



Agents providing workers - Labour hire

Managing the safety of workers under a labour hire arrangement

This publication outlines the occupational safety and health (OSH) responsibilities of labour hire agents.

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Introduction

The following information provides an overview of your OSH responsibilities as an agent including:

- consulting with workers on OSH matters;
- taking reasonable steps to ensure risks are controlled at the client (host) workplace; and
- monitoring and reviewing the effectiveness of measures to protect workers.

This publication is designed to assist agents with the arrangement of placements that will not expose workers to OSH risks.

Under the *Occupational Safety and Health Act 1984* (the Act) a "labour hire arrangement" is characterised by:

- an agreement for remuneration between the client and the agent regarding supply of a worker;
- an agreement, which may be a contract of employment, between the agent and the worker; and
- a lack of contract of employment between the client and the worker.

Workers include employees and contractors.

This bulletin should be read in conjunction with:

- WorkSafe Bulletin 6/2005 Labour hire industry and duty of care.
- WorkSafe Bulletin 6/2006 Host employers/clients: Managing the safety of workers under a labour hire arrangement.

What are the OSH responsibilities of agents, including labour hire agencies?

For agents, OSH obligations as an employer extend to workers through section 23F of the Act. The same general duties of care that apply to an employer under section 19 of the Act apply to both the agent and client, in relation to matters over which each has the capacity to exercise control. Even though you will not always have direct control or management of the workplaces involved, the duty of care remains as an employer to your workers.

It is important to understand that agents and clients both have responsibilities for the safety of workers. An agency cannot 'pass on' its legal duty of care, even if the client agrees to this.

This means that you have a legal obligation to take action to establish that the workplace and its operations are safe before workers are placed with a client. You also need to continue monitoring workers' safety throughout the term of their placement.

If you are not convinced the host workplace is safe, you should not provide workers.

A worker supplied by an agent has the same general duties of care as those that apply 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.

Effective consultation between agents, their workers and their clients is fundamental to securing safe work placements. The agent has a legal obligation to consult with workers on OSH matters and to support workers' rights to be represented. This responsibility is ongoing. You should also be assured of the appropriateness of your clients' OSH consultative arrangements as they relate to your workers.

Establishing OSH objectives

To effectively manage OSH issues associated with labour supply arrangements, OSH must be an integral part of the way an agent does business. You should establish:

organisational objectives that include OSH goals;

- a framework for achieving these goals;
- roles and responsibilities for staff accountable for OSH risk assessments and decisions; and
- training to ensure staff have the right skills to manage worker placements.

Key steps to ensuring safe work placements

Achieving the safe placement of workers presents OSH situations that are distinctive to labour hire arrangements. Along with the general OSH duties of an employer, agents should also take the following actions for every placement:

- Provide an induction
- Assess the placement
- Monitor the workplace

1. Provide an induction

Information must be provided to the worker about the client workplace and the work tasks, including workplace hazards and their controls. This should include both generic and site-specific OSH induction and training.

Usually, the agent will provide the general induction prior to placement and the client will provide the site-specific induction and training. You need to consult with your client to ensure all appropriate induction and training is covered and provided. If adequate induction and training are not provided by both the agent and client, the worker may be exposed to unacceptable risks.

2. Assess the placement

The agent must adequately and competently assess the client's workplace and the worker's capacity to undertake the required work safely prior to the placement being made.

You should keep a 'training register' to demonstrate that workers, both permanent and temporary, have the required knowledge, skills and capabilities to safely carry out the roles assigned to them.

3. Monitor the workplace

The agent must monitor the workplace to ensure that OSH requirements are being implemented as expected and no new or potential risks have arisen.

Taking effective action

To assess and control the risks to the worker effectively, the agent needs to:

- gather information;
- visit the workplace; and
- implement hazard controls and assess their adequacy

1. Gather information

The first step in securing a safe work placement is to gather information about:

- the client;
- the work;
- the worker; and
- the work environment.

The client

You must know about the client's operations and hazards, their OSH performance and their approach to managing safety in the workplace. Clients should be made aware of *WorkSafe's Bulletin 6/2006 Host employers/clients labour hire: Managing the safety of workers under a labour hire arrangement*. This publication assists host employers/clients to prepare for and manage these workers.

Remember, it is your decision to place a labour hire worker or contractor. If you are concerned that the workplace is not safe or that its hazards are not well managed, you should not provide workers.

The work

You must obtain details of the jobs to be carried out by the worker. Included in the job summary should be information about:

- plant or equipment to be operated;
- materials and substances to which the worker could be exposed; and
- specific hazards associated with any operation or activity.

Arrangements for consultation and supervision should be clear to both the agent and the client, and details of induction and other training should be documented. Your duties are to ensure that consultation, supervision and training of your workers are carried out and ongoing. Describe any personal protective equipment (PPE) that is required and ensure that PPE is provided without any costs to the worker.

The worker

You must be confident that the qualifications and experience of the worker will enable them to undertake the work safely. Their level of skills, knowledge, competency, experience and training will all contribute to making this assessment. If the job requires certification, you must ensure workers have the appropriate and current licences.

The work environment

You can use information about the working environment to determine whether a client is operating within a high-risk industry or an industry that has risks requiring specific control measures and operating certificates. Hazards within the working environment should be identified and recorded. The worker must know how to report any safety issues at the workplace. You should also obtain information about facilities and amenities.

2. Visit the worksite

The objective of workplace visits is to identify each hazard to which the worker at the client workplace is likely to be exposed, assess the risks of identified hazards at the site and demonstrate commitment to carrying out your duty of care to your workers, by so far as is practicable considering control measures in consultation with the client. The number of site visits required should reflect the degree of potential risk. Known high-risk industries are likely to require more frequent monitoring.

It is essential that the agent engages someone competent to make an informed OSH assessment of the worksite. This will require knowledge and understanding of the client's operations, workplace hazards and OSH management systems. Ongoing contracts should require that site visits are repeated at appropriate intervals to ensure no changes occur that could compromise safety.

The initial site assessment should be made before the worker is placed at the client's workplace. The client's OSH documentation should reflect its safe operating procedures relevant to the work. The OSH policy manual, hazard-specific policies and procedures should be reviewed and a job-specific risk assessment carried out and documented.

3. Implement hazard controls and assess their adequacy

As part of the consultative process with the client, you should ensure action is taken to control OSH risks. Remember, the agent has control over whether or not a worker is placed with a client. Therefore, you must be satisfied that hazards will be managed effectively and workers will not be at risk. Timeframes must also be agreed with the client to ensure that action is taken without undue delay.

Representatives of the agent and the client should document and sign-off agreed risk control measures.

Review the induction provided to workers to ensure it has taken place and that it was sufficient to address all OSH risks specific to the site and tasks.

Monitoring inspections should be conducted and recorded. Use previous worksite assessments as a starting point. Discuss the job with the worker and meet with the client after the inspection to discuss the results and to resolve any issues or concerns you have identified.

Further information

Further information can be obtained from the WorkSafe website at www.worksafe.wa.gov.au or by contacting WorkSafe on 1300 307 877.

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