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UCS POV | REVISITING AGREEMENTS ON CONTRACTUAL EMPLOYMENT

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Contractual employment is common in the IT/ITES industries with respect to work deemed as core and perennial. The Contract Labour Regulation and Abolition Act 1970 (CLRA), Section 10 (a) and (c), prohibits the deployment of contract labour that is perennial and is done ordinarily through, regular workmen in that establishment or an establishment similar thereto (Core nature). However, the appropriate authority is yet to publish the list of core and perennial activities for IT industries. Hence, such contract engagements are prevalent in the industry. Section 10 of CLRA, further clarifies that the decision of appropriate government is final on whether any process or operation or other work is of core and perennial nature.

Referring to the Hon. Supreme Court judgment on *Mahanandi Coalfields vs. Brajrajnagar Coal Mines Worker's Union* dated March 12, 2024. Initially, the Central Labour Authority (appropriate government) had done conciliation under the Industrial Dispute

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Act with the Appellant (Establishment) and Respondent (Worker's Union) for the regularisation of 32 contract employees who worked with the establishment for more than 10 years through a third-party contractor. The conciliation process eventually culminated in a settlement under Rule 58 of the Industrial Dispute Act and regularised 19 contract employees; for the remaining, it was contended that they were engaged in a casual nature of work, which is not prohibited under the CLRA (Sec. 10). Given the fact that the settlement is confined to only 19 workers, the Central Labour Department referred the entire dispute to the Industrial Tribunal under Section 10 of the ID Act. Following its ruling on May 23, 2002, the Industrial Tribunal directed the regularisation of the remaining 13 workers. The Tribunal Court's observations in its judgment were that the remaining persons should not have been ignored because they are casual workers and they did not deserve to be regularised, as claimed by the Appellant. The employees were also working in a perennial and permanent manner, even though the nature of the work carried out was casual.

In addition, the Appellant filed the Writ petition with the Orissa High Court, questioning the legality and validity of the tribunal's judgment. The High Court also dismissed the Writ filed by the Appellant and upheld the judgment of the Industrial Tribunal. The Appellant further filed a petition with the Hon. Supreme Court, stating the remaining workers were supervised by the contractor and not under the Appellant, hence, application of the Industrial Dispute Act is deemed irrelevant. The Supreme Court examined the Appellant's case as unjust denial of employment and regularisation for no fault of the workers and found no merit in the appeal that was filed. As a result, the Supreme Court dismissed the plea of the Appellant in this matter.

In view of this judgment and Sec. 10 of CLRA, it is advisable to re-visit the employment terms outlined in the contract with the contractors. The companies must ensure that there should not be any direct supervision for the contract employees when it comes to hiring or firing, approval of leaves, appraisals, awards, or any other benefits that may give rise to a claim of regular employment.



The Supreme Court's earlier judgment on "equal pay for equal work" may also be taken into account for the engagement of contract employees in a similar nature of work at the establishment. The agreement with contractors should be able to prove that the engagement is solely for specific services by deploying contract workers and must not create any employer-employee relationship. The service must be rendered by the respective contractors as per the agreement, and any resources that are deployed must be supervised and managed by them alone.

85% OF GIG WORKERS WORK FOR MORE THAN 8 HOURS: STUDY

A survey conducted among more than 5,000 gig and platform workers across 32 cities in the country has found that 85% of them work above eight hours a day as drivers and riders and within that, 21% work sweat it out for more than 12 hours a day. A whopping 65% of women who responded to the survey said they felt unsafe in their jobs. The survey conducted by Janpahal, a Delhi-based NGO, recommended that governments and regulators rename the gig, platform and e-commerce workers as "gig" is something taken up for a short period. "Permanent gig work is an oxymoron," the survey report said adding that "e-commerce workers" will be a better nomenclature to address them because, without the last-mile delivery by a human being, e-commerce cannot function, at least as of today. The report also recommended regulations to ensure that companies establish fair and transparent payment structures to protect gig workers from being

underpaid or exploited by companies. “Considering the physically intense nature of this work, the number of hours that are ‘regular’ hours needs to be stipulated beyond which the platform must pay overtime,” the report said. It also said that payment of a minimum wage to platform workers will help guarantee a fixed component in the income. Commenting on the instances of blocking the IDs of workers, such practices should not be allowed and IDs of workers cannot be indefinitely blocked. The report asked platforms to address rising voices of income insufficiency and respond to worker demands such as reducing the amount of commission they charge per transaction or making separate payments for workers’ fuel bill, which keeps inflating as fuel prices rise.



