Horticulture

Guidance for labour hire providers

Companies that supply workers to 'host' businesses to perform services such as picking, packing or pruning fruit or vegetables are labour hire providers.

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

Labour hire workers may also sort, label, grade, thin, prune or spray plants, or undertake other horticulture activities.

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, horticulture 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

Accommodation

Providers are required to advise LHA if they intend to procure or provide accommodation in connection with a labour hire service.

As a class of prescribed accommodation, labour hire accommodation must be registered by the proprietor with the local council, and must meet minimum standards.

To comply with the standard licence conditions on worker accommodation, labour hire providers must:

- ensure housing procured for or provided to workers meets the applicable minimum standards – even if it is provided by a third party, such as a real estate agent
- take reasonable steps to ensure it remains compliant throughout the time workers live there.

Providers should establish and document processes for:

- regular monitoring of the condition of the accommodation
- maintenance and repairs
- collecting regular feedback from workers on their comfort and wellbeing
- monitoring ongoing compliance with minimum standards.

Illegal phoenixing

Illegal phoenixing – where a company is liquidated, wound up or abandoned to avoid paying debts, and a new company is started to continue the same business activities – harms both workers and the community:

- Employees miss out on wages, super and entitlements.
- Legitimate businesses are put at a competitive disadvantage.
- The community loses out on revenue that could contribute to community services.

LHA utilises a range of intelligence and analysis mechanisms, including through data-sharing with other agencies, to detect and address phoenixing.

Licence applications may be refused or licences cancelled where it is believed illegal phoenix activity is taking place.

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/horticulture**

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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