LABOUR HIRE AUTHORITY

Commercial cleaning

Guidance for labour hire providers

Companies that supply workers to perform cleaning activities at commercial premises are labour hire providers.

This includes businesses that do not directly employ labour hire workers, but which on-supply workers employed by other companies.

Commercial premises can include shops, restaurants, factories, offices, schools, construction sites and other premises.

Under Victorian law, labour hire providers must hold a licence, and businesses must only engage licensed providers to supply workers.

Licensing helps to ensure labour hire companies meet their obligations to workers, and supports fairness, transparency, and integrity in the industry.

Labour hire providers must comply with a range of legal obligations, including around worker pay and conditions, superannuation and taxation.

Senior decision-makers, and anyone else who influences or controls the business, must also be 'fit and proper'– in terms of their legal and compliance history, as well as their honesty, integrity and professionalism.

The Labour Hire Authority (LHA) oversees Victoria's labour hire licensing scheme, including its monitoring, compliance and enforcement.

Penalties

There are significant penalties – for both companies and individuals – for breaches of the *Labour Hire Licensing Act 2018* (Vic).

For using or providing unlicensed labour hire services, penalties can exceed:

- $660,000 for a corporation
- $160,000 for an individual.

Penalties also apply for any attempt to avoid or circumvent the law, and for unlicensed advertising or failing to notify LHA of changes to their business.

A register of all licensed labour hire providers is published on the LHA website, and businesses can subscribe to be notified of any changes to a provider's licence status or conditions. LHA encourages businesses and workers to report any unlawful labour hire activity.

Standard licence conditions

For providers operating in industries with higher risks of worker exploitation and unlawful conduct, LHA applies standard conditions to all new licences, as well as progressively to existing licences.

To comply with the standard conditions, commercial cleaning providers must:

- make all payments to workers or subcontractors related to labour hire services by electronic transfer through an authorised deposit-taking institution, into the account name of the worker or subcontractor
- not supply workers engaged as independent contractors to perform specific work activities related to their industry, whether directly engaged or through a subcontracting arrangement
- report the use of subcontractors to LHA as part of their annual report, providing details of the subcontractor and hosts they supply workers to
- not use more than a single tier of subcontracting, and only supply its workers directly to a host, or to another licensed labour hire provider for on-supply directly to a host
- ensure all workers receive information on their rights and how to report problems.

Other conditions also apply. Failure to comply with licence conditions can lead to licensing action – up to and including cancellation – and legal action where required to address unlawful conduct.

REPORT A PROBLEM

Anyone with evidence of non-compliance with Victoria's labour hire law can make a report to LHA, including issues such as:

- labour hire worker mistreatment
- unlawful behaviour
- unlicensed providers advertising or providing labour hire services
- hosts using unlicensed providers.

Reports should include details such as business names and addresses, dates, relevant documents or evidence such as emails or screenshots.

Visit the LHA website:
lha.vic.gov.au/report

Key issues in labour hire

LABOUR HIRE AUTHORITY

Engaging workers as independent contractors

Misclassification of employees as independent contractors is a strategic focus for LHA because of the significant harm:

- to workers, through undercutting minimum wages set in the modern award or enterprise agreement and the perceived ability to avoid other legal obligations such as superannuation and portable long service leave
- to the community, through the avoidance of taxation obligations such as PAYG withholding and payroll tax, and failing to pay adequate premiums for workers' compensation
- to compliant businesses, which are unfairly disadvantaged when competing against non-compliant providers that have unlawfully lowered their costs.

Conditions imposed on providers operating in the commercial cleaning industry prohibit providers supplying workers engaged as independent contractors to perform specific work activities related to their industry.

This applies to workers who are directly engaged by a provider, or through another provider via a subcontracting arrangement.

Providers who have a compelling reason to engage a worker as an independent contractor can apply to LHA to vary their licence.

Subcontracting arrangements

Subcontracting increases the risks of non-compliance with legal obligations under workplace, taxation, superannuation and occupational health and safety laws by shifting the risk down the supply chain.

While subcontracting can be a legitimate business model, it can also be used by unscrupulous operators to illegitimately minimise cost and obscure operators lower in the chain from regulators.

Every additional tier of subcontracting impacts transparency, and the potential for providers' profit margins reduces leading to a greater risk of worker exploitation.

To comply with the standard conditions on subcontracting, providers must:

- only supply its workers directly to a host, or to another licensed labour hire provider for on-supply directly to a host
- not use more than a single tier of subcontracting
- report the use of subcontractors to LHA as part of their annual report, providing details of the subcontractor and hosts they supply workers to.

Workplace health and safety

Labour hire hosts and providers have shared responsibilities for the health and safety of labour hire workers, and cannot pass their duties onto one another via contract.

Providers and hosts should consult, coordinate and cooperate to meet their shared workplace health and safety duties, including by:

- sharing information that allows them to jointly manage health and safety
- implementing health and safety arrangements and responding to reasonable requests
- working together to eliminate gaps in health and safety measures.

To comply with the standard conditions on workplace health and safety, labour hire providers must:

- supply all personal protective equipment (PPE), without charge, to workers to minimise exposure to any workplace hazards
- reimburse workers for any PPE purchased by workers specifically for work for the provider
- cooperate with hosts to ensure workers are provided with information, training, and instruction on the proper use, wearing, storage and maintenance of PPE
- ensure that all used PPE has been decontaminated, is clean and in good condition if it is to be reused.

In appropriate cases, PPE can be reused and reissued to other workers.

MORE INFORMATION

To access the LHLO portal, LHA tools and a range of guidance and information for labour hire businesses, visit: **lha.vic.gov.au/commercial-cleaning**

Resources are available on:

- legal obligations
- licence applications and renewals
- key issues in each industry
- reporting problems or objecting to a licence application.

You can also call LHA on **1300 545 200** or email **enquiries@labourhireauthority.vic.gov.au**

Interpreter

If you need an interpreter, call TIS National on 131 450.
If you are deaf or have a hearing or speech impairment, contact us via the National Relay Service at relayservice.gov.au

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