Contract Employees

R Sridhar & S Panda

Companies have been deploying numerous employment types to obtain labour cost Advantages – temporary, trainee, casual, contract . These employment types are a majorcause of labor unrest and industrial strife, While the argument in favor of deploying Multiple employment types are familiar – surplus labour, uncertain market demand, the ambiguity and inconsistencies in the Contract Labor Act – the fact is that employees and unions perceive the multiple employment types as pure exploitation. This paper discusses the logic that companies could use to arrive at an employment policy. Moving beyond the immediate benefit of cost arbitrage, an "investment" approach is being suggested for this segment of the workforce.

R Sridhar & S Panda (E-Mail:Swarup.Panda@itc) are from ITC Limited.

Introduction

Post the onset of economic liberalization in the early 1990s, many Indian companies relied on the conventional wisdom that "the only way to succeed in an era of global competition is to take advantage of the benefits of a largely unregulated, non-unionized, and low-wage environment" (Pfeffer, 1998). This conventional wisdom, along with a host of other commonly held beliefs, predicated the employment practices that companies followed in order to leverage numerical labor flexibility. Numerous employment types were deployed to obtain labor cost advantages – temporary, trainee, casual, contract. Fast forward to recent times and we find that these employment practices are now the major cause of labor unrest and industrial strife. While the arguments in favor of deploying multiple employment types are familiar – surplus labor, uncertain market demand, the ambiguity and inconsistencies in the Contract Labor Act – the fact is that employees and unions perceive this practice of multiple employment types as pure exploitation.

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While companies should explore the use of different employment modes to allocate work in view of the pressure of achieving both efficiency and flexibility, it is important that a logical and consistent approach be taken to arrive at decisions pertaining to the nature of employment at the company level. It is also appropriate that as with other capital investments, the management of human capital should be categorized into "make" or "buy" decisions. Although the make-or-buy distinction may appear simplistic, the growing number of subtle variations on this theme makes the effective management of employment modes at once complicated, contentious, and more directly related to company effectiveness (Lepak & Snell, 1999).

In this paper, we discuss the logic that companies could use to arrive at an employment policy. We also describe an approach adopted by our company to manage contract employees that is proving effective. We consider contract employees to be an integral part of the workforce contributing to company operations. Moving beyond the immediate benefit of cost arbitrage, an "investment" approach is being adopted for this segment of the workforce. Apart from managing basic issues of compliance, the principles of industrial democracy, equality, and equity are core elements in our management of this segment of employees. Another critical shift in our approach in this area is to partner with specialized agencies (Professional Service Providers) to ensure a more holistic and professional approach towards managing non-core jobs.However, before discussing employment mode selection logic and the management of contract employees, we consider it pertinent to briefly examine India's formidable labor legislative framework and its impact on employment and industrial progress.

Indian Labor Legislation

The World Bank in its India Country Overview (2008) states: "India's labor regulations –among the most restrictive and complex in the world – have constrained the growth of the formal manufacturing sector where these laws have their widest application. Better designed labor regulations can attract more labor-intensive investment and create jobs for India's unemployed millions and those trapped in poor quality jobs. Given the country's momentum of growth, the window of opportunity must not be lost for improving the job prospects for the 80 million new entrants who are expected to join the workforce over the next decade." There are over 50 national laws and many, many more state-level laws. Traditionally, Indian governments at the central and state levels have sought to ensure a high degree of protection for workers. For instance, a permanent worker can only be terminated for proven misconduct or habitual absence and the legal process could, and usually does, take years to complete.

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While the Indian legislature fully endorses the general view of employers that the legislative framework requires drastic amendments, the political will to bring about changes has been absent. Indian employers find that efficiency and flexibility are fettered by three labor enactments in particular: The Industrial Disputes Act, 1947; The Trade Union Act, 1926; and The Contract Labor (Regulation & Abolition) Act, 1970.

