LABOUR HIRE RISK

A GUIDEBOOK FOR LOCAL GOVERNMENT AUTHORITIES

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CONTENTS

COMMON TERMS

There are terms used throughout this guide that the reader should familiarise themselves with and ensure that they understand when referring to this guide.

Local Government AND Host Employer/Principal

For the purposes of this guide, it is assumed that the local government is the host employer (or principal). That it, it is assumed that the local government has contractors on it's worksites, engaged to complete local government work, who are sourced from a labour hire agency.

Note: Also called local government authority or LGA, members of LGIS or 'members'.

Labour Hire Agency (LHA)

The organisation that directly employees contract workers and has responsibility for payroll, employment contracts and carries the responsibility of the applicable industrial relations legislation and regulations.

Deemed employee/employment

Where a LGA hires a contractor to perform work, the contractor's workers will be considered (deemed) employees of the LGA if:

- the task they are engaged in is directly related to the LGA's trade or business, and
- the injury occurs on premises under the control or management of the LGA (host employer)

This deemed employment status applies to all levels of the contractual chain, meaning that employees of both contractors and sub-contractors are considered employees of the principal if the conditions of the Act are met.

HIDDEN RISK

Managing the challenges and opportunities of labour hire arrangements

Flexible work has been a landslide shift in the Australian workplace. There are many benefits for employers in a tight labour market and mounting cost pressure. Local governments, like many organisations, have evolved to take advantage of the benefits that flexible work offers – particularly labour hire arrangements. They're becoming more important for local government authorities (LGAs) in Australia and this trend shows no sign of slowing.

Contractors are used to deliver diverse services, for specific projects, and to find staff when there are skills set shortages in the broader job market.

Using labour hire offers practical benefits by providing expertise on a short-term basis or filling staffing gaps. However, it is crucial for LGA host employers to understand their responsibilities towards labour hire staff and effectively manage the risks associated with this relationship.

Shifting risk

While labour hire arrangements offer significant advantages, the shift away from 'traditional' employment has meant that workplace injury claims are no longer the exclusive domain of workers' compensation.

The regulatory landscape governing labour hire arrangements has also undergone significant refinement with the introduction of the *Work Health and Safety Act 2020 (WA)* in 2022. This legislation has expanded the duties and responsibilities of host employers while imposing restrictions on their ability to delegate or contract out of their duties towards hired staff.

As 'host employers' LGIS members often assume unrecognised risk, responsibilities, and obligations.

When negotiating and managing labour hire arrangements, it is important to consider two categories of risks:

- **Injuries to the workers**
  This includes liabilities for injuries to the workers themselves, such as workers' compensation, work safety and health legislation, and common law liabilities. These liabilities cannot be delegated.
- **Third party liabilities**
  This involves liabilities owed to third parties because of the actions of labour hire workers. The extent of liability will depend on the relationship between the host employer and the worker.

LGIS has partnered with legal experts DLA Piper to develop this guide for members. In it we address each of the risk categories, provide practical guidance and examples for members to minimise their risks.

Next steps

There are five(5) practical steps for local governments to use to manage the risks of using labour hire contractors. These are covered in the 'Practical Guidance' section of this document. They include:

1. Step 1: Do your due diligence
2. Step 2: Get the contract right
3. Step 3: Talk to labour hire employers
4. Step 4: Before the job, check qualifications
5. Step 5: Monitor and supervise

INJURED WORKERS

When labour hire workers are injured while working for local government

The health and safety of all workers should be a priority for local governments – this includes labour hire staff.

But they're not our employees…

It's a myth that labour hire employees are the responsibility of the labour hire employer. The reality is that the host employer (LGA) bears a similar, if not greater, responsibility for their well-being.

It's true that labour hire arrangement reduces the administrative burden of employment – it's the labour hire company that remains responsible for employment issues such as worker wages, tax, workers' compensation insurance, superannuation and leave entitlements.

BUT, the host employer, aka the local government, still owes a duty of care. The same duty owed to all employees to provide a safe workplace and proactively identify and manage risks – both physical and psychological.

In cases where workplace injuries occur, the first recourse is usually through workers' compensation legislation. However, if a worker is not eligible for workers' compensation or their injuries are significant, they may seek remedies through common law damages. It's important to note that common law liability can provide broader compensation than what is available under workers' compensation legislation.

Liabilities under workers compensation legislation

Employers in Western Australia have a legal obligation to ensure compensation for workplace injuries suffered by their employees under the *Workers Compensation and Injury Management Act 1981 (WA),* including workers engaged on a labour hire basis.