Among the 5,220 respondents, 57% have been drivers or riders for two to five years, and 16% for more than five years. “Even in the majority age group of 22-30, which expectedly would have the maximum number of people who would treat it as a temporary job, 47% have been gig workers for more than two years,” the report said.

SOURCE : THE HINDU

IS IT HIGH TIME THE POSH ACT SHOULD ADDRESS MEN’S CONCERNS TOO?

The POSH (Prevention of Sexual Harassment) Act predominantly addresses sexual harassment issues faced by women in the workplace. However, as the understanding of harassment continues to evolve, society gradually started recognising that sexual harassment can affect individuals of any gender.

But are the existing workplace policies reflecting the same?

A recent LinkedIn post by the men's rights activist, Deepika Bhardwaj, describes how an organisation tried to suppress the sexual harassment faced by a male employee. However, after the social media outrage, the company provided the boy with a therapist, and his grievances were investigated. This is not an isolated instance. There are ‘n’ number of anonymous posts by male victims on apps like Reddit that throw light into the horrific experiences of ‘them’ being subjected to sexual harassment at the workplace. Does this indicate that men at work don't have a proper outlet to express their concerns, unlike women? Is it high time that the POSH Act gets a gender-inclusive recalibration?

Legal Side

Nilesh Tribhuvann, Litigation Lawyer and Founder & Managing Partner, White & Brief Advocates and Solicitors, says that while there is no specific gender-neutral law addressing sexual harassment against men in the workplace in India, organisations can take proactive steps by implementing gender-neutral Prevention of Sexual Harassment (POSH) policies. “While the existing POSH Act may not be gender-neutral, organisations can create policies that allow anyone facing sexual harassment to file a complaint, irrespective of gender. This approach ensures that all employees, regardless of gender, have recourse to legal remedies in cases of sexual harassment. We have also been approached by male victims seeking legal assistance for sexual harassment in the workplace,” Tribhuvann says. “While there are challenges due to the absence of specific gender-neutral laws, we guide them to pursue legal remedies within the existing legal framework. Our aim is to support all victims of sexual harassment, regardless of gender, and advocate for inclusive workplace policies that prioritize safety and accountability for all employees,” Tribhuvann adds. Shonee Kapoor, Legal Consultant - Specialising in POSH, says, “I have met and discussed sexual harassment with male victims. However, due to no laws to support their issues, it has been an uphill task with such male victims. In my experience, the majority of the male victims were being sexually harassed by male offenders/culprits.

And, the situation is grave when it comes to males being harassed by females, especially when they had been in a relationship, as there is a "danger" of being framed in a false rape case."

Law is still biased towards women

Shikhar Singh, India Lead - Culture and Talent Management, CG Infinity, has never come across any case where the man himself raised an issue. "If you read the POSH policy, it isn't gender-neutral. Our law is still biased towards women and their protection/rights. While I understand that it was formed to safeguard women in workplaces and I am sure it has brought a lot of awareness and changed things for the better, it's high time that we make it gender-neutral and promote "speaking up." A lot of men ignore or simply adjust to whatever is happening to them and never raise their voices against it because they don't feel empowered," Singh says.



"You'd often hear conversations like "It's better to stay away", and "Don't mess with her, she can screw your life." It creates a sense of fear which further leads to hatred between the two genders. Men are always either fearful or critical of the situation. Also, social apprehensions come into play when a man isn't expected to report such things, and **"What is consent? When it comes to a man, they never say NO!"** (I've heard a woman say this, and it's sad!)," Singh points out. Singh further says that a lot of companies have gone beyond the given "compliance" and made gender-neutral policies where men have equal rights. "However, the government should also bring changes to POSH, so that a wider set of companies start normalising it.