The Industrial Disputes Act (IDA), though meant to promote industrial harmony by resolving disputes, in reality slows down change and impedes labor numerical flexibility. Particular attention has been paid to its Chapter V-B, introduced by an amendment in 1976, which requires companies employing 300 or more workers to obtain government permission for layoffs, retrenchments and closures. A further amendment in 1982 (which took effect in 1984) expanded its ambit by reducing the threshold to 100 workers. It is argued that since permission is difficult to obtain, employers are reluctant to hire workers whom they cannot easily get rid of. Job security laws thus protect a tiny minority of workers in the organized sector and prevent the expansion of industrial employment that could benefit the mass of workers beyond its compass. It is also argued that the restriction on retrenchment adversely affects workplace discipline, while setting the threshold at 100 has discouraged factories from expanding to economic scales of production, thereby harming productivity. Several other sections of the IDA allegedly have similar effects, because they increase workers' bargaining strength and thereby raise labor costs either directly through wages or indirectly by inhibiting work reorganization in response to changes in demand and technology.

The Trade Union Act on its part is generally perceived as a millstone and a costly distraction by employers. It allows seven or more members to apply for union registration leading to multiple unions in a work location which in turn hampers recognition of representative unions by the management. Further, under the existing Act, up to 50 per cent of the members of the executive of a union can be outsiders resulting more often than not in the politicization of union leadership.

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The Contract Labor Act (CLA) was legislated to regulate the conditions under which contract labor are employed and abolish their employment where unwarranted. Four guidelines in the Act are to be considered by the government in deciding whether abolishment of employment of contract labor is warranted: whether the work is of perennial nature; incidental or necessary for the work of the establishment; sufficient to employ a considerable number of whole-time workmen; and whether the work is being done ordinarily through regular workmen in that establishment or a similar establishment. Widespread criticism of the Act focuses on the fact that it does

not provide a clear definition of contract labor, and when it comes to abolishment of contract labor in industries or establishments, the guidance and directives often come from judiciary rather than promulgated law. In addition, the Act lays down onerous conditions that are meant to regulate the employment of contract employees, which contractors and employers find difficult to comply with. Hence, the CLA, paradoxically, provides fecund breeding ground for labor problems and disputes. In the recent past, the country has witnessed several incidents of major industrial unrest, many of them arising due to the provisions of the Act.

Determination of Employment Modes

Porter (1985) suggested that it is a company's valuable and unique activities that are the primary components of its competitive advantage, which help it to differentiate its value chain from those of its competitors. Building on Porter's suggestion, Lepak and Snell (1999) use the dimensions of value (human resource skills that help companies to improve efficiency and effectiveness) and uniqueness (company specificity) of human capital, to identify four employment modes: internal development; acquisition; contracting and alliance. Internal development and acquisition are internal employment modes providing the benefits of stability and predictability of a company's skills and capabilities, better coordination and control, enhanced socialization and lower transaction costs. However, internal modes may force companies to incur costs stemming from administering the employment relationship and constrain a company's ability to adapt to environmental changes, particularly those that influence the demand for labor. Contracting and alliance are external employment modes that enable companies to decrease overhead and administrative costs, balance workforce requirements, and enhance flexibility. They also provide companies with more discretion in both the number and types of employees used while focusing critical resources on the development of core capabilities.

More recently, Porter has argued (Magretta, 2012) that the logic of core competences has led many companies to pursue outsourcing without thinking through the strategic consequences. Instead of trying to determine which activities are core, he asks a different question: "which activities are generic and which activities are tailored? Generic activities – those that cannot be meaningfully tailored to a company's (strategic) position – can be safely outsourced to more efficient external suppliers. Companies almost always make outsourcing decisions for short-term cost savings. These decisions limit the opportunities for uniqueness and fit in the company's strategy, and push an entire industry into greater homogenization (Magretta, 2012). We believe that companies should answer Porter's question before reaching decisions on outsourcing or contracting.

