsourcing basis and the remuneration fixed was on the basis of minimum of the time scale of the respective category of employment as per RPS 2005. Government also directed the departments engaging personnel through outsourcing to strictly monitor and ensure that the remuneration reaches the employees that the allotment of outsourcing work to an agency should be done in a transparent manner by open tender process. Detailed guidelines have been issued vide G.O. Rt. No. 4459 dated 27-12-2006 of Finance (SMPC) dept. It is ordered that in the districts, a committee with collector as chairman, deputy director T&A and district labour officer as members and district employment officer as member convener shall select the outsourcing agency. For the Offices at the State level, the GAD will select the outsourcing agency. Head of Department i.e. the principal employer should get permission from government in finance department to outsource functionaries

/ functions. The principal employer i.e. head of the office / head of the department has to register his office / department under Contract Labour (R&A) Act, 1970 and the outsourcing agency selected by the committee should obtain license under the said Act which shall be renewed regularly. The outsourcing agency is responsible for payment of remuneration to the employees timely which should be monitored by the department. Contribution towards EPF and ESI would be deducted from the remuneration of the employees and along with the contribution of the outsourcing agency the EPF and ESI amounts should be remitted to the EPF organization and ESI Corporation and only on a certificate produced by the outsourcing agency regarding remittance of EPF and ESI, payment for subsequent month shall be released by the department. The agency has to pay service tax and should include the employers contribution of EPF and ESI, service tax and its commission along with remuneration payable to the employees in its quotation. The employees are eligible for 15 days casual leave per year. (The employee and employer contributions under EPF are 12% and 13.61% and ESI are 4.75% and 1.75% respectively)

Government vide G.O. Rt. No. 2246 of finance (SMPC) dept, dated 07-06-2007 have clarified that outsourcing of support services is of two types i.e. functionaries and functions that guidelines regarding outsourcing of functionaries have been issued vide G.O. Rt. No. 4459 and that certain activities like sweeping, maintenance of computers etc., which are part time in nature can be outsourced to the service providers instead of taking persons on outsourcing basis and it was advised that the activities that can be outsourced to the service providers need not be outsourced through functionaries and the departments can take decision on outsourcing of functions / activities.

Government in continuation of G.O. Rt. No. 4459, vide circular memo No. 14863 – F/547/A2/SMPC/2007 dated 14-06-2007 of Finance (SMPC) dept, have delegated the powers to the head of the department to extend the contract with the outsourcing agency as long as the posts outsourced are within the sanctioned strength of the department and the concurrence of finance (SMPC) dept. is required only at the initial time of outsourcing the services.

Government vide circular Memo No. 17944/668/A2/SMPC/2007 dated 06-10-2007 have directed the heads of departments to ensure implementation of rule of reservation as per the existing 100 points roster already prescribed in Rule 22 of AP State and Subordinate Service Rules and presidential order in all outsourcing appointments.

Government also issued instructions vide circular Memo No. 28346 – C/958/A2/SMPC/2008 dated 30-09-2008 of finance (SMPC) dept, that all employees working in government and quasi government organizations, grants-in-aid institutions, outsource / contract employees should get their salaries on the 1st of every month.

Government also issued instructions vide circular Memo no. 30766/A/896/A1/BG1/2008 dated 23-10-2008 authorizing the director of treasuries and accounts / pay & accounts officer, Hyderabad and director of works accounts to admit bills into audit without insisting 80% expenditure of earlier quarters to facilitate prompt payment of salaries to outsourcing / contract employees.

Covering all the above instructions / guidelines government vide G. O. Rt. No. 4271 of Finance (SMPC) dept, dated 01-11-2008 have issued comprehensive guidelines on outsourcing of services in government departments as follows.

Selection of outsourcing agencies:- The head of the office or department i.e. the principal employer should get permission from the government in finance SMPC department to engage for outsourcing the services. After obtaining the permission, a committee with district collector, as chairman, deputy director T&A and district labour officer as members and district employment officer as member convener will select the outsourcing agencies and the district employment officer is responsible to move the proposal for outsourcing the functions and functionaries.

