

LABOUR HIRE WORKERS: OHS RIGHTS AND RESPONSIBILITIES

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A labour hire (or on-hire) employee is someone who is directly employed by one employer but contracted to work with another employer.

If you work under such arrangements (such as through an agency), or if you are an apprentice or trainee employed by a group training company, this publication contains important information about your health and safety rights and responsibilities.

YOUR RIGHT TO A HEALTHY AND SAFE WORKPLACE

Under the *Occupational Health and Safety Act 2004* (OHS Act), your labour hire agency and host employer must provide you with a working environment that is safe and without risks to health, so far as is reasonably practicable¹. Both the agency and the host employer share this duty, and it cannot be shifted from one to another through a contract.

The OHS Act also sets out ways for you to be represented and raise issues in relation to your health and safety at work.

In short, you have the same legal rights regarding your health and safety at work as any other employee, including:

- the right to a healthy and safe workplace;
- the right to be represented and consulted in relation to your health and safety;
- the right to refuse to perform unsafe work; and
- the right to be protected from discrimination if you raise a health and safety issue or concern.

This publication explains the OHS duties of your labour hire agency and the host employer, as well as your responsibilities. For further information, visit the dedicated labour hire page on WorkSafe's website (at www.worksafe.vic.gov.au). Alternatively, you can call the WorkSafe Victoria Advisory Service on (03) 9641 1444 or toll-free on 1800 136 089.

YOUR LABOUR HIRE AGENCY'S RESPONSIBILITIES TO YOU

Labour hire agencies and group training companies are usually the direct employers of on-hired workers, and therefore they have the duties of employers under the OHS Act. This means that your labour hire agency has a legal obligation to place its workers in safe workplaces. The agency needs to establish that the place where you are being sent to work and its operations are safe before you are sent there, so far as it is reasonably practicable. The agency must also continue monitoring your safety throughout your placement with the host employer.

The agency must consult with you on a wide range of OHS matters. It must: provide information to you about OHS matters relevant to your job; give you a reasonable opportunity to express your views about OHS matters; and take your views into account².

¹ Section 20(2) of the OHS Act sets out a number of things that an employer must take into consideration when deciding what is 'reasonably practicable'.

² The OHS Act allows workplaces to agree on the process for this consultation. If there are elected health and safety representatives (HSRs) in the workplace, they must be involved in the consultation. In some labour hire agencies, consultation with employees may be through the elected HSRs.

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To ensure that it is complying with its legal duties, the agency should take the following actions each time it places you with a host employer.

1. **Provide an induction.** The agency must give you information about the host workplace and the tasks you will be performing there. The induction should include general information about OHS, as well as information on the hazards that are present in the workplace and how they are controlled. This induction should normally happen before you are sent to the workplace. The agency should also let you know the managers you should contact at the agency and the host employer if you have any health and safety issues or concerns.
2. **Assess the workplace.** The agency must know about your host employer's operations and hazards, its OHS performance and its approach to managing safety in the workplace. The agency must obtain details of the tasks you will be required to carry out. This will include information about: the plant or equipment you will be operating; the materials and substances you may be exposed to; and any other specific hazards. The agency must make sure that the host employer is taking effective action to provide you with a healthy and safe working environment, so far as reasonably practicable. The agency must also ensure that the arrangements in the host workplace for consultation with employees and supervision are effective.
3. **Assess your ability to do the job safely.** The agency must be confident that you will be able to do the work safely, considering your skills and experience, and the training, information and supervision that will be provided by your host employer. In assessing your suitability for the work, the agency should consider your skills, knowledge, competency, experience and training, and make sure that you have any licence/s required to do the job. It also needs to consider the effects of any proposed shift work, split shifts or extended working hours on your health and safety³.
4. **Monitor the workplace.** The agency must keep monitoring your host employer's workplace to make sure that health and safety requirements are being met, and that no uncontrolled risks to your health or safety have arisen or may arise.

If the agency is not convinced that the host workplace is safe, it should not send you to work there.

YOUR HOST EMPLOYER'S RESPONSIBILITIES TO YOU

Your host employer has legal responsibilities to you regarding health and safety as it does to its direct employees. This means that it must provide you with a safe and healthy working environment, so far as is reasonably practicable. The host employer should treat labour hire workers and contractors as if they are its own employees, by providing and maintaining a safe working environment and conditions.

