LABOUR HIRE AUTHORITY

Guidance for labour hire providers

Companies that supply contract workers to a 'host' business are generally considered to be labour hire providers.

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

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.

Engaging workers as independent contractors

Businesses may misclassify workers as independent contractors because they mistakenly believe that PAYG withholding tax, superannuation, workers' compensation and payroll tax obligations do not apply if workers are engaged as independent contractors.

In reality, a business's legal obligations to workers are often similar or identical, regardless of whether they are engaged as employees or independent contractors.

Labour hire workers may be misclassified as independent contractors:

- if they are being engaged under an Australian Business Number (ABN)
- if working as part of the labour hire provider or host's business, rather than genuinely conducting their own business
- if subject to control about how their work is performed, as an employee would be.

If workers have been misclassified, LHA can take a variety of actions, including educating the applicant about the laws, imposing conditions or refusing or cancelling a labour hire licence.

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

Subcontracting arrangements

Pyramid contracting involves a host engaging a labour hire provider to supply workers, who then subcontracts to other providers, who subcontract further.

Subcontracting can be legitimate in labour hire, but the risk of worker exploitation and non-compliance increases as supply chains become more complex, due to factors including:

- confusion about who the true employer of the workers is
- reduced visibility of companies further down the supply chain and their compliance
- the potential for unlicensed providers to be introduced into the supply chain
- each business in the supply chain taking a cut, leaving workers exposed to underpayment.

Generally, every business that supplies labour hire workers to a host – whether directly or through intermediaries – must have a labour hire licence.

Labour hire providers can manage supply chain risk by ensuring subcontracting arrangements include clauses that:

- require subcontractors to inform a provider if their labour hire licence is suspended or cancelled
- limit further subcontracting or require a provider's consent before further subcontracting out work
- entitle a provider to obtain information and documents to verify that employees are being paid correctly.

All parties in the supply chain should also ensure contract prices are sufficient for businesses to meet their legal obligations.

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/provider**

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**

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 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.

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.

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.

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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