

Labour hire: duties of persons conducting a business or undertaking

This Guide provides information for persons conducting a business or undertaking (PCBUs) involving the supply of workers (labour hire PCBUs) to work for another business or undertaking (host PCBUs) on complying with their health and safety duties under the model Work Health and Safety (WHS) laws.

Model Work Health and Safety Act and labour hire arrangements

Labour hire arrangements are covered by the model WHS Act.

The primary duty of care under the model WHS Act is owed by a PCBU to a ‘worker’, which includes a labour hire worker. All labour hire PCBUs and host PCBUs have a primary duty of care to ensure, so far as is reasonably practicable, the health and safety of labour hire workers engaged by, or caused to be engaged by them, or whose activities are influenced or directed by the PCBU.

The model WHS Act provides that more than one duty holder may have the same duty, in this instance a labour hire PCBU and a host PCBU. Labour hire arrangements can be complex. In some circumstances, there may be more than one labour hire or host PCBU.

If more than one person has a duty for the same matter, each person must meet their duty to the extent to which they have the capacity to influence and control the matter. A labour hire PCBU or host PCBU may exercise influence and control over a

relevant matter through, for example, the terms of a contract or directing workers in a practical sense. However, duty holders cannot contract out of or transfer their WHS obligations to another person.

Consultation between PCBUs

All duty holders in a labour hire arrangement must consult, cooperate and coordinate with each other so far as is reasonably practicable.

Each duty holder should share information to find out who is doing what and work together in a cooperative and coordinated way to ensure compliance with WHS laws. For example, host and labour hire PCBUs must discuss consultation arrangements, the hazards and risks associated with the work, what precautions will be taken to ensure the health and safety of the labour hire worker and the respective roles the organisations in responding to an incident. Some labour hire PCBUs may have substantial knowledge of WHS issues and risk management practices in their industry that may assist in assessing the practices of a host PCBU and ensuring compliance with WHS laws.

Duty holders should not assume that someone else is taking care of a health and

safety matter. Find out who is doing what and work together with other duty holders so risks are eliminated or minimised as far as is reasonably practicable. What is reasonable practicable will depend on the circumstances.

Relevant issues for duty holders to discuss will depend on the circumstances. These may include:

- hazards and risks that may arise, taking into account things like the physical environment where work will occur
- control measures to eliminate or minimise risks and the suitability of those measures
- compliance with minimum requirements set by legislation, such as the WHS laws
- how work will be carried out (including safe work methods and processes that are already in place or need to be in place)
- the people involved in the work (including supervision arrangements)
- competency and training requirements, including arrangements for the provision of additional training required for the particular work
- arrangements for facilitating assessments of the individual worker's needs and/or competencies, as appropriate
- arrangements for health monitoring and relevant vaccinations
- the respective roles of the organisations in responding to an incident, as well as relevant policies and procedures, and
- any other factors which may impact the work environment and how work is carried out.

Like all PCBUs, labour hire and host PCBUs are required to be proactive in managing hazards and risks. The duties in the model WHS Act are ongoing and must be complied with throughout the labour hire arrangement.

Be aware that circumstances can change over time and this may result in a change in the hazards and risks or in the ways they may be eliminated or minimised. Changes that may necessitate a review of hazards, risks and control measures may include:

- change in a work process
- change in the physical environment
- different people undertaking the work, with different skills or means of co-ordinating activities
- new hazards are identified, and
- new ways to eliminate or minimise risks are identified or invented.

If a labour hire worker has a reasonable concern that to carry out the work would expose them to a serious health or safety risk, they may cease, or refuse to carry out work. A labour hire and host PCBU must not discriminate against a worker for exercising this or any other right under the model WHS Act.

Duties of a host PCBU

As a host PCBU under the model WHS Act, you have the same health and safety duties to labour hire workers as you do to other types of workers. It is your duty to ensure, so far as is reasonably practicable, the health and safety of all workers while at work. This duty requires you to eliminate or, if that is not reasonably practicable, to minimise risks to their health and safety. To identify what is reasonably practicable to do, you must take into account all the relevant matters and work with the labour hire PCBU/s to provide the highest level of protection that is both possible and reasonable in the circumstances.

