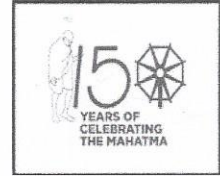




HEADQUARTER'S OFFICE
EMPLOYEES' STATE INSURANCE CORPORATION
PANCHDEEP BHAWAN: CIG ROAD: NEW DELHI
Email-id: jd-general.hq@esic.nic.in



MEMORANDUM

Sub: **Action on Outsourcing Contractors in case of default in wage payments and statutory compliance.**

1. Detailed instructions had been issued by the Hqrs. Office in the past (No. D-36/11/Contractual Agencies/Hqrs./2008-Genl. (CT) dated 14/11/2008; D-36/12/Sec.Ten./2005-06 (CT) dated 23/10/2007 and D-36/11/Sec./Hqrs./2011-CT dated 12/11/2015) to outsource non-core activities of the Corporation through contractors. It is the responsibility of the Head of the Office to ensure that the contractor makes timely wage payment and all statutory compliance.
2. However, Hqrs. Office has been receiving complaints of violations of law by the Outsourcing Contractors and indifferent response from the Offices concerned to such complaints. The major area of complaints are:
 - i. Non-payment of wages for long periods of time
 - ii. Non-compliance of statutory obligations
3. Compliance of the following laws are essential while outsourcing work through Labour Contractors
 1. Contract Labour (Abolition & Regulation) Act, 1970
 2. Employees State Insurance Act, 1948
 3. Employees Provident Funds & Miscellaneous Provisions Act, 1952
 4. Indian Contracts Act, 1872
4. Under the provisions of Contract Labour (Abolition & Regulation) Act, 1970, it is mandatory that the employer who outsource work through labour contractors register themselves with the Office of the Labour Commissioner and such employers become Principal Employer in respect of persons engaged by the contractor for the purpose of said Act. The representative of the Principal Employer is also required to certify the correctness of wage payments based on the attendance and wage records maintained.
5. The ESI Act, 1948, the Rules, Regulations and instructions require the employer to generate Sub Code Numbers for their different establishments for proper monitoring of compliance and efficient delivery of benefits.
6. The EPF & Misc. Provisions Act, 1952 allows the covered establishments to generate multiple Challans for submission of contributions in respect of contributing members.

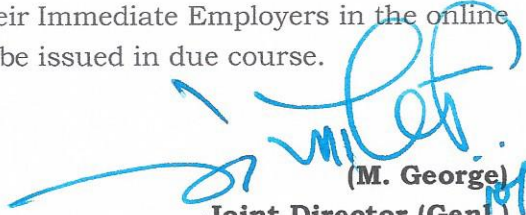
7. The Indian Contract Act, 1872 covers all the contracts entered into between various parties and violation of any mandatory terms and conditions of the Contract would confer the right on the parties to terminate the contract in such an eventuality unless the violation is rectified on being notified.
8. Keeping these provisions in sight, all the Offices of the Corporation should ensure that the following instructions are scrupulously followed in respect of the existing and future contracts entered into by the ESIC Offices.
 - a) A Nodal Officer, preferably the General Branch officer, be nominated to ensure timely wage payments and statutory compliance by the outsourcing contractor.
 - b) The Offices that have outsourced work through outsourcing contractor should register themselves with the jurisdictional Labour Commissioner's Office under the Contract Labour (Abolition & Regulation) Act, 1970 and ensure compliance with the provisions of the said Act relating to engagement of persons through contractors and their wage payments.
 - c) Every outsourcing contractor engaged by the ESIC Offices should be directed to obtain location specific Sub-Code Number for the office and the user id and password for the ESI Corporation locations should be shared with the nominated officer of the Corporation who would monitor the compliance under the said Sub-Code each month within the statutory time limit.
 - d) Copy of the location specific EPF Challan should be submitted within the time limit specified.
 - e) The wage payments to the outsourced workers within the time limit specified under the relevant Act should be ensured by the Nodal Officer.
 - f) The Head of the Office should ensure timely processing of bills and payments to the Outsourcing Contractors after ensuring statutory compliances. It will be the sole responsibility of the Head of the Office that the statutory compliances are not delayed.
9. In case of default by the Contractor and / or complaints from the outsourced workers of the nature mentioned in para 2 the following procedure should be adopted by the Offices without fail.
 - a) Individual declaration in the proforma attached as Annexure-I should be obtained from the aggrieved outsourced workers which would trigger the action against the contractor.
 - b) Show Cause Notice in the format at Annexure II should be issued to the outsourcing Contractor on receipt of the Declaration at Annexure - I with 7 day's time to respond to the notice.
 - c) In case the outsourcing Contractor does not take prompt remedial action and show compliance within the time limit of 7 days and / or fail to show legally valid cause, prompt action for termination of the contract should be taken. Model termination order is given in Annexure - III.