It's just like period leaves, which might not help a woman as much, but would definitely normalise conversations and break the taboo. Similarly, POSH for men should be an awareness campaign within companies and by the government as well," he adds.

Unwanted proximity by female supervisor

Kaushik Chakraborty, Chief People Officer, Savills India, says, "In my career, I did come across instances of wrong touch, physical proximity and unwanted proximity by the female supervisor which got shared mildly with peers, but it was not raised officially because of the ambiguity of the redressal system." "As we strive to bridge the gender gap, I think it's high time to take a closer look at some of the gatekeeping policies like POSH. It's one of those anomalies where the scales are tipped in the opposite direction, where men may not have a proper grievance redressal system to report harassment. It's time to evaluate gender-specific policies and see how we can make it inclusive for all - men and women alike. After all, the protection of self is a right of every human and we need to acknowledge it," Chakraborty says.

Men hesitate to report such incidents

Meenakshi Chhillar, Head - HR, Gainsight, says, "Certainly, throughout my professional journey, there have been instances where male victims approached both me and my HR colleagues to file sexual harassment complaints. However, there is typically hesitation in reporting these incidents, especially among our male colleagues."

Several reasons, according to Chhillar, contribute to this hesitation. These are:

- Fear of mockery from co-workers and friends
- Concerns about potential retaliation from their employer
- Apprehension that reporting harassment may implicate their own sexuality

"Due to the stigmas and misconceptions surrounding male behaviours, individuals often choose not to report, and even when they do, they may be reluctant to pursue a full inquiry," Chhillar says.

Do men deserve a better grievance redressal mechanism?

Pande is of the view that it's not solely about men deserving a better grievance mechanism. "All individuals, irrespective of gender, should have rightful access to comprehensive measures for combatting workplace sexual harassment. While studies indicate a disproportionate prevalence of sexual harassment against women, it's essential to acknowledge that men are also susceptible, highlighting the importance of addressing all forms of harassment to cultivate a safe and healthy work environment for all," she says. "A pivotal measure for organisations is to prioritise inclusivity in formulating their POSH policy. Specifically, the definitions within the policy must encompass all personnel within its purview. When delineating a complainant in the policy, organisations must ensure coverage for all employees. Instead of adhering to the term 'aggrieved woman' or 'aggrieved man' as stipulated in regulations, **the policy should embrace the term 'aggrieved person'** to broaden its scope and promote gender neutrality," she points out.

How can workplaces provide a safer space for men to report sexual abuse?

Chhillar of Gainsight says there is a misconception that harassment is exclusively a women's issue. Because of this bias and oversight, companies may overlook this aspect when designing their grievance redressal mechanisms. She opines that companies must adopt gender-neutral POSH policies that cover all genders. It's important to recognise that harassment can affect individuals regardless of gender, and organisations should be committed to addressing and preventing such incidents for all employees.

- First and foremost, cultivating psychological safety is crucial. This involves creating a workplace culture that values open communication and ensures that individuals reporting incidents, regardless of gender, are not subjected to stereotypical statements like 'man up' or 'toughen up and handle it like a man'.
- The organisation's **ICC (Internal Complaints Committee)** should include both men and women and needs to ensure they present a balanced approach for all genders,

it can be a man, woman, or an individual identifying with any other gender identity.

- Encourage confidentiality throughout the entire process, ensuring that the handling of a complaint, detailed investigation, and resolution is conducted discreetly. Assure individuals that their concerns will be treated with the utmost confidentiality from start to finish.
- Organisations ought to allocate resources towards the development of gender-neutral policies. They should also broaden the scope of POSH policies to include all gender types.
- Organisations should conduct a comprehensive review of their POSH processes and policies. Investing in clear guidelines, continuous monitoring, and comprehensive awareness initiatives collectively contributes to mitigating concerns, thereby ensuring that the ICC becomes an effective and inclusive mechanism for preventing workplace harassment for all employees.
- Organisations should invest in robust training and concerted efforts to enhance awareness of POSH policies and processes. They should adopt innovative methods such as theatres/performance-based training, where actors simulate the roles of complainants, respondents and witnesses in a mock case, facilitating better recognition and response.
- Offer counselling services specifically designed to address the emotional and psychological impact of sexual harassment, providing a supportive environment for victims to express themselves.