Payment of remuneration:-

In respect of categories not covered in the G.O. Rt. No. 2501, the departments are advised to submit proposal of remuneration based on the minimum of time scale attached to the equalant category for sanction by finance department. In order to ensure payment of remuneration to all the persons covered by outsourcing / contract services on 1st of every month promptly, the departments shall reckon the working period as 21st of previous month to 20th of current month and necessary steps should be taken to present the bill in time and in case of short fall in budget the concerned departments shall submit proposals to the finance department for sanction of additional funds and ensure payment of remuneration on 1st of every month. Instructions were already issued to the director, T&A / PAO /DWA to admit the bills under certain heads without insisting 80% expenditure of earlier quarter to ensure payment of remuneration to the outsourcing employees on 1st of every month. It was also directed that all departments shall ensure that a bank account in the name of contract / outsourcing person is opened and the

remuneration paid to the agency shall be paid to the outsourcing persons by account payee cheques.

Deductions:-

Only employees contribution towards EPF and ESI and profession tax are allowed to be deducted and the outsourcing agency shall produce a certificate showing remittance of EPF and ESI contribution at the time of submitting bill for the following month and any deviation shall result in stringent action including termination of outsourcing agency duly protecting the interest of outsourcing persons.

Continuation of Contract / Outsourcing persons:-

Instructions have already been issued that the departments can continue contract / outsourcing agency beyond one year as long as the posts are outsourced within the sanctioned strength of the department.

Grievance cell:-

All the departments shall create a grievance cell to attend to the complaints of the contract / outsourcing persons and one of the existing officer of the department are to be nominated as in-charge of the cell and his phone number and address should be made available to all contract / outsourcing persons. Any violation of instructions by the outsourcing agency should be brought to the notice of the collector who will black list the agency if the complaint is genuine. Further, all the departments and unit officers were instructed to scrutinize the acquaintance rolls maintained by the outsourcing agencies and any irregular deductions should result in stringent action and as a measure of protection to the diligent outsourced persons the outsourcing agency should not be allowed to discontinue without the consent of the principal employer and to replace except on grounds of indiscipline or dissatisfactory service and except by cessation of need and not as per the whims and fancies of the agency.

Other Acts applicable:-

The outsourcing agencies / contractors shall also comply with the provisions under all applicable labour laws like The Employees Provident Fund and Miscellaneous Provisions Act, 1954 and the Employees State Insurance Act, 1948 and maintain the prescribed record and the principal employer shall ensure the same. The authorized representative of the principal employer should verify every month whether the contractor / outsourcing agency had actually remitted the total contributions towards EPF and ESI to the respective organizations.

Suggestions for improvement of services through outsourcing employees;

District outsourcing screening committee:- Employment by outsourcing takes place in respect of regular vacancies of a government department remaining vacant for a long time and also for additional manpower and the outsourcing employees work along with the regular government employees and perform the same or similar kind of work performed by the regular government employees of the respective categories. They are not governed by all government service rules as they are not directly employed by the government and their employment is through a contractor / outsourcing agency and the terms and conditions of employment are regulated by the provisions of the Contract Labour (R&A) Act and the instructions of the government as regards outsourcing procedure. However government issued instructions to observe rule of reservation (100 points roster) and to implement G.O. 610 in accordance with Rule 22 of A.P. State and Subordinate Service Rules since the employment on outsourcing is against regular vacancies in the government departments. It was observed that the existing procedure of recruitment of employees on outsourcing by the outsourcing agencies lends itself to all kinds of abuse resulting in deployment of incompetent and unsuitable persons against illegal considerations and the quality of service by such incumbents and the plight of the public who are already at the receiving end can be easily imagined. Therefore with in the norms of procedure on outsourcing, it is proposed to constitute a ***district outsourcing screening committee*** at the district level and State Outsourcing Screening Committee at State level with the representatives of the respective department and Labour Department. The Employment Department should be nodal department to conduct the proceedings of the Screening Committees. The Designated Officer of the Department requiring persons on outsourcing, should inform the requirement of persons and requisite qualifications to the outsourcing agency. The outsourcing agency has to send qualified candidates in a ratio 1:5 for every post to be filled, to appear along with the certificates, before the outsourcing screening committee and on verification of certificates and a Trade Test by the expert in the field would short list one person against each post and recommend to the outsourcing agency. The outsourcing agency would formally sponsor the screened candidates to the department for employment on outsourcing. The above procedure was already followed in Warangal District with significant improvement in the quality of outsourcing personnel. The Finance Department may be requested to examine the above procedure and to incorporate in the outsourcing norms towards improvement of quality of public service by employing competent incumbents.

