

Mr. Abdul Aziz Memon,
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Baldia, West Division,
Karachi.

Subject: MINIMUM WAGES AND CONTRACT / THIRD PARTY EMPLOYMENT

This refers to your reference # JD(W)/INSP/AD/2016/991, dated 31st August, 2016 on the above subject.

In response to the above referred letter, we would like to comment that your interpretation of the relevant provisions of the newly enacted Sindh Factories Act 2016 and Sindh Terms of Employment Standing Order Act 2016 stipulating that “there shall be no contractual / third party employment in manufacturing process” **is incorrect** for the following reasons:-

1. None of the above two Acts specifically mention that there shall be no contractual or third party employment in manufacturing process.
2. In section 2 (n) of the Sindh Factories Act 2015 in the definition of “worker” towards the end it is provided as under:-

“Provided that no worker shall be employed through an agency or contractor or sub-contractor or middle man or agent to perform **production related work.**”

The term “production related work” in the above definition has not been defined in the Factories Act which may be interpreted to mean all those works which are related to production such as, procurement, logistics, maintenance, quality etc. which do not fall within the domain of production.

In view of the absence of the specific definition of “production related work” in the Factories Act, it is unfair on your part to interpret that production related work should mean manufacturing process. Had it been the intention of law to prohibit employment through contractor to perform “manufacturing process”, as contended by you in your letter, it could have been plainly stated and the word “production related work” would not have been used.

3. Section 1 (4)(a) of the Sindh Terms of Employment Standing Orders Act (2015) reads as under:-
 - i- The Standing Order applies to:

“(a) Every industrial establishment and commercial establishment wherein, 10 or more workers or employees are employed **directly or through any other person** whether on behalf of himself or any other person, or were so employed on any day during the preceding 12 months”.
 - ii- In section 2 sub-section (h) (VII), **industrial establishment** means: - “(7) **establishment of a contractor** who directly or indirectly employs persons to do any skilled or unskilled, manual or clerical labour for hire or reward in connection with

- the execution of the contract to which he is party and includes the premises in which, or the site at which, any process connected with such execution is carried on:
Explanation - "Contractor includes sub-contractor head man, middle man or agent"
- iii- Schedule 1 (g) of the "Standing Orders while defining a contract worker" states as follows:-
"(g) a contract worker means a worker who works on contract basis for a specific period mentioned in the contract, in any establishments but does not include the **third party employment.**"
- iv- From a perusal of clauses mentioned in Para 3 above, it is very clear that the "Sindh Standing Orders Act 2015" duly recognizes:-
- i. Establishment of a contractor
 - ii. Employment of workers directly or through any other person
 - iii. Third party employment

It is, therefore, also not correct on your part to conclude that, the Sindh Term of Employment "Standing Orders" Act 2015 does not stipulate contractual / third party employment in manufacturing process.

- v- Besides the above, the Employers' Federation of Pakistan has already taken up with the Advisor to Chief Minister on Labour and Provincial Labour Secretary, the issues of ambiguity in the Sindh Factories Act 2015 and the Sindh Terms of Employment Standing Orders Act 2015, which must be removed to make the law practical and applicable.

It has also been contended by the Employers Federation of Pakistan that, third party contractual employment is an International phenomena. It is a right to business guaranteed under the Contract Act and is being widely used throughout the world to diversify and delegate the manufacturing process subject however, to the compliance to all necessary labour laws by the third party employment agencies.

We earnestly request you, in the interest of industrial peace not to take any measure or use any threat / harassment for compliance of new legal provisions which are vague till the ambiguity is removed through appropriate administrative and legislative measures.

We will also appreciate that the industry is already facing extreme hardship in its operations due to energy crises, law and order, high cost of production, inflation, etc. and it is not advisable from any angle that the labour department and its officials disturb the smooth operation of the enterprises by using interpretations of the new law which needs better understanding and consensus among stake holders. By a copy of this letter to the Employers' Federation of Pakistan, we are also requesting them to take up the matter with the Government for further clarification and assistance.

Thanking you.