According to Pande of Sterlite Power, the following practices can be followed to ensure a safer workspace for everyone:

- One of the first things that one can do is to take the time to listen to the employee's concerns without judgement. Regardless of their gender, allow them to express themselves fully and validate their feelings.
- Secondly, reassure them that their confidentiality will be respected throughout the process. Offer clear and concise information about the company's policies and procedures for addressing sexual harassment. Explain the steps involved in filing a complaint and outline the support resources available to them.
- Keep the employee informed about the progress of the investigation and any actions taken as a result. Check-in with them regularly to offer ongoing support and assistance.
- Workplaces can establish comprehensive training programmes on consent, boundaries and respectful communication for all employees. These programmes can focus on promoting healthy relationships and understanding the importance of mutual respect in professional settings, irrespective of gender.
- Organisations can designate trained individuals, such as HR professionals or counsellors, as confidential points of contact for anyone experiencing sexual harassment. These individuals can provide support, guidance and resources to employees in need, ensuring their confidentiality and privacy are respected.

“Furthermore, fostering a culture of empathy and active listening can encourage open communication and support among colleagues. By encouraging respectful dialogue and validating the experiences of others, workplaces can create an environment where everyone feels valued and heard,” Pande says.

SOURCE : HR ECONOMIC TIMES

BUILDING AN EFFECTIVE HIRING PROCESS: 7 BEST PRACTICES TO FOLLOW

As veteran business leader and former CEO of AlliedSignal (later Honeywell), Lawrence Bossidy, once famously said, “Nothing we do is more important than hiring people. At the end of the day, you bet on people, not strategies.” - highlighting the critical role that talent acquisition plays in the success of any enterprise.

Finding the ideal candidate can be a challenging prospect in a highly competitive marketplace for talent, which makes putting in place the right processes pivotal for success. Embracing the following best practices will empower organizations to build a winning hiring strategy.

Determine the Ideal Candidate

The talent search begins with a precise understanding of what the organization is looking for in terms of the ideal candidate. An effective recruitment team needs to keep in mind the expectations of the hiring managers, and other key stakeholders, in terms of critical parameters such as qualifications, experience, competencies, and alignment with team/company culture. This ideal candidate profile should be the prism through which subsequent processes are approached.

Draft a Precise and Compelling Job Description

A job description or ‘JD’ serves as the first point of contact between the organization and a prospective candidate, making it a crucial bedrock of the hiring process. A well-written JD is both compelling enough to attract candidates to the organization and the role, and precise in outlining the key responsibilities and duties of the role, academic and professional qualifications required, compensation and other benefits etc. The JD should set the right expectations for the prospective candidate, without any scope for ambiguity that could lead to a mismatch later in the process.



Optimize the Interview Experience

No hiring process is complete without one or more interviews. It is best, however, to restrict the maximum number of interviews to three. This respects the time and convenience of candidates, as well as internal stakeholders. It also compels hiring managers to ensure that the interviews they do take are as focused as possible. Interviewers should ideally dispense with generic questions, and prioritize in-depth conversations tailored to the candidate's background and the nature of the specific role.

Include a Practical Test

Testing the competencies of a candidate should be an essential part of the hiring process. While a candidate might come across favourably in an interview, and their resume checks all the right boxes, their performance in actual tasks might not match expectations. This is why it is crucial to assess their capabilities in a 'real-world' scenario, through a practical test, which may take the form of an assignment or simulation/role-play exercise.

Streamline and Expedite the Process

Streamlining the application process is essential for organizations to attract the best talent and ensure that potential candidates do not abandon the process midway. If applications are being sought through an online portal, recruiters need to ensure that the interface is user-friendly and involves minimal friction. Moreover, it is essential to expedite the hiring process wherever possible – for instance, by leveraging digital solutions to rapidly screen and shortlist resumes or ensuring that interviewers provide timely post-interview feedback – to avoid candidate frustration (or drop-offs due to their acceptance of other offers) owing to a prolonged hiring process.