The host employer must also consult with you on a wide range of OHS matters. It must: provide information about relevant OHS matters; give you a reasonable opportunity to express your views about health and safety matters; and take your views into account⁴. To protect your health and safety during your placement, your host employer needs to take the following actions.

- Provide and maintain a safe working environment and conditions for you.
- Define the job, task or role that is assigned to you.
- Control any risks that arise from the work that is assigned to you.
- Make sure that you have the necessary skills and knowledge to perform the work safely, and give you the necessary training, information and supervision so that you can.
- Ensure that you have the necessary equipment so that you can do the job safely (this may include personal protective equipment, such as safety boots or a helmet).
- Encourage you to participate in arrangements in the workplace for employees to be consulted on health and safety matters (including introducing you to the relevant health and safety representative (HSR) and the management person responsible for OHS).
- Make sure that you understand the OHS requirements of the workplace.
- Tell you how to report any hazard or incident relating to health and safety.
- Notify WorkSafe Victoria of any notifiable serious incident or injury.
- Encourage you to maintain contact with your labour hire agency.

³ Some of the issues that the agency will need to consider in this context are whether you may become fatigued, and whether you may be exposed to substances which are hazardous when exposed to them for long periods of time.

⁴ The OHS Act allows workplaces to agree on the process for consultation. If there are elected HSRs in the workplace, they must be involved in the consultation. In some workplaces, consultation with employees and labour hire workers may be through the elected HSRs.

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YOUR RESPONSIBILITIES

You have health and safety responsibilities under the OHS Act as an employee⁵. While at work you must take reasonable care for your own health and safety, and that of other people. You must cooperate with anything your labour hire agency or host employer does to meet its health and safety obligations. This includes obeying all safety signs and instructions, and wearing any personal protective equipment required.

If you become aware of a hazard or an incident relating to health and safety, you should report it to your host employer immediately. If there is an elected HSR, you should also report it to him or her.

HOW TO BE REPRESENTED ON OHS

The OHS Act states that 'employees are entitled, and should be encouraged, to be represented in relation to health and safety issues'. This applies equally to labour hire employees as it does to other employees. The OHS Act outlines a number of ways that you can be represented on workplace health and safety.

OHS representation in the labour hire agency

You are entitled to participate in the election of HSRs who can raise OHS issues with the agency and have specific powers to help protect your health and safety. Your HSR has the power, after giving reasonable notice to the employer (or straight away if there is an immediate risk to your health or safety), to inspect any part of a workplace where you work. After consultation with the relevant employer, your HSR may issue a provisional improvement notice (PIN) to require the employer to comply with the OHS Act or regulations.

If there are no HSRs at your agency, you may ask the agency to negotiate with its employees to establish designated work groups so that HSRs can be elected. The agency must do everything reasonable to ensure that these negotiations start within 14 days of this request.

OHS representation in the host employer workplace

The direct employees of your host employer may have elected HSRs to represent them. The OHS Act allows the host employer and its employees to agree that the elected HSRs will also represent labour hire workers. In this case, these HSRs may also raise issues with the host employer on your behalf. HSRs have the same powers as described above. If the host employer and employees have not agreed that the HSRs can represent labour hire workers, you can approach either the responsible manager or a HSR to ask whether such an agreement could be negotiated.

In addition to the arrangements for your representation, both the labour hire agency and the host employer must consult labour hire employees on a range of health and safety matters (as outlined previously).

HOW TO RAISE OHS ISSUES

If you have any concerns about your health or safety as a labour hire employee, you can raise your concerns with any of the following people:

- the responsible manager at your labour hire agency;
- the responsible manager at your host employer;
- your HSR at your labour hire agency;
- (where agreed at the workplace) a HSR at the host employer;
- your union; and/or
- the WorkSafe Victoria Advisory Service on (03) 9641 1444 or toll-free on 1800 136 089.

The OHS Act prohibits any employer or prospective employer from discriminating against you on the ground that you raised an issue or concern about health or safety.

MORE INFORMATION

For further information, go to the WorkSafe website (at www.worksafe.vic.gov.au) or call the WorkSafe Advisory Service on (03) 9641 1444 or toll-free on 1800 136 089.

⁵ Refer to section 25 OHS Act

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