

Horticulture
Guidance for labour hire hosts

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

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

Labour hire generally involves a business that supplies workers and pays them to perform work at a host business.

Under the *Labour Hire Licensing Act 2018* (Vic), businesses that provide labour hire services must be licensed, and hosts must only use licensed providers.

Licensing helps to ensure labour hire companies are run lawfully, by fit and proper people – to protect workers and improve the integrity of the industry.

Under the Act, the same penalties apply to businesses found using unlicensed labour hire services or providing those services – maximum penalties per breach exceed:

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

Using licensed providers also helps to protect your business against unlawful operators.

Site visits by Labour Hire Authority (LHA) officers

LHA undertakes inspections of labour hire sites to monitor and enforce compliance.

Under the Act, LHA inspectors may enter and search any occupied business premises during normal business hours, without consent, where labour hire workers are or have been working.

By law, LHA inspectors may:

- require you to produce documents such as invoices or service agreements
- inspect and make copies of documents, take photos or make audio-visual recordings
- seize anything they reasonably believe relates to a contravention of the Act
- require you, or any other relevant person at the premises, to answer questions.

You must not refuse or fail to comply with a request made by an LHA inspector under the Act without reasonable excuse.

It is an offence to provide false information or to hinder an LHA inspection.

Engaging a labour hire provider

1. Check the labour hire licence.

- Do not rely on paper documentation, and keep records of all checks and their outcomes
- Visit the Labour Hire Licence Register on the LHA website.
- Locate the business by searching by name or ABN – tap 'View licence details'.
- Confirm the licence status is 'Active'.
- Note any licence conditions.

2. Verify the identity of the person and business.

- Check the person you are dealing with is acting on behalf of the licensed business.
- Check their identification, role, and authority to act.
- Ask for evidence of company structure, hierarchy of control, and any sub-contracting.
- If in doubt, contact the nominated officer of the licensed business using their details from the Register.

3. Establish a clear, lawful contract.

A signed, written contract should:

- properly identify the parties involved
- ensure correct wages and entitlements are paid
- set clear and specific expectations, including of compliance with all workplace laws
- limit and/or require pre-approval of sub-contracting
- require the business to advise you of any changes in its compliance or licence status.

Check and follow your current providers

Take two quick actions now to protect your business and support a fairer labour hire industry:

1. Check the licence of any provider you currently use.
2. Subscribe to be notified of any changes to your providers' licence status.

To access free tools and more information, visit: **lha.vic.gov.au/check**

Key issues in labour hire

Standard licence conditions

LHA has identified the horticulture industry as having a sustained higher risk profile of worker exploitation and unlawful conduct.

Host businesses in horticulture should be particularly vigilant when engaging labour hire providers, including by checking licences and seeking transparency around worker, payment and subcontracting arrangements.

To address the higher risk profile of the horticulture industry, LHA applies standard conditions to all new licences, as well as progressively to existing licences.

These standard conditions act to further:

- increase transparency, by ensuring all workers receive information on their rights, and through reporting on the use of subcontractors, payroll services, and any change in industry
- enforce integrity, through restrictions on cash payments, the use of independent contractors and subcontractors, and clear requirements around accommodation and provision of PPE.

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.

Under standard licence conditions, providers may only supply its workers directly to a host, or to another licensed labour hire provider for on-supply directly to a host.

Workplace health and safety

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

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
- a provider has the same occupational health and safety duties to a labour hire worker as to any other employee.

Hosts and providers 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 respond to reasonable requests
- working together to eliminate gaps in health and safety measures.

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

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.

MORE INFORMATION

To access a range of guidance and information, LHA tools and the LHLO portal, visit the LHA website: **lha.vic.gov.au/hort-host**
You can also contact LHA on **1300 545 200** or **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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