Leverage Your Existing Employees

Employee referrals are widely considered among the best sources for high-quality candidates. Existing employees have a keen understanding of the organization, which makes them ideally placed to identify individuals in their circles who would be the right fit. Thus, talent acquisition teams must create an effective employee referral programme, with attractive incentives in the form of referral bonuses, gift cards or prizes.

Build a Robust Employer Brand

Last, but not the least, it's crucial for organizations to understand that an effective hiring strategy is not restricted to a particular process, but rather, is underpinned by a robust employer brand. A strong social media presence – with regular updates showcasing the company culture and values, team-building activities, notable achievements etc - serves as a powerful tool for drawing the attention and interest of prospective candidates. Testimonials of current employees, featured across the company's digital touchpoints and recruitment materials, will further bolster the organization's credibility as a desirable and reputable employer.

As with any other business function, hiring requires an organization's leadership to operate with clearly defined goals and evolve and optimize processes in alignment with them. Bringing on board the right talent at the right time provides businesses with a significant competitive edge in a dynamic market landscape and shapes the character and legacy of an organization for years to come.

SOURCE : HR ECONOMIC TIMES



EPFO'S NEW RULE THAT WILL COME INTO EFFECT FROM APRIL 1

April 1st is the start of a new financial year in India. This is important for your wallet because most new tax rules announced in the budget by Finance Minister Nirmala Sitharaman take effect on this day. There might also be other changes impacting your finances, so it's a good idea to be aware of them. The new fiscal year brings updates to rules for your savings plans (NPS & EPFO), taxes, FASTags, and other financial matters. Understanding these changes can help you save more and avoid any rule-breaking headaches. It's worth taking some time to learn about them.

New EPFO Rule

Switching jobs just got easier on your finances. The Employees' Provident Fund Organisation (EPFO) has implemented an automatic transfer system for your provident fund balance. This means no more manually requesting a transfer when you start a new position. EPFO will automatically credit your PF balance to your new employer's account, ensuring a seamless continuation of your retirement savings. This is a big win for employee portability and simplifies the process of managing your PF across different employers.



New Tax Regime

Starting April 1, 2024, the new tax system becomes the default option in India. This means unless you specifically choose the old tax system, your taxes will be calculated automatically under the new rules. Here's the good news: the tax brackets for the new system remain the same for the financial year 2024-25 (tax year 2025-26). There were no changes announced in the recent budget. Even better, if your income is ₹ 7 lakh or less annually, you won't pay any income tax under the new system!



NPS: Two-Factor Authentication

Starting April 1, 2024, the PFRDA will implement an additional security measure for the National Pension System. This enhanced system involves a two-factor Aadhaar-based authentication for accessing the CRA system via password. The announcement of this upgrade was issued through a circular on March 15, 2024.

The introduction of the two-factor Aadhaar authentication system aims to provide an additional layer of security to authenticate fingerprints and mitigate spoofing attempts, thereby enhancing the security of Aadhaar-authenticated transactions.

According to the PFRDA circular, the Aadhaar-based login authentication will be integrated with the existing User ID and Password-based login procedure, facilitating 2-Factor Authentication for accessing the NPS CRA system. The PFRDA notification states, "In order to bolster security measures for accessing the CRA system and safeguard the interests of subscribers and stakeholders, additional security features will be implemented through Aadhaar-based authentication for login to the CRA system.

"The Aadhaar-based login authentication will be integrated with the current user ID and password-based login process so as to make the CRA system accessible through 2 Factor Authentication," the notification added.

New Rule of FasTag

Attention FASTag users! Avoid toll booth hassles! Get your FASTag KYC done by March 31st. After that, banks may deactivate your FASTag if it's not updated. Without KYC, payments won't work, and you could end up paying double toll charges. Follow NHAI's guidelines to ensure smooth sailing at toll plazas.



Exemption Of Enhanced Leave Encashment

The leave encashment tax exemption limit for non-government employees was ₹ 3 lakh in 2022 and is now increased to ₹ 25 lakh.

