

## Labour hire industry & duty of care

Everyone in a labour hire arrangement has duties to ensure a safe workplace. Labour hire (recruitment/employment) agencies or agents and the host or client have the same responsibilities as employers over matters, which they each control, to ensure the safety of workers. Workers in labour hire arrangements have the same responsibilities as employees.

Effective systems should be in place to identify any hazards, assess the risk and ensure the safety of the worker, on a placement and throughout the time the worker is hired to carry out the work for the client, including a system for monitoring and addressing any changes that may occur in the workplace.

The number of people working under contract, temporary and labour hire employment arrangements has increased dramatically in the past 10 years. The range of working relationships has created particular challenges for managing occupational safety and health in workplaces. The biggest and fastest growing of these new employment arrangements is “labour hire”, which is now utilised in many key industries.

Amendments to the *Occupational Safety and Health Act 1984* (Act) introduced from 1 January 2005, provide an equivalent level of protection to workers engaged in labour hire arrangements, as that applying to other workers.

### 1.0 What are labour hire arrangements?

Labour hire refers to arrangements when a host organisation or person (the client), in the course of trade or business, engages workers from an organisation, which specialises in providing labour (the labour hire agency or agent). The arrangement is characterised by:

- An agreement for remuneration between the client and the agent regarding the supply of a worker;
- An agreement (which may be a contract of employment) between the agent and the worker; and
- The lack of a contract of employment between the client and the worker.

An agent is a person who carries on a business, which provides workers (who can be employees or contractors) to carry out work for clients of the person. This includes a group training organisation under the *Industrial Relations Act 1979*, such as a group apprenticeship scheme.

Workers are usually employed and paid by a labour hire agency or agent, which requires them to perform their tasks or functions for a client, usually under that client’s direction. Other names for these workers are on-hired workers, dependent contractors, or temps.

## 2.0 Duties of the agent and the client

Sometimes, there is a misunderstanding that engaging a worker through a labour hire agent involves few safety and health obligations.

Both the agent and the client have the same general duties of care as those applicable to an employer under section 19 of the Act, in relation to those matters over which each has the capacity to control. In broad terms, an employer must, as far as practicable, provide a work environment in which employees are not exposed to hazards.

While it is recognised that the agent does not have day to day control of the work at a client's workplace, the agent's responsibilities do not stop simply because the work is not carried out at the agent's workplace. There is much the agent can do, for example:

- Verify and match training, skills, and experience of the worker to the needs of the task;
- Provide a general induction and make arrangements with the client to ensure that specific induction is provided in relation to the tasks to be undertaken and the plant to be used;
- Ensure that any change of duties does not present a hazard to the worker should the client and/or the worker notify the agent that change is being considered;
- Provide information and training to make sure the worker knows how to carry out his or her activities safely;
- Ensure the work environment (including plant and equipment, systems of work and other matters under the control of the client) is safe;
- Ensure that adequate on-site supervision is provided;
- Ensure the work of the client's employees does not harm the safety and health of the labour hire worker; and
- Report notifiable injuries and diseases to WorkSafe.

The client has day to day control of the labour hire worker, so there is much the client can do to ensure a safe workplace, for example:

- Ensure the work environment (including plant and equipment, systems of work and other matters under the control of the client) is safe;
- Provide specific induction in relation to the tasks to be undertaken and the plant to be used;
- Notify the agent if any change is being considered;
- Provide information and training to make sure the worker knows how to carry out his or her activities safely;
- Provide adequate on-site supervision;
- Ensure the work of employees does not harm the safety and health of the labour hire worker; and
- Report notifiable injuries and diseases to WorkSafe.

There are also a number of actions to be taken jointly, with the agent and client to consult with each other, for example:

- Identify hazards in relation to the task and assess the risk associated with the task, prior to placement of a worker;
- Understand obligations of how to deal with hazards;
- Consider and, so far as practicable, implement control measures to ensure a safe work environment;

- Ensure personal protective equipment is provided to the worker at no cost to the worker; and
- Provide on-site training and induction, and resolution of issues procedures.

### **3.0 Duties of the worker**

A worker in a labour hire arrangement has the same general duties of care as those applicable to an employee under section 20 of the Act. Workers must take reasonable care of their own safety and health and that of others in the workplace.

A person cannot contract out of their responsibilities under the Act.

There are also legal rights and obligation on workers in relation to their conditions of employment and wages about which employers should be aware. For further information, ask for a fact sheet called “Employees and Sub-Contractors” available from the Labour Relations Division of the Department of Consumer and Employment Protection of Western Australia or contact Wageline on 1300 655 266.

The Occupational Health and Safety Act 1984, as well related papers, can be downloaded online at: <http://www.safetyline.wa.gov.au/sub2.htm>.

### **4.0 Reference**

The information for this paper was obtained from:

“Labour hire industry and duty of care”. WorkSafe Bulletin 6 / 2005.

### **5.0 Disclaimer**

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