



# Construction industry

## Guidance for labour hire providers and hosts

**Labour hire services are common in construction and a range of other industry areas. Broadly, a labour hire arrangement exists where a business supplies workers to work at a host business.**

**Under Victorian law, labour hire providers must hold a licence, and anyone using their services must only use licensed providers.**

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

To comply with licence conditions, labour hire providers must meet a range of requirements, including around worker pay and conditions, superannuation and taxation. Key people in the business must also be 'fit and proper'.

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

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.

### 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:

- **\$600,000 for a corporation**
- **\$150,000 for an individual.**

These penalties also apply to any attempts to avoid or circumvent the law, and to unlicensed sub-contractors supplying labour hire workers.

Penalties also apply for advertising labour hire services without a licence.

## LABOUR HIRE HOSTS

Host businesses – those that engage labour hire providers – also have obligations under the Act.

Hosts' key obligation is to use only licensed providers – significant penalties apply for using unlicensed providers.

Hosts also have obligations to workers – whether engaged via an employment or labour hire arrangement – and hosts can be liable for contraventions by a provider under workplace and migration laws.

Hosts should ensure that any provider they use is licensed, and that they meet their own legal obligations.

The advice below can assist hosts in engaging labour hire providers.

### Before engaging a provider

- Check the provider is licensed using LHA's [Register of Licensed Labour Hire Providers](#).
- Confirm the company offering services is the same as the one listed on the Register – check details, and contact the licensed company's nominated officer if required.
- Check the age of the provider's company, industry details.
- Ask for evidence of providers' company structure, hierarchy of control and contracting arrangements.

### When engaging a provider

- Sign a written contract with identification such as ABN, director IDs and full names.
- Set clear expectations, including that the provider advise of any changes to company officers, licence status or compliance issues.
- Place limits on sub-contracting.
- Use LHA's [Follow My Providers](#) tool to be notified of any changes in licence status.

## CONSTRUCTION INDUSTRY KEY ISSUES

### Sham contracting

Sham contracting – where an employer attempts to disguise an employment relationship as independent contracting – is often an attempt to avoid responsibility for employee entitlements.

While labour hire providers may lawfully supply genuine independent contractors, some claim that workers covered by an award are contractors. Many of these workers are legally employees and have rights under the *Fair Work Act 2009*, even if there is a written agreement stating they are independent contractors.

Sham contracting is unlawful – serious penalties can apply.

Providers should ensure that all staff working in and for their business, along with all apprentices, trainees, labourers and trade assistants, are engaged as employees.

### Pyramid contracting

Pyramid contracting involves a host engaging a labour hire provider to supply workers, who then sub-contracts to other providers, who sub-contract further.

These layers of contracting can involve larger contractors transferring risks and responsibilities to smaller and less stable entities. As a result, the risk of worker exploitation and non-compliance increases as supply chains become more complex.

It's important that providers and hosts maintain a line of sight throughout their supply chains, with appropriate visibility and responsibility across all arrangements.

### Illegal phoenixing

Illegal phoenixing occurs where a company is liquidated, wound up or abandoned to avoid paying debts, with a new company started to continue the same business activities.

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

Under workplace health and safety laws, a host is taken to be the 'employer' of a labour hire worker if a provider supplies or places the worker to perform work at a host business.

Hosts should work with providers to consult, coordinate and cooperate with each other to meet shared workplace health and safety duties to labour hire workers.

This means they should:

- share information that allows them to jointly manage health and safety
- implement health and safety arrangements and respond to reasonable requests
- work together to eliminate gaps in health and safety measures.

Where a labour hire worker requires PPE, providers and hosts should ensure it is provided at no cost to the worker, and meet standards required by health and safety legislation.

## REPORT A PROBLEM

Businesses can help protect workers and improve the integrity of the labour hire industry by reporting any providers or hosts doing the wrong thing via the LHA website.

Reports may be made around issues such as:

- labour hire worker mistreatment
- unlawful behaviour, such as tax avoidance
- unlicensed advertising or provision of labour hire services
- a host using an unlicensed provider.

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

## MORE INFORMATION

[labourhireauthority.vic.gov.au](http://labourhireauthority.vic.gov.au)

Visit the LHA website to access a range of guidance and information, LHA tools, the LHLO Portal, and other resources.

You can also contact LHA on 1300 545 200 or [enquiries@labourhireauthority.vic.gov.au](mailto:enquiries@labourhireauthority.vic.gov.au)