10. Further, in addition to taking the above actions, the Heads of Offices should take the following legally mandated actions after issuing the Show Cause Notice to the outsourcing Contractor specified at (ii) above.

- a) It is the duty of the Principal Employer under Section 24(1) of the Contract Labour (Abolition & Regulation) Act, 1970 to pay the wages on behalf of the Contractor to the workers engaged by him in case of any default by the contractor in this regard. Hence wage payments be made directly to the outsourced workers based on the biometric attendance records maintained in the office at the contracted rates after 7 days of the receipt of the notice by the contractor.
- b) ESI and PF contributions at the statutory rates should be deducted from the wages of the workers engaged by the outsourcing contractor at the time of such wage payments.
- c) The deducted EPF contribution along with the Employer contribution which is being reimbursed by the Corporation should be remitted to the jurisdictional EPFO Office by way of Demand Draft and covering letter showing the names of the contributing employees, their UAN Numbers, wage particulars and contribution details.
- d) The ESI Contribution should be remitted along with Employer's share which is being reimbursed by the office after generating challan using the location specific sub-code to be generated for the persons deployed at the office concerned.
- e) In case of persistent default by the Contractor, the jurisdictional Labour Commissioner's Office should be approached for action against the contractor for violation of the licence conditions under the Contract Labour (Abolition & Regulation) Act, 1970.

11. Action to amend the existing contracts incorporating the above provisions be taken on top priority and confirmation may be sent to Hdqrs Office within 30 day's time. It may also be ensured that the above provisions are incorporated into all future contracts entered into by the Offices.

12. Action is being taken by the Divisions concerned to mandate the Principal Employers under the ESI Act to incorporate the details of their Immediate Employers in the online records. Separate instructions in this regard will be issued in due course.


(M. George)
Joint Director (Genl.)

Dated: 10/02/2020

D-36/11/Housekeeping/Compt./2017-CT

To

All Addl. Commissioners-cum-Regional Director(s)/Director(s)/Jt. Director/ Dy. Director I/c. of R.O.s/SROs, Dean/ Medical Superintendent(s) of all ESIC Medical/Dental College(s) and Hospital(s).

(M. George)

ANNEXURE -I

**SUBJECT- DECLARATION REGARDING NON-PAYMENT OF WAGES BY MY
EMPLOYER/CONTRACTOR**

I _____, S/o / D/o / W/o
_____, Aged about _____ years, R/o
_____ and Employee Code
No. _____ declare that:

1. I am the contractual employee/worker of M/s _____
having their office at _____ and I am currently
posted/working at _____ as
_____.
2. I am an Insured Person under the ESI Act and my Insurance No.
_____ and I am a contributor to EPF under EPF and
Miscellaneous Provisions Act, 1952 and my UAN Number is
_____.
3. My employer, i.e. M/s _____ has engaged me for the
above noted post since _____ and currently I am working
at _____ and my total salary/wages is
Rs. _____/- per month .
4. My employer , i.e. M/s _____ has not paid my
wages from _____ to _____ till now and in spite
of my several request and reminder to him for the payment of my wages, he
is making excuses for the payment of wages on one pretext or another and
thus I am unable to meet my livelihood and day to day expenses and I request
you to pay my pending wages directly to me , i.e. Rs. _____
after deduction of ESI and PF contributions.