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In India, contract employees constitute a large part of the total wage employment. Most of these workers are engaged in generic activities (loading and unloading of goods and materials; catering including canteen services; security services; civil and construction works; electrical/air conditioning/painting/whitewashing; housekeeping services; computer maintenance, etc.) and those necessitated by seasonal/occasional requirement or in situations where there is a temporary increase of work. However, many companies today engage contract employees in regular and core activities, those that require "tailoring" to fit with a company's strategy. Saini (2010) cites studies that have found the share of contract employees in wage employment to be as high as 60 to 70 per cent as against the official claims of 15 to 26 per cent. There are also establishments where the number of regular employees is just a few hundred, but that of contract employees runs into several thousands. Although regular and contract employees are often found to work on same or similar tasks, regular employees earn between two and six times the wages earned by contract employees. No wonder, employers are accused of "misusing" and exploiting this category of employees. Continued reliance on external modes of employment is almost certain to lead to labor disputes and mitigates the development of core capabilities for long-term company performance. Lepak and Snell (1999) argue that the discussion on employment modes should not be reduced to an either/or distinction, but companies should use the four employment modes simultaneously, based on the dimensions of value and uniqueness in their idiosyncratic contexts.

Within in our company, in our business division, contract employees are engaged to perform generic activities such as housekeeping, gardening, material loading and unloading and construction work, and are not deployed in perennial production activities. Our efforts focus on raising their productivity levels by providing them with automated tools and training them to adopt efficient work methods. Whereas some years ago the average ratio of regular to contract employees in our factories was 2:1, this figure has improved to 3:1 today and our target is to stabilize at 4:1. We believe that this approach is helping us consider better wages and benefits to contract employees and reduce the level of employee dissatisfaction. We urge companies to engage in activity analysis, generic and tailored, and use both internal and external modes of employment to allocate human capital. This will provide an unassailable logic that could help companies explain and defend their make-and-buy decisions on human capital. Though employee costs could rise in the short-term, in the longer term companies would stand to gain in better employment relations and more durable competitive advantage.

Management of Contract Employees

Lepak and Snell (1999) view each employment mode as an inherently different form of employment relationship, shaped by the company, in terms of an

exchange agreement between individuals and their companies. They also consider patterns of HR practices – or HR configurations – as helping to define the employment mode, maintain the employment relationship and support the strategic characteristics of human capital. When contracting is chosen as the employment mode, a "transactional" employment relationship comes into being and the HR configuration is one of "compliance".

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In India, employers emphasize arm's length relationships with contract employees, focusing on the work to be done, the results to be accomplished, the terms of the contract with contractors – and virtually nothing else. Given the transactional nature of contract work, HR activities tend to focus only on securing compliance with the terms and conditions of the contract. Rules and regulations governing work are strictly enforced and specific provisions regarding work protocols are upheld with out any breach. This may sound reasonable, but in numerous instances contract employment practices are found to be unreasonable and unfair. We discussed the practice of deploying contract employees to perform activities that reasonably should go to regular employees. Though the principle of equity would dictate that contract employees be paid at par with regular employees for performing the same or similar nature of work, in practice, the wage differential tends to be steeply inequitable, which labor activists term "naked capitalism". The Contract Labor Act provisions and rules and other labor legislations are often violated with employees not having access to basic amenities at the work place; occupational health and safety standards not being applied and enforced; overtime pay being denied; and medical and social security contributions not being made. So many companies loudly and often proclaim their zero tolerance for poor quality and waste. We consider it time that they apply equal fervor to contract employment violations. The consequences of not doing so are clear and present as evidenced by contract employee agitations in some companies. There have also been demands to provide contract employees with rights for representation and dialogue.