As a host PCBU, you must also consult, cooperate and coordinate activities with the labour hire PCBU/s to ensure you meet your obligations. The model WHS Act specifically provides that you cannot contract out of or transfer your WHS obligations to another party, including labour hire or other host PCBUs.

Before engaging labour hire workers

Before you engage labour hire workers to carry out work, you should consider:

- providing the labour hire PCBU/s with detailed information about the nature of work to be carried out including details of, and where possible supporting material, relating to:
 - the work environment/s
 - tasks to be performed
 - accommodation arrangements
 - any known hazards or risks
 - any plant or equipment to be used
 - organisational and WHS arrangements, including supervision arrangements and any other organisations responsible for the worker during the arrangement
 - health and safety risks associated with the work, and
 - any skills, knowledge, licenses and qualifications required to safely undertake the work.
- verifying, in consultation with the labour hire PCBU, that the selected worker/s have any necessary qualifications, licences, skills and training to carry out the work safely. In limited circumstances, you may be required to verify the worker/s are

medically fit to carry out the work (see regulations 168 and 417(3)(b) of the model WHS Regulations)

- discussing with the labour hire PCBU arrangements for health monitoring and vaccinations
- consulting with the labour hire PCBU/s on WHS matters including in relation to who will provide any necessary equipment such as personal protective equipment (PPE), and relevant points of contact for health and safety between the organisations
- ensuring that general health and safety information about the work, workplace and work environment has been provided to the worker/s. Check that you have provided this information in a way that is suitable, adequate and readily understandable for the worker/s
- eliminating or, if that is not reasonably practicable, minimising risks in the workplace
- establishing, in consultation with the labour hire PCBU/s, a review process for ensuring the ongoing WHS of workers, and
- any more you can do to ensure the health and safety of all your workers.

During a labour hire worker's placement

While labour hire workers are carrying out work, you should consider:

- providing the worker/s with a site specific safety induction outlining WHS duties, policies, procedures and practices in the workplace including consultation methods
- where WHS advice or workplace assessments are required, ensuring the persons engaged to conduct

those assessments are suitably qualified

- treating labour hire workers as you would employees and other workers with respect to health and safety and the provision of a safe working environment and PPE (if PPE is not provided by the labour hire PCBU/s)
- providing adequate supervision of the worker/s at all times to ensure that work is being performed safely
- consulting with the labour hire PCBU/s and worker/s regarding any changes which may affect WHS. Ensure you do not transfer workers to new tasks or change the nature of their work tasks, work environment or work location until you have consulted with the worker/s and obtained the approval of the labour hire PCBU/s
- encouraging labour hire workers to participate in the identification of hazards and risks specific to their work
- supporting and encouraging labour hire workers to participate in workplace safety consultative arrangements
- working with the labour hire PCBU/s to facilitate appropriate WHS arrangements. For example, allow the labour hire PCBU/s access to workers, the workplace and relevant documents for the purpose of workplace safety assessments and to fulfil their WHS duties as a PCBU
- facilitating any assessments conducted by the labour hire PCBU/s, for example, WHS management assessments or work site assessments
- providing any further training, instruction or information prior to transferring a labour hire worker to new tasks, in a way that is suitable,

adequate and readily understandable to the worker.

- encouraging labour hire workers to maintain contact with the labour hire PCBU/s throughout their placement, and
- in the event of an incident, notifying the labour hire PCBU/s as soon as practicable and working with them to implement agreed arrangements. For example, allowing the labour hire PCBU/s access to the workplace and to relevant documents to fulfil their WHS duties as a PCBU.

Duties of a labour hire PCBU

As a labour hire PCBU under the model WHS laws, it is your duty to ensure, so far as is reasonably practicable, the health and safety of workers during their placement with the host PCBU/s. It is your duty to eliminate or, if that is not reasonably practicable, minimise risks to health and safety a labour hire worker may encounter. In some circumstances, this means not placing workers in, or removing workers from, a workplace where you believe there is a risk to their health and safety or where risks have not been adequately controlled.