5. The deductions of contributions in respect of ESI and PF, my employer will pay as per the rules and procedures under the ESI Act, 1948 and EPF and Miscellaneous Provisions Act, 1952 and in case he fails to pay within the prescribed period, ESIC can take appropriate steps to deposit the same and / or take appropriate action against my employer and my declaration may be treated as a complaint against my employer.
6. I have not received my wages till today which are mentioned in this declaration and in case my statement through this declaration found to be false or fabricated, then I will be liable for every legally permissible actions and will further face the legal consequences under the civil and criminal law as per the Indian Laws which may be initiated by the ESIC.
7. For my identity proof to show that I am the same person who has been employed by my employer, I am submitting a copy of my Aadhar Card / Election Identity Card / Employment ID and I also undertake to submit any other document which may be necessary or required by the ESIC to verify my identity in further course of action.
8. The payment of wages by the ESI Corporation on behalf of M/s. _____ will not confer any Employer-Employee relationship between ESI Corporation and me and I will continue to be the employee of M/s. _____.
9. The wages may please be paid into my bank A/c. No. _____ in the name of _____ with bank _____ Branch _____ and IFSC _____.
10. This declaration has been read over and explained to me in my vernacular language and the contents of the said are true and correct.
11. This declaration has been made in a sound mind and full consciousness and the same has been signed, acknowledged and submitted by me without any threat, pressure, coercion or undue influence by any person.

12. This declaration is true and correct to the best of my knowledge and nothing has been concealed by me herein.

Witnesses:

a).

b).

Yours faithfully,

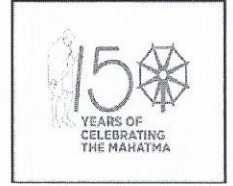
Sd./- or Thumb Impression
Of Contractual Employee/Worker
EPF UAN Number

ESIC IP No.

ANNEXURE-II



**HEADQUARTER'S OFFICE
EMPLOYEES' STATE INSURANCE CORPORATION
PANCHDEEP BHAWAN: CIG ROAD: NEW DELHI
Email-id: jd-general.hq@esic.nic.in**



Date-

To,

**SUBJECT- SHOW CAUSE NOTICE FOR YOUR FAILURE TO PAY WAGES TO
YOUR EMPLOYEE/ CONTRACTUAL WORKERS**

Sir,

1. This Show Cause Notice (SCN) is issued to you, on behalf of ESIC, _____ because of your reported failure to pay the wages due to the contractual workers, working as _____ at _____. The employee codes, Insurance Numbers and other details of the above mentioned employees are given below:-

Sl. No.	Employee Code	Name	IP Number	UAN Number
1.				
2.				

3.				
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2. It is regretted that you have reportedly failed to pay the wages as detailed in the Annexure to this notice of the above contractual workers/ employees hired by you. The above noted employees have also submitted a Declaration to the ESIC and has declared that they have not been paid since _____ by you and the total wages mentioned against each of such employees mentioned in the Annexure are payable by you upto _____. Moreover, you have also failed to deposit PF, ESI contributions, etc. in respect of the above mentioned employees.
3. Hence, due to these reported inactions on your part, you are hereby advised to explain as to why the wages have not been paid by you on time to the concerned employees as mandated in the Payment of Wages Act and Contract Labour (Abolition and Regulation) Act. You are further called upon to explain the reasons as to why your contract/agreement should not be terminated for the above mentioned reported illegal actions on your part.
4. Further, you are also advised to explain as to why you have not submitted the Wages Bill of your contractual employees/workers to this office within time to enable this office to disburse your bills in time, which appears to indicate that you are not able to discharge your legal duty towards your

employees/contractual workers which further appears to indicate your failure to perform your duties in terms of the contract/agreement.

5. Therefore, you are hereby directed to fulfil your obligations towards the above mentioned contractual employees and towards the statutory authorities including but not limited to those under the EPF and Miscellaneous Provisions Act, 1952 and the ESI Act, 1948 within 7 days from receipt of this Notice and submit proof of having fulfilled such obligations with all the details including receipts / Challans of ESIC, PF and other government taxes, failing which ESIC will take appropriate steps as mandated under Section 21(4) of the Contract Labour (Regulation & Abolition) Act, 1970 to disburse the salaries / wages to the above mentioned contractual workers / employees as detailed in the Annexure to this notice without further notice to you and you will also be liable to legal action under Section 14 of the Contract Labour (Regulation & Abolition) Act, 1970 and this office may also take up the matter with the appropriate authority for cancellation of your licenses.

