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Who is responsible for third party employees: the ones who hire them or the company where they are posted?

The question here is not just in terms of the safety of employees and their mental and physical health, but also in terms of their life and death. In the light of a recent incident involving the suicide of a female employee, and in the context of many organisations working with employees hired, trained, deputed and/or managed by third-party staffing agencies, ETHRWorld reached out to HR experts and law firms to understand and discuss the burning issue and possible solutions to cater to employee safety.



Yumna Mobin, · ETHRWorld
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3174 Industry Professionals



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Highlights

- Contract (third-party) labourers who are engaged by establishments through a contractor are regulated under the Contract Labour (Regulation and Abolition) Act, 1970 (CLRA).
- Contract workers are the employees of the contractor agency primarily and remain under the direct supervision and control of the contractor.
- The CLRA provides the duties of the principal employer and the contractor agency. While the primary responsibility lies on the contractor, the principal employer is made vicariously liable for any non-compliances such as providing a safe work environment.
- However, the CLRA is silent on whether the principal employer is vicariously liable with respect to mental health issues and workplace stress if the contractor fails to address the same.
- Companies, while engaging and managing third-party employees, need to specifically define the roles and locate the liabilities between the contractor and the company in the service agreement.



Determining responsibility in cases involving incidents with employees hired, trained, deputed or managed by third-party staffing agencies can be complex and often depends on several factors.

The recent stands of Axis Bank and Quess Corp over the suicide of a female employee, who was hired by Quess Corp and posted at a branch of Axis Bank in Noida, raise a pertinent question on employer accountability:

Who is responsible for third party employees – the ones who hire them or where they are posted?

In the above case, the employee reportedly committed suicide because of toxic workplace culture and unprofessional behaviour of her manager/colleagues.

The question here is not just in terms of the safety of employees and their mental and physical health, but also in terms of their life and death.

In the light of the incident and in the context of many organisations working with employees hired, trained, deputed and/or managed by third-party staffing agencies, ETHRWorld reached out to multiple third-party staffing service providers, HR experts and law firms, and most of them refused to comment.

Only one HR consultant and one law firm spoke to ETHRWorld sharing insights on the burning issue and possible solutions to cater to employee safety as under.

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**When anything happens to an employee, and accusations are made—
who is responsible and why?**

Reetu Raina, Founder and CEO, ElementSkill, said that the

responsibility of employees is as defined by the contract signed by the two parties.

"However, in general, a payroll company is supposed to monitor the wellbeing of the employees. Nonetheless, the company where the employees are actually working also needs to ensure that these employees are managed well," said Raina.

She also pointed out how it is not right to play a "me vs them" game in this scenario, emphasising the joint responsibility of both the parties to ensure a safe and supportive environment for the employees, regardless of whose payroll they are on.

Advt

Deepti Thakkar, Leader - Employment & HR Laws, Nishith Desai Associates, said that employers often use "shared employee" arrangements with staffing agencies for temporary workers.

These shared employees are contract labour who are engaged by establishments through a contractor and are regulated under the Contract Labour (Regulation and Abolition) Act, 1970 (CLRA), said Thakkar.

According to Raina, collaboration between the payroll company and the host company is essential to foster a positive workplace atmosphere and

to ensure that the employees' needs are met effectively.

Thakkar, however, said that contract workers are the employees of the contractor agency primarily and remain under the direct supervision and control of the contractor.

"These contractors are typically engaged by establishments through services agreements by virtue of which such workers when deployed with the contractor's clients work out of the client locations, and also perform for specific projects as per client instructions," said Thakkar.

She further explained that the CLRA provides the duties of the principal employer and the contractor agency. While the primary responsibility lies on the contractor, the principal employer is made vicariously liable for any non-compliances such as providing a safe work environment.

"Given that the contract worker continues to be the employee of the contractor, issues related to workplace safety, harassment etc should primarily be raised by the contract worker directly with his/her employer, which is the contractor," Thakkar added.

Employees' health, safety and life concerns: Determining the scope of responsibility & authority for each– the company and the third party

Thakkar said, "The present case involves deployment of manpower by Qness Corp and therefore, the contractor– who is the employer of the deceased employee is primarily responsible for the employment relationship, all related compliances and ensuing liabilities."

She pointed out that according to the CLRA, the principal employer is liable to provide certain welfare amenities like canteen, restrooms, drinking water, and first aid amongst others, if the same is not provided by the contractor within the time prescribed.

"However, the CLRA is silent on whether the principal employer is

vicariously liable with respect to mental health issues and workplace stress if the contractor fails to address the same,” Thakkar said.

“Though the CLRA does not define the ambit of “welfare” of employees, but a logical inference may be drawn that ensuring safety, security and absence of harassment may also be read into the scope of “welfare” and accordingly, principal employer should be responsible for providing a safe working environment," Thakkar opined.

She further said that in this regard, the upcoming Occupational Safety, Health and Working Conditions Code, 2020 (OSH Code) also introduces a new duty on an employer (where employer is defined to include an establishment which has ultimate control over the affairs of the establishment as well as a contractor) with respect to providing and maintaining a safe and reasonably practical working environment which does not pose a threat to the health of the employees.

Raina said that determining responsibility in cases involving incidents with employees hired, trained, deputed or managed by third-party staffing agencies can be complex and often depends on several factors.

"These factors can include the nature of the incident, the terms of the contract between the primary organisation and the staffing agency, and the specific laws and regulations governing employment and liability in the relevant jurisdiction," she explained.

Raina also mentioned the following guidelines:

1. Nature of the Incident
2. Terms of the Contract
3. Specific Roles and Responsibilities

She further explained how organisations can take several steps to mitigate risks and clarify responsibilities, as under.

- Clear contracts

Ensuring that contracts with staffing agencies clearly outline the responsibilities of each party, including liability and indemnification clauses.

- Regular audits

Conducting regular audits and reviews of the working conditions and supervision provided to third-party employees.

- Joint training programmes

Implementing joint training programmes to ensure that both the staffing agency and the primary organisation understand their roles in maintaining a safe and compliant work environment.

- Legal consultation

Consulting with legal experts to ensure compliance with relevant employment laws and regulations.

Recommendations and dos & don'ts for companies to manage third party employees

Raina summarised some dos and don'ts by adhering to which companies can effectively manage third-party employees, ensuring a productive and harmonious working relationship.

Dos

Clear contracts and agreements, effective onboarding, regular communication, performance monitoring, integration, compliance and security, support and resources, and effective conflict resolution.

Don'ts

Neglecting contracts, poor onboarding, lack of communication, isolation, non-compliance, resource denial and ignoring conflicts.

Thakkar said that companies, while engaging and managing third-party employees, should specifically define the roles and locate the liabilities between the contractor and the company in the service agreement.

She further said, "As per the information available in the public domain, the present issue with respect to workplace harassment was ongoing for a few months; therefore, it is essential that in order to ensure safety of third-party employees, the contractor or the service provider should have a designated point of contact who is able to address such issues timely and efficiently with the client or the principal employer."

The contractor may have regular meetings (such as monthly or quarterly) to understand any workplace issues being faced by its employees, added Thakkar.

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