Before placing labour hire workers

Before you place labour hire workers, you should consider:

- reviewing the host PCBU's safety record to satisfy yourself that they provide a safe workplace
- gathering information about the work and the workplace/s, including the work environment/s, accommodation arrangements, organisational arrangements, health and safety risks associated with the work and any skills and knowledge the worker will require to safely undertake the

work. This might include information about facilities, work schedules and environmental factors, such as whether work will be conducted outdoors

- providing workers with suitable, adequate and readily understandable WHS induction and training. Include any risks you have identified and consultation methods you have established with workers and the host PCBU/s
- verifying and working with the host PCBU to ensure site specific and task specific induction, training and PPE is provided to labour hire workers in a way that is suitable, adequate and readily understandable to them
- assessing the workplace/s for any risks to health and safety, as appropriate. Work with the host PCBU/s to gather enough information to make an assessment, for example, by arranging a workplace visit. Where risks are identified, consult with the host/s to ensure they are eliminated, or if that is not reasonably practicable, minimised
- ensuring that workers have the necessary qualifications, licences, skills and training to safely carry out the work. In limited circumstances you may be required to verify the worker/s are medically fit to carry out the work (see regulations 168 and 417(3)(b) of the model WHS Regulations).
- consulting with the host PCBU and workers to ensure you and the workers understand and are confident in your understanding of the WHS policies, procedures and practices of the host PCBU/s

- discussing with the host PCBU arrangements for health monitoring and vaccinations
- establishing communication methods workers can use to contact you if they consider there is any risk to their health or safety
- discussing consultation arrangements with the host PCBU/s
- ensuring workers have the means to identify and take action in an unsafe situation at the host workplace, such as stopping work or bringing it to the attention of the host PCBU/s, a health and safety committee representative or health and safety representative
- ensuring workers have the means to raise safety issues with you if they are unsatisfied with the host PCBU's response
- establishing, in consultation with the host PCBU/s, a review process for ensuring the ongoing WHS of workers, and
- any more you can do to ensure the health and safety of the labour hire worker.

During a labour hire worker's placement

While your workers are placed with the host PCBU, you should consider:

- consulting with the host PCBU/s and labour hire workers on any changes which may affect their health and safety. For example, this may include consultation about the use of plant and equipment not envisaged prior to placement
- working with the host PCBU/s to undertake workplace safety assessments in accordance with agreed arrangements

- where WHS advice or workplace assessments are required, working with the host PCBU to ensure the person/s engaged to conduct those assessments are suitably qualified
- monitoring the workplace for new risks to health and safety and consulting with the host PCBU/s about how they might be addressed. This might include regular visits to the host/s workplace
- encouraging workers to maintain contact with you and to provide feedback on health and safety matters in the host/s workplace
- taking effective action when the worker or host PCBU/s identifies risks or raises concerns about health and safety. This might include removing the worker from the workplace, and
- in the event of an incident, working with the host PCBU/s to respond effectively.

Further information

More information on the topics covered in this Guide can be found here:

- [How to determine what is reasonably practicable to meet a health and safety duty](#)
- [The meaning of 'persons conducting a business or undertaking'](#)
- [Work health and safety consultation, cooperation and coordination](#)

You can also find further information about other WHS topics on the Safe Work Australia website swa.gov.au.

Safe Work Australia is a national policy body responsible for WHS and workers' compensation arrangements. We do not regulate or enforce WHS or workers' compensation laws.

This guide provides information on the model WHS laws. It is important to consider the WHS laws that apply in your circumstances. To find out more, contact your WHS regulator. Where your business arrangements span multiple jurisdictions, you may need to contact more than one WHS regulator. The relevant contact details are available on our website swa.gov.au/whs-authorities-contact-information.

In most jurisdictions the labour hire PCBU (not the host PCBU) is responsible for providing workers' compensation to the worker, however there are exemptions to this. However, labour hire and host PCBUs should work together to coordinate return to work arrangements and support workers through the return to work process. It is important to contact your workers' compensation authority for more information on understanding and complying with your workers' compensation obligations as penalties can apply.

Some jurisdictions have implemented a labour hire licensing scheme. Safe Work Australia cannot provide advice in relation to these schemes. It is your responsibility to identify whether these requirements apply to you.

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Safe Work Australia works with the Commonwealth, state and territory governments to improve work health and safety and workers' compensation arrangements. Safe Work Australia is a national policy body, not a regulator of work health and safety. The Commonwealth, states and territories have responsibility for regulating and enforcing work health and safety laws in their jurisdiction.

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