6. You are further directed to Show Cause within 7 days of the receipt of this notice as to why your contract with the _____ (Office Name), ESIC should not be terminated for your aforementioned failure to pay wages within the statutorily prescribed time limit and further failure to discharge your other statutory obligations. It is further directed that your explanation should be in writing and within the prescribed time limit as

mentioned in this Notice and in case you fail to reply to the said notice within time, it will be presumed that you have no cause to show for your aforesaid failures and your contract may be liable for cancellation without further reference to you.

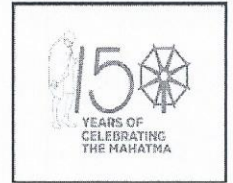
7. You are also hereby notified that in case of your failure to pay the wages within 7 days after receipt of this Notice and ESIC being compelled to pay such wages to the concerned employee/worker on your behalf, such wages and statutory dues so paid by ESIC will be deducted from any payment due to you from ESIC in the future and / or if such wages and statutory dues had been already paid by ESIC to you against your bills, ESIC will be free to recover the amounts through legal course of action as mentioned in the original contract/agreement dated _____.
8. The copy of this Show Cause Notice will be retained in this office for further course of action.

Yours faithfully,
Asst./Dy.Director
ESIC

Annexure-III



HEADQUARTER'S OFFICE
EMPLOYEES' STATE INSURANCE CORPORATION
PANCHDEEP BHAWAN: CIG ROAD: NEW DELHI
Email-id: jd-general.hq@esic.nic.in



Date _____

To _____

M/s _____

SUBJECT- TERMINATION OF THE AGREEMENT/CONTRACT _____

DATED _____

Please refer to the agreement for _____ dated _____
("Agreement") entered between M/s _____ and
_____ **ESIC** _____.

1. On receipt of complaints in the form of declarations from your existing contractual employees / workers in my office/ESIC of your having not paid the wages to the said contractual employees / workers, working as _____ at _____ having employee codes, Insurance Numbers and other details as below:-

Sl. No.	Employee Code	Name	IP Number	UAN Number
1.				
2.				

3.				
----	--	--	--	--

2. you were served with Show Cause Notice (SCN) dated __/__/2020, wherein you were instructed to fulfil your obligations towards the aforementioned contractual employees / workers and make the wage payments mentioned in the Annexure to the said Notice within 7 days of receipt of the SCN.

3. You were also provided with an opportunity to explain your failure in discharging your statutory obligations and delay in payment of wages to your contractual employees. However, you have failed to offer your explanation and / or to discharge the aforementioned statutory obligations towards your contractual employees / workers within the time limit specified in the notice. *[Your explanation received was examined and found that the same is not acceptable for the reason that]* It is further found that such failure on your part violates the terms of the agreement dated _____ and specifically clause no.____ of the mentioned agreement. Hence it is held that you have failed to perform your duties and obligations as mentioned in the SCN dated _____ and also that the same tantamount to violation of the section 39 of the Indian Contract Act, 1872 on your part.

4. Since you have not discharged the liabilities and also failed to remit the ESI Contribution in respect of your employees / workers as mentioned in the SCN dated _____, this office/ESIC is free to take appropriate legal action against you as per the ESI Act, 1948.

5. It is further found that because of such failure on your part, the wages due to your contractual employees/workers has been paid by ESIC to your employees / workers as detailed in the Annexure to the said Notice in accordance with the provisions of section 21(4) of Contract Labour (Regulation and Abolition) Act, 1970. The paid amounts totalling Rs. _____ will be recovered from the amount payable to you from ESIC for any services rendered in fulfilment of the terms of the agreement dated _____ or otherwise.
6. Under these circumstances, you are hereby informed that agreement / contract dated _____ shall stand terminated with effect from _____ and all the Terms & Conditions of the agreement dated _____ may be read as part and parcel of the agreement. Hence you are advised to withdraw the personnel deployed by you at the office premises from the said date.
7. It is also notified that ESIC will proceed as per the law governed for recovering the damages/ other expenses paid by ESIC on your behalf through the legal course of action as mentioned in the original contract/agreement dated _____ and Show Cause Notice dated _____.

Yours faithfully,
Asst./ Dy. Director
ESIC