This obligation will remain with the updated *Workers Compensation and Injury Management Act 2023 (WA).*

Where a LGA hires a contractor to perform work, the contractor's workers will be considered employees of the LGA if:

- the task they are engaged in is directly related to the LGA's trade or business, and
- the injury occurs on premises under the control or management of the LGA (host employer)

This deemed employment status applies to all levels of the contractual chain, meaning that employees of both contractors and sub-contractors are considered employees of the principal if the conditions of the Act are met.

Whilst an injured worker's primary recourse in such circumstances will typically be under the labour hire employer's workers' compensation insurance, the LGA may be called upon to "fill the gap" where a deemed employment relationship exists and the employer's workers' compensation insurance does not respond (for example, if the labour hire employer has not taken out workers' compensation insurance or has failed to renew its insurance). In those circumstances, the LGA will have the same obligations as the labour hire employer under the Act. This includes payments for lost wages, and medical and rehabilitation expenses, subject to the limitations outlined in the Act.

It is therefore crucial that LGAs take proactive steps, both before entering a labour hire arrangement and throughout the life of the relationship, to confirm that the labour hire agency current, up-to-date, and sufficient workers' compensation insurance.

Practical steps to minimise the risks resulting from deemed employment are provided in the 'Practical guidance' section of this handbook.

Got questions?

Talk to the LGIS WorkCare team for information and advice on workers' compensation in Western Australia

Common law and other statutory bases of liability

More commonly, an LGA will face claims for 'common law' liabilities to an injured worker (that is, liability arising outside of the Workers Compensation Act).

Whether an LGA has a common law liability to a labour hire worker will depend upon the specific circumstances of the case. Common sources of liability include failing to:

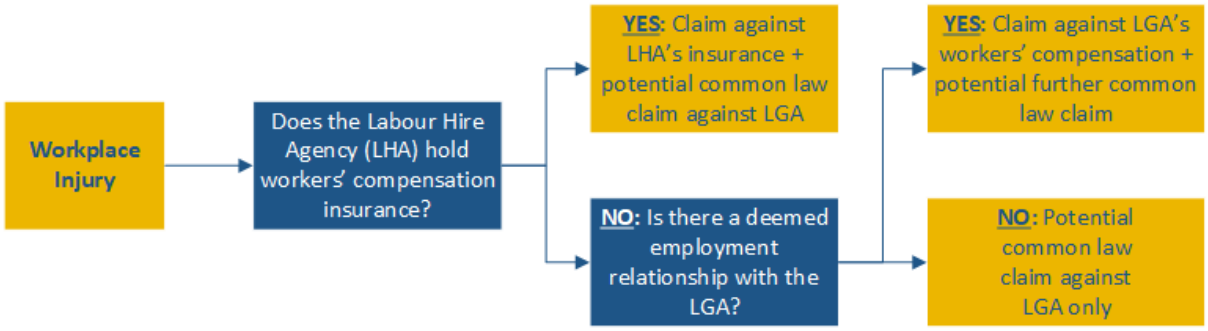
- identify and minimise workplace hazards,
- provide safe work systems,
- provide appropriate personal protective equipment,
- provide adequate training, and
- warn of workplace risks.

In making a common law claim, an injured worker can seek damages for losses not available under the Workers Compensation Act, such as:

- pain and suffering (also known as general damages),
- future economic losses, and
- gratuitous services provided to the injured worker.

If this happens, the liability of the LGA (host employer can be greater than the liability to pay compensation under the Workers Compensation Act.

The flowchart below sets out the claims that may be faced by an LGA following a workplace injury being suffered by a labour hire employee.



How liable are you?

When a host employer (LGA) is found to have a common law liability to a labour hire worker, there are questions about the division of liability between the two parties. These issues are decided by the courts based on:

- the parties' conduct,
- the extent to which they have departed from reasonable standards of care, and
- caused the worker's injuries.

It's important to note that while a host employer may be entitled to contribution from a labour hire agency, liabilities for personal injuries are "joint and several."

> ***Definition – 'Joint and several'***
>
> This is a legal term that means a responsibility that is shared by multiple parties. In this instance it means that an injured worker can seek 100% of their damages from the host employer, who can then seek contribution from the labour hire agency.

Members should be mindful that sometimes they may not be able to get a contribution from the labour hire company for damages. Such situations could include if:

- the labour hire agency ceases to exist, or
- lacks adequate resources.

Additionally, unless the injured worker has a sufficient level of permanent impairment (the Workers Compensation Act requires a 15% whole of person impairment), the liability of the labour hire employer will be limited to the making of statutory payments under the Workers' Compensation Act. In those circumstances, neither the injured worker nor the LGA will be entitled seek contribution from the labour hire employer.