Appropriate wages / remuneration payable to the employees on outsourcing :-

The remuneration fixed by the finance department in respect of outsourcing employees should not be less than the minimum wages fixed by the

Government under Minimum Wages Act, 1948 and the wages fixed under the Contract Labour (R&A) Act, 1970 and Rules, 1971. The remuneration paid to a contract employee should not be less than the remuneration paid to a regular employee directly employed by the principal employer, doing the same or similar kind of work in accordance with Rule 25(v) (a) of the Contract Labour (R&A) Act, 1971. In addition to the wage rates, other conditions of service like holidays applicable to the direct employees are applicable to the contract employees also in accordance with the said rule. The remuneration paid to an outsourcing employee should include not only the basic pay in the time scale of the respective category but also other allowances like D.A, H.R.A and CCA etc. The remuneration fixed by the government in respect of full time contingent employees also includes the basic pay, D.A, H.R.A and C.C.A. Even in the present revision of remuneration of contingent employees the Government followed the same procedure.

The remuneration in respect of outsourcing employees should be fixed on the basis of the minimum of pay in the time scale recommended by PRC 2009, applicable to the respective category of employee and other allowances like D.A, H.R.A and C.C.A etc, in order to comply with the Contract Labour (R&A) Act 1970 and Rules in respect of outsourcing employees and thereby to reduce to some extent the irrational disparity in the remuneration paid to the regular employees directly employed by the government and the remuneration fixed in respect of outsourcing employees. Payment of such remuneration to the outsourcing employees is violation of Rule 25 (V) (a) of The A.P. Contract Labour (R&A) Rules, 1971 and the Government are expected in general to be a model employer.

Under the same Rule 25 (v) (a), and also in accordance with the doctrine of equal pay for equal work, the employees on outsourcing are entitled to a weekly holiday with wages, 8 national and festival holidays with wages and leave with wages @ one day for every 20 days work performed during the calendar year. But the Government vide the above instructions allowed to the employees on outsourcing, casual leave with wages for 15 days a year and maternity leave of 120 days without wages to the women employees. Whereas the weekly holidays and national and festival holidays are extended to the employees on outsourcing on par with government employees the said leave with wages (earned leave) and maternity leave with wages should be allowed to the employees on outsourcing in accordance with the said Rule and the spirit of the Contract Labour (R&A) Act. The Finance Department may be addressed in this aspect.

Security of tenure of employees on outsourcing:- Government issued instructions not to allow the outsourcing agency to dispense with the services of any employee on outsourcing on its whims and fancies and now it is required to consult the principal employer for taking decision on

discontinuation of any person on outsourcing. The Rule 25 (v) (a) of the A.P. Contract Labour (R&A) Rules, 1971 provides that if the workmen employed by the contractor perform same or similar kind of work as the workmen directly employed by the principal employer, the wage rates, holidays, hours of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer and any dispute on this issue shall be referred to the Commissioner of Labour for decision. The said Rule implies that the employees on outsourcing are regulated by all service Rules of the regular government employees and are entitled to the same wages and holidays etc. In respect of the employees on outsourcing not doing the same or similar kind of work performed by the regular employees, the wage rates, holidays and working hours and other conditions of service of such employees shall be decided by the Commissioner of Labour. In accordance with the notification No. D1/8385/79 dated 15-11-1979 of the Commissioner of Labour, A.P., Hyderabad, the person under contract labour system should not be punished for any misconduct without holding an enquiry and even to terminate the services, the employer should follow the said procedure laid down under clause 14 of the said notification. The finance department may kindly be advised to issue instructions accordingly to secure employment of employees on outsourcing in accordance with the provisions of the Contract Labour (R&A) Act.

Fixation of wages / remuneration of the employees on outsourcing, whose categories are not covered in the G.O. Rt. No. 2501 dated 13-07-2006 of finance (SMPC) department:-

The government vide the said G.O. Rt. No. 2501 have fixed remuneration payable in respect of certain categories of employees engaged on outsourcing and it was advised vide subsequent instructions that wages / remuneration of the employees on outsourcing not covered in the said G.O, should be proposed to the finance department on the basis of minimum time scale attached to the equivalent category and on sanction of the finance department, the wages / remuneration so sanctioned shall become payable to the employees on outsourcing. But it is learnt that the wages / remuneration in respect of such categories are not always being fixed on the minimum of time scale of the respective category in certain departments. This is required to be streamlined and the fixation of wages / remuneration of the employees on outsourcing should be strictly on the basis of the minimum of the time scale of the respective category of the employee on outsourcing in accordance with the norms of the Finance Department. The procedure to submit proposal to the finance department may also be dispensed with since undue delay is caused besides the said discrepancies in fixation. Only in cases of certain categories requiring clarification, a proposal need be submitted to the finance

department and the procedure is required to be amended accordingly. Or alternatively, the finance department may fix wages / remuneration in respect of all the categories of employees engaged on outsourcing. The Finance Department may be addressed on the above aspect.

