



Labour hire: duties of persons conducting a business or undertaking

LEGISLATIVE FACT SHEET SERIES

Overview

This fact sheet provides information for persons conducting a business or undertaking (PCBUs) involving the provision of workers (labour hire PCBUs) to work for another business or undertaking (host PCBUs) on complying with their health and safety duties to labour hire workers under the model work health and safety laws.



The new Work Health and Safety Act and labour hire arrangements

The work health and safety (WHS) Act broadens the scope of the primary duty of care to cover new and evolving work arrangements which extend beyond the traditional employer and employee relationship. The primary duty of care under the new work health and safety laws is owed by a PCBU to a 'worker'.

A worker specifically includes a labour hire worker who has been assigned by one PCBU to work for another. The duty is to ensure, so far as is reasonably practicable, the health and safety of labour hire workers engaged by, or whose activities are influenced or directed by the PCBU.

The new WHS Act also provides that more than one duty holder may have the same duty, in this instance a host PCBU and a labour hire PCBU. Where this is the case, all duty holders who have a duty in respect of the same matter must consult, cooperate and coordinate with each other so far as is reasonably practicable. Duty holders under the model WHS Act cannot contract out of their work health and safety obligations.

This means that under a labour hire arrangement, both the labour hire PCBU and the host PCBU have duties to ensure the health and safety of labour hire workers so far as is reasonably practicable. These duties must be fulfilled to the extent to which each PCBU has the capacity to influence and control the matter.

More information on PCBUs can be found in the [Interpretive Guidelines: The meaning of 'persons conducting a business or undertaking'](#).

More information on the meaning of reasonably practicable can be found in the [Interpretive Guidelines: The meaning of 'reasonably practicable'](#).

Work health and safety duties of a host PCBU

As a host PCBU under the model work health and safety laws, you have the same health and safety duties to labour hire workers as you do to directly engaged or employed workers. It is your duty to ensure, so far as is reasonably practicable, the health and safety of all workers while at work. This duty requires you to eliminate or, if that is not reasonably practicable, to minimise risks to health and safety.

As a host PCBU you must also consult, cooperate and coordinate activities with the labour hire agency to ensure you meet your obligations. The model WHS Act specifically provides that you cannot contract out of or transfer your work health safety obligations to another party.

More information on cooperation and coordination can be found in the Code of Practice: [Work Health and Safety: Consultation, Cooperation and Coordination](#).

Before engaging labour hire workers

Before you engage labour hire workers to carry out work, you should:

- provide the labour hire agency with detailed information about the nature of work to be carried out including details of:
 - the work environment
 - any plant or equipment to be used
 - organisational and work health and safety arrangements
 - health and safety risks associated with the work
 - any skills and knowledge required to safely undertake the work required.
- verify that the selected worker/s have any necessary qualifications, licences, skills and training to carry out the work safely
- consult with the labour hire agency on work health and safety matters including in relation to who will provide any necessary equipment such as personal protective equipment and the standards it must meet
- consult with the labour hire agency to ensure that general health and safety information about the work, workplace and work environment has been provided to the worker/s
- eliminate or, if that is not reasonably practicable, minimise risks in the workplace
- establish open communication and consultation methods with the labour hire agency and the labour hire worker including in relation to health and safety matters. This should include establishing relevant points of contact for health and safety between the organisations as well as agreed means and frequency of communication.

During a labour hire worker's placement

While labour hire workers are carrying out work, you should:

- provide the worker/s with a site specific safety induction outlining work health and safety duties, policies, procedures and practices in the workplace including consultation methods
- treat labour hire workers as you would employees and other workers, with respect to health and safety and the provision of a safe working environment practices and personal protective equipment (PPE)
- provide adequate supervision of labour hire workers to ensure that work is being performed safely
- consult with the labour hire agency and worker regarding any changes which may affect work health and safety. You should not transfer workers to new tasks or change the nature of their work tasks until you have consulted with the worker about this and obtained the approval of the labour hire agency to the proposed changes
- provide any further training, instruction or information necessary prior to transferring a labour hire worker to new tasks
- encourage labour hire workers to participate in the identification of hazards specific to their work
- support and encourage labour hire workers to participate in workplace consultative arrangements
- allow the labour hire agency access to the workplace and to relevant documents for the purpose of workplace safety assessments and to fulfil their work health and safety duties as a PCBU
- encourage workers to maintain contact with the labour hire PCBU throughout their placement.

Work health and safety duties of a labour hire PCBU

As a labour hire PCBU under the new work health and safety laws, it is your duty to ensure, so far as is reasonably practicable, the health and safety of workers during their placement with a host PCBU. It is your duty to eliminate or, if that is not reasonably practicable, minimise risks to health and safety a labour hire worker may encounter. In some circumstances, this might mean not placing workers in a workplace while you believe there is a risk to their health and safety or where risks have not been adequately controlled.

Before placing labour hire workers

Before you place labour hire workers, you should:

- review the host PCBU's safety record to satisfy yourself that the host PCBU provides a safe workplace
- gather information about the work and the workplace including the work environment, organisational arrangements, health and safety risks associated with the work and any skills and knowledge the worker will require to safely undertake the work
- verify that the host PCBU will provide site-specific and task-specific induction, training and PPE to labour hire workers
- assess the workplace for any risks to health and safety. Where risks are identified, consult with the host to ensure they are eliminated, or if that is not reasonably practicable, minimised
- ensure that workers have the necessary qualifications, licences, skills and training to safely carry out the work
- require the host PCBU to obtain your approval prior to transferring a labour hire worker to a new task
- ensure arrangements are in place to consult and coordinate with other duty holders on work health safety duties remembering that duties are non-transferable and more than one duty holder may have the same duty
- consult with the host PCBU and workers to ensure you and the workers understand and are confident in your understanding of the work health and safety policies, procedures and practices of the host PCBU
- establish communication methods workers can use to contact you if they consider there is any risk to their health or safety
- ensure workers have the means to identify and take action in an unsafe situation at the host workplace, such as stopping work or bringing it to the attention of the host PCBU or a health and safety representative
- ensure the worker has the means to raise safety issues with you if they are unsatisfied with the host PCBU's response

- provide workers with a general work health and safety induction and training covering any risks you have identified in the host workplace and consultation methods you have established with workers and the host PCBU
- ensure that you have a documented system in place for the management of work health and safety including trained staff.

During a labour hire worker's placement

While your workers are placed with the host PCBU, you should:

- consult with the host PCBU and labour hire workers on any changes which may affect their health and safety. For example, this may include consultation about the use of plant and equipment not envisaged prior to placement
- monitor the workplace for new risks to health and safety and consult with the host PCBU about how they might be addressed. This might include regular visits to the host workplace
- take effective action when the worker or host PCBU identifies risks or raises concerns about health and safety
- encourage workers to maintain contact with you and to provide feedback on health and safety matters in the host workplace.

More information on cooperation and coordination can be found in the Code of Practice: [Work Health and Safety Consultation Cooperation and Coordination](#).

Disclaimer

Note: this fact sheet provides general information only and should not be used as a substitute for seeking professional legal advice for your specific circumstances. The contents of this fact sheet are correct and based on available information at the time of writing. However, there may be subsequent decisions of courts or tribunals on the matter covered by this fact sheet which mean that the contents are no longer accurate.