We are of the view that even if contract employees are engaged to perform generic activities they need to experience "inclusion". If contract employees feel excluded and alienated social tensions at the work place will rise, impacting the morale of regular employees as well. Moreover, generic activities have a role to play in the overall operations of the establishment; otherwise they would have been entirely unnecessary. Porter and others have suggested the classification of generic and tailored activities to arrive at make-or-buy decisions on human capital, not to deny contract employees their due. Though a "transactional" employment relationship is found to prevail when the employment mode is one of contracting, we find the study of Tsui,

Pearce, Porter and Tripoli (1997) illuminating in answering the question, "Does investment in employees pay off?" They examined employee responses from ten companies under four types of employee-company relationships, as defined from the employer's perspective.

These four types are: (a) Quasi-spot contract, where the employer offers short term, purely economic inducements in exchange for well–specified contributions by the employee; (b) Mutual investment which involves a combination of economic and social exchange. In this case, the employer offers an extended consideration of an employee's wellbeing as well as an investment in the employee's career within the company. In exchange, the employee's obligations and contributions include working on job assignments that fall outside of prior agreements or expertise, assisting junior colleagues, accepting job transfers, and, in general, being willing to consider the unit's or company's interests as important as core job duties; (c) Under investment, where the employee is expected to undertake broad and open-ended obligations, while the employer reciprocates with short-term and specified monetary rewards, with no commitment to a long-term relationship or investment in the employee's training or career; and (d) Over investment, where the employee performs only a well-specified set of job focused activities, but the employer offers open-ended and broad-ranging rewards, including training and a commitment to provide the employee with career opportunities. The study found, in general, that employees performed better on core tasks, demonstrated more citizenship behavior, and expressed a higher level of affective commitment to an employer, when they worked in a mutual investment or over investment (by the employer) relationship than when they worked in a quasi-spot contract or under investment relationship. The finding that both the mutual investment and over investment approaches perform substantially better than the other two employee-company relationships suggests that offering open-ended inducements and a high level of social exchange to employees is more important than balance in the exchange. This has important implications for human resource management practices for regular and contract employees.

Our Approach

The management approach that we are seeding in our business division with regard to contract employees seeks inclusion of those employees based on "investments" being made in them. Some key features of our approach are:

– Contract employees are to be considered as a category of employees just as regular, supervisory, front line, and managerial categories would be. To reinforce this, we have attempted a name change – from contract labor to employees of service providers (ESPs).

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- Treat contract employees distinctly, but without discrimination. No discrimination when it comes to employee amenities at the workplace, shift timings, work breaks timings, etc. For instance, one of our factories celebrated its centenary this year. All regular employees were given a memento to commemorate the year. Nothing new there. But what was a welcome "new" was that all the contract employees engaged in the factory were given a memento as well – no discrimination.

- 100 per cent compliance to laws applicable to contract employees including work place safety, with zero tolerance for any violation. The factory's HR department works with contractors to ensure that contract employees are not denied their dues and their grievances, if any, are redressed quickly. It is also our intent to conduct employee satisfaction studies for this category of employees in the near future.

- Contract employees are to enjoy the freedom to form collectives. Two of our factories have unions representing contract employees. Periodic Long Term Agreements are entered into between the contractors and the contract employees after due collective bargaining. The process of negotiations is facilitated by managers of the factory's HR department. These agreements ensure that contract employees enjoy the same rights and obligations as regular employees. Where there are no collectives, we ensure that contractors pay their employees fair wages, determined on the basis of region-cum-industry surveys.

- We encourage and support contractors to have "employee-connect" events; provide training for skill up gradation; and consider them for regular employment when vacancies arise.

Conclusion

We consider it apt to paraphrase Max Frisch, the Swiss playwright and novelist, to sum up the discussion: "We asked for contract labor. We got people instead." And people want a "Decent Work Agenda" to be fulfilled –full and productive employment, rights at work, social protection and promotion of social dialogue (ILO Manual, 2012). This isn't too much to ask and, therefore, certainly not too much to give. Whether employees perform generic or tailored activities is an important consideration in deciding their employment mode. But it is more important to acknowledge that by working together they can boost a company's performance and ensure its success.

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