STATUTORY COMPLIANCE · 13

ISMW

Support enquiries concerning inter-state migrant-worker arrangements and related employment records.

Compliance under The Inter- State Migrant Workmen Act, 1979 : Mandate vs Ground Realities

- November 27, 2020

With growing industrialisation, workers migrate because of the booming economy in some states, which provide them with more work opportunities.

The organisations with their base in these relatively developed states, in turn, employ such workers in ancillary activities like housekeeping, security, construction, etc. As such workers whose services are requisitioned outside their native states in India now constitute part of the mainstream workforce, their adequate regulation and proper becomes imperative.

An important legislation which regulates their conditions of service is Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. (The ISMW Act).

The Act is applicable to every establishment in which five or more inter-State migrant workmen are employed or who were employed on any day of the preceding twelve months. The ISMW Act is also applicable to every contractor who employs or who employed five or more inter-State migrant workmen on any day of the preceding twelve months.

It is immaterial whether or not such workmen are employed by the Contractor or in the establishment, in addition to other workmen. The conceptual and structural framework of the ISMW Act is similar to Contract Labour (Regulation and Abolition) Act, 1970, in as much as both delve into the concept of Principal Employer, Contractor and Workman, along with their responsibilities and compliance requirements.

The 'Inter-State Migrant Workman' (ISMW) is defined under the Act to mean any person who is recruited by or through the Contractor in one State under an Agreement or other arrangements or employment in an establishment in another State. It is inconsequential whether such employment is whether with or without the knowledge of the Principal Employer of such Establishment.

In essence, the recruitment should have been made in one particular State through a Contractor or other arrangements and he should have been brought to another State in which establishment is located.

As an instance, if the person is recruited from another State and brought into Karnataka for working in the establishment through the Contractor or as a direct employee of the employer, only such person will be treated as ISMW.

However, if a person belonging to another State directly approaches the employer for employment in Karnataka and if he is given employment by the employer, the ISMW Act does not cover such workmen.

The Act mandates that no Principal Employer of an establishment to which the Act applies shall employ inter-State migrant workmen in the establishment, without obtaining a certificate of registration in respect of such establishment issued under the Act. The Act provides for certain responsibilities on the part of the employer.

It mandates that in case such workman performs the same or similar kind of work as is being performed by any other workman in the establishment, the wage rates, holidays, hours of work and other conditions of service of an ISMW shall be the same as those applicable to such other workman. The Act also stipulates clear responsibilities with regard to timely payment of wages.

The primary responsibility for payment of wages to the ISMW lies upon the contractor. However, in case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the Principal Employer shall be liable to make payment of the wages in full or the unpaid balance due to the inter-State migrant workman and recover the same from the Contractor.

A notable feature of the law is that it provides for payment of Displacement Allowance and Journey Allowance for the benefit of the ISMW. The Act stipulates stringent sanctions in the event of Contravention of provisions the law. The Act provides for imprisonment and monetary penalty in the event of contravention of the provisions of the law.

Despite the existence of a stringent framework governing ISMW, challenges exist in the implementation of the law at the ground level. There is a tendency amongst the contractors to escape their coverage under the law by not registering themselves under the Act to avoid compliance costs. In such situations, the majority of the migrant workers are not routed through licensed contractors, resulting in a huge number of them being excluded from availing any benefit provided under the ISMW Act.

Another popular modus operandi by which contractors avoid compliance under the law is mentioning the local address of the ISMW in the documents instead of their permanent address in the State from which they have migrated to obtain employment. This may be addressed by ensuring that proper mechanisms are in place to carry out background verification of the Contractor, by whom ISMW are deployed at the establishment of the Principal Employer, prior to such deployment.

The Occupational Safety, Health and Working Conditions Code 2020 (the Code) has been passed by both the houses of Parliament on 23rd September 2020, which will replace the existing ISMW Act. The Code has received Presidential assent and was published in the Gazette of India on 29th September 2020. However, rules in respect of the Code and the date on which the Codes would come into force are yet to be notified by the Government of India.

- The rules, wherever required, will be notified by the Government of India and along with such notification, the date on which the Code will come into force will also be notified by the Government of India.

- The provisions of the Code relating to Inter-State Migrant Workers are applicable to the establishment in which ten or more migrant workers are employed or were employed on any day of the preceding twelve months.
- Further, Registration of ISMW on the portal on the basis of self-declaration and Aadhaar.

The Code provides for portability benefits to ISMW to avail benefits in the destination State in respect of ration and availing benefits of building and other construction worker cess. The Code also provides for the creation of a Social Security Fund for the welfare of such workers by crediting amounts received from, inter alia, composition of offences and amount of penalty imposed, etc. By introducing such beneficial provisions, it is believed that the Code will pave the way for greater transparency in the regulation of ISMW at the ground level.

FAQ

Q. Which establishments does the ISMW Act apply to?

It applies to every establishment that employs, or employed on any day of the preceding twelve months, five or more inter-state migrant workmen, and to every contractor who does so.

Q. Who counts as an inter-state migrant workman?

A person recruited by or through a contractor in one state for employment in an establishment in another state. Someone from another state who approaches the employer directly for a job is not covered.

Q. Does the principal employer need registration?

Yes. A principal employer may not employ inter-state migrant workmen without a certificate of registration for the establishment under the Act.

Q. Who is responsible for paying their wages?

The contractor is primarily responsible. If the contractor fails to pay on time or pays short, the principal employer must pay the wages in full or the unpaid balance and recover it from the contractor.

Q. What allowances are migrant workers entitled to?

The Act provides for a Displacement Allowance and a Journey Allowance, and requires wages, holidays, hours of work and other conditions to match those of other workers doing the same or similar work.

Q. Will the ISMW Act be replaced?

Yes. The Occupational Safety, Health and Working Conditions Code 2020 will replace it once its rules and commencement date are notified. Under the Code, the provisions apply where ten or more migrant workers are employed.

Useful details to share when you enquire

- Business activity, site location and ownership details
- Existing applications, permissions and supporting records
- The registration or approval you need to discuss

TALK TO MLC

+91 77269 32023 · +91 99498 45759 | info@mlcqehs.com

H. No. 06-096/7/5, Manikya Nagar, Chintal, Quthbullapur, Medchal (Malkajgiri), Hyderabad, Telangana – 500054, India