SOURCE : NDTV

BENGALURU: KARNATAKA IT UNION DEMANDS THAT TECH FIRMS BE BROUGHT UNDER LABOUR DEPT



Shouts of 'Inquilab zindabad' and 'workers unity long live' reverberated around Karmika Bhavana, the Karnataka Labour Commissioner's office in Bengaluru, on Saturday, March 16, as hundreds of IT employees held a protest march against the 'anti-worker practices' in the information technology (IT) and information technology-enabled services (ITeS) sector in the state. One of the main demands of the protest, organised under the banner of Karnataka State IT/ITeS Employees Union (KITU), was to extend the implementation of the Industrial Employment (Standing Orders) [IE(SO)] Act, 1946 to the IT/ITeS sector as well.

The Act clearly states the rules to be followed during the recruitment of an employee, their working hours, attendance, procedure for obtaining leave, rights and liabilities of the employees arising from closing and temporary stoppages of work, termination and suspension or dismissal of the employee, and so on. The reasoning behind exempting IT employees from this Act, according to the KITU, was that tech firms were considered as 'sunrise industries' and that the absence of such a law would help in accelerating the growth of these companies by throwing workers rights to the air. IT employees of some of the prominent tech companies in Bengaluru tell TNM that over the years, they have witnessed arbitrary termination, mass retrenchment, long working hours without extra pay, and even sexual harassment at work place, for which many of the firms don't even have a complaints committee in place.

In May 2019, the Karnataka Government had extended the exemption of the IT sector from the IE(SO) Act for a period of five years, which comes to an end on May 25 this year. If the exemption ceases, then the IT sector in the state will come under the state's labour department, which will be able to look into the alleged worker's rights violations that take place in the sector. Sooraj Nidiyanga, the general secretary of KITU, says that the union demanded the government not to renew the exemption anymore as the employers have not complied with the conditions imposed on them while giving the exemption.

The conditions that the government stated while granting the exemption included the setting up of an Internal Committee (IC) in the firms as per the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, a grievance redressal committee in every establishment, and IT companies should inform the labour department regarding cases of disciplinary action, discharge, termination, demotion, or dismissal of employees. "All these conditions are blatantly violated by the establishments and thousands of employees are discharged, without notice or enquiry, laid off and retrenched without complying with the legal requirement to seek permission of the appropriate government under Industrial Disputes Act," says Sooraj.

A memorandum with all the demands of the union was handed over to HN Gopalakrishna IAS, Labour Commissioner, who said that he will hold consultations with all the necessary stakeholders and look into the matter.

In December last year, there were reports that the Karnataka government is contemplating to bring the IT sector under the purview of the state labour department. In a report by Economic Times, Karnataka Labour Minister Santosh Lad was quoted as saying, "The exemptions to the tech sector have been around for many years now. A proposal to not extend it came before me in 2016 also, when I was the labour minister. I have come across instances of unfair termination, and such employees find it very difficult to get another job." He went on to add that it was high time to revisit the exemption.

SOURCE : THE NEWS MINUTE

LOK SABHA ELECTION, 2024 & BYE ELECTIONS DATE RELEASED, FOR MORE INFO CLICK THE BELOW LINKS !

**ECI
Notification**

1

**Mizoram
Notification**

2

**Ladakh(UT)
Notification**

3

**Telangana
Notification**

4

**Bihar
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**Karnataka
Notification**

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**West Bengal
Notification**

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**Tamil Nadu
Notification**

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**Maharashtra
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(Amendment)

Minimum
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21 United
Consultancy





The logo for UCS CompliTool features the letters 'UCS' in a light blue font above the word 'CompliTool' in a darker blue font. A stylized orange checkmark is integrated into the 'C' of 'CompliTool'. A registered trademark symbol (®) is located at the top right of the 'l' in 'Tool'. Below the logo, the tagline 'Streamline Compliance & Risk' is written in a blue font.

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UCSCompliTool is a technology to ease the complexities of navigating through the changing Labour laws. With our past experiences and feedbacks, we have developed an in-house Software solution and have created this robust mechanism which represents our motto – Compliance simplified. It provides a real time and 360-degree view of compliance status for the Principal employer (CompliTool - Compliance) and with risk matrix to monitor the contractors (CompliTool - Audit). We have developed a Role Based Access Control model and being a cloud-based system, we are offering an absolute security and protection of data.

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