Since the number of employees employed by various government departments through outsourcing system under Contract Labour (R&A) Act, 1970 is growing progressively constituting substantial number of employees exceeding more than 70,000, in addition to the employees already working in certain departments/agencies like DWMA for implementation of MGNREGA, delivering services to the public, it is required to at least reduce the irrational disparity in remuneration between the regular employees and outsourcing employees by ensuring the minimum of basic wage in the time scale of the respective category and D.A, H.R.A., CCA etc. applicable, in accordance with Rule 25 (V) (a) of the A.P. Contract Labour (R&A) Rules, 1971, which has remained on paper. In the present G.O.Ms.No.3 Government has removed the discrimination in the wages/remuneration paid to the contract employees and outsourcing employees as the G.O is applicable to both categories.

Ensuring regular payment of wages / remuneration to the employees on outsourcing:-

Further, it has been observed that most of the government departments were not following the above government Rules and also the provisions of the Contract Labour (R&A) Act as regards the employees engaged through outsourcing. The wages / remuneration payable to the employees on outsourcing has not been paid regularly by certain departments. Most of the departments have also not ensured remittance of EPF and ESI contributions. There are certain departments utilizing the services of the employees on outsourcing without payment of remuneration for several months. The explanation in general, of the department officers who are principal employers as regards irregular payment of remuneration is that they are not receiving funds from the heads of their respective departments which appears to be correct in most of the cases. Enforcement of Contract Labour (R&A) Act against government departments to ensure regular payment of wages is not desirable as it will not address the crux of the problem. The elaborate instructions of the government vide above G.Os, circulars and memos to ensure payment of remuneration to the employees on outsourcing by 1st of every month on par with the regular government employees is of no avail. If the funds are not allotted beforehand the above government instructions exist only on paper. The appropriate solution to this perennial problem is to allot budget towards remuneration of the employees on outsourcing, along with the budget allotment for regular government employees. In cases of default by the contractors/outsourcing agencies, the remuneration to the employees on

outsourcing should be paid directly by the principal employer by credit in the Bank account of the employees. Section 21 (4) of the Contract Labour (R&A) Act 1970 provides for payment of wages to the contract employees directly by the principal employer in case of default of the contractor.

The Provident Fund and ESI contributions in respect of the employees on outsourcing may also be directly remitted by the principal employers to the respective organizations on behalf of the outsourcing agencies in view of the irregularities in remittance of EPF and ESI contributions by the outsourcing agencies. The EPF organization is going to allot permanently a portable EPF No. to be called NSS number (National Social Security Number) to the employees which enables direct contribution to the EPF organization irrespective of their employer and the employers EPF code number. The muster particulars of the employees on outsourcing are maintained by the principal employer also and therefore the principal employer can calculate remuneration as well as EPF and ESI contributions. Now the only remuneration payable directly to the outsourcing agencies would be the remuneration of the outsourcing agency and taxes if any like service tax payable, since the outsourcing agency is a nominal intermediary to avoid direct employment and the outsourcing employees have been engaged mostly in core activities of the Government Departments. Employment on outsourcing basis would save the government, more than 50% of the remuneration payable to the regular government employees even on payment of allowances like D.A, H.R.A and C.C.A and allowing the leave in accordance with Rule 25 (v) (a), since the basic pay is always at the minimum of the time scale and there are no increments and other benefits like medical reimbursement, LTC etc., are not extended to them.

Failure to ensure regular payment of remuneration to the employees on outsourcing along with regular government employees would result in irrational disparity and unjustifiable discrimination between the regular government employees and the employees on outsourcing who are doing the same work sitting side by side, delivering services to the public and such a situation may brew discontent causing unrest in the long run and is likely to fail the outsourcing system itself defeating the very purpose of the outsourcing system. Therefore it is required to immediately initiate the above measures towards rectification of the discrepancies in the system of outsourcing by addressing the finance department.

Now the serious issues of outsourcing employment to be addressed are the quality of service of the outsourcing personnel and their accountability to the public and the control of the Government over them to ensure the same.