Contractual indemnities can be used to alter the allocation of liability between a host employer and a labour hire agency. They're common in labour hire agreements and allow either party to seek complete or partial indemnity from the other for any common law liability they may have to an injured worker.

It's important to carefully consider the presence and wording of such clauses, as they can significantly impact the scope of a host employer's liability. It's also worth noting that liabilities incurred through indemnities are typically excluded from coverage by LGIS Liability protection and other insurance policies.

Members should seek legal advice when drafting indemnity provisions in labour hire agreements. These provisions cannot always be easily applied as showed by the differing approaches taken to seemingly similar factual scenarios in cases one through to four.

Case Study 1:

Parlin Pty Ltd v Choiceone Pty Ltd [2012] WASCA 19

The facts

The appellant, a drilling contractor (DC), against the respondent, a labour hire company (LH), following an incident on a drill rig.

Tyson Barns (an employee of the LH) was injured by a fire on the rig. The fire was caused by the ignition of hydraulic fluid, which engulfed the rig and caused Mr Barns to suffer burns to 60% of his body.

The decision

The trial judge found that the LH was obliged to conduct a complete safety inspection on the rig (prior to placing Barns with the DC) and, had that inspection been undertaken, the likelihood is that the accident would have been avoided. The judge also found that LH was required to satisfy itself on the DC's safety procedures.

Apportionment

The Court of Appeal overturned the trial judge's determination of relative contribution (40:60 in favour of the LH and substituted a finding that the LH was 20% responsible. The court held that there was no evidence to justify the conclusion that the safety inspection would have found any defect, and that it also failed to consider the DC's greater responsibility in terms of its management of what was potentially dangerous equipment.

Case Study 2:

Thornton v Wollondilly Mobile Engineering [2012] NSWSC 621

The facts

The plaintiff (Thornton) claimed damages for a post-traumatic stress disorder suffered after he saw his supervisor jump to his death (and engulfed in flames). Thornton was employed by Wollondilly Mobile Engineering Pty Ltd (Wollondilly) as an apprentice boilermaker.

On 22 March 2007, the plaintiff and his supervisor were extending a platform and installing a handrail above a shavings bin for Penrose Pine Products Pty Ltd (Penrose).

While conducting welding work, they noticed smoke coming from the bin and asked the site's leading hand to open the bin door. The plaintiff and the supervisor were proximate to the shavings bin (they appeared to be on top of it).

When the door was opened, the sudden influx of air caused the contents of the bin to catch fire. The supervisor was then surrounded by flames and leapt from the platform, sustaining fatal injuries.

Wollondilly defended its position by asserting that the plaintiff was a "guest worker", and that Penrose was obliged to ensure that he was appropriately trained and inducted.

The decision and apportionment

Wollondilly's argument was largely rejected by the trial judge. It was held to be 60% responsible for the plaintiff's damages. The trial judge held that Wollondilly owed to the plaintiff a duty that was akin to that which it would have owed its actual employees. That is, it was under a general duty to take reasonable care to avoid exposing him to the risk of injury. The trial judge held that it was just and fair that Wollondilly bear the substantial portion of responsibility for the plaintiff's loss.

Case Study 3:

Kabic v Workers Compensation Nominal Insurer (No 3) [2017] NSWSC 1281

The facts

Mr Kabic was employed by a labour hire company (LH). The LH supplied Mr Kabic as labour to the host employer (HE). The HE was a subcontractor to a principal contractor as part of a construction programme.

The HE was responsible for the undertaking of formworks. Mr Kabic was engaged with that task, and he was working from a raised wooden platform to undertake the relevant works.

Mr Kabic's commenced proceedings against the LH, HE, and principal contractor. All his claims, save for the one against the HE, failed.

The decision

The trial judge held that it was the HE who was responsible for Mr Kabic's supervision and his working environment. This conclusion meant that the claim against the LH failed.

The trial judge held that Mr Kabic's claim against the principal contractor was conceptually open (it owed a duty to exercise reasonable care), but that it had not breached that duty in its selection or supervision of the HE.

A host employer's high standards of care

Local government authority = host employer = PCBU

When a LGA hires labour hire workers, they have a responsibility to ensure workplace safety and health. Failing to meet these obligations can result in significant penalties and the costs and stresses associated with regulatory investigations.

The *Work Health and Safety Act 2020 (WA*) has had a significant impact on the regulatory landscape for host employers and the working environment provided for labour hire employees. The Act imposes obligations on "persons conducting a business or undertaking" (PCBUs), which includes local government authorities.

These obligations are owed to any person who is a worker of the PCBU, which includes workers employed by labour hire companies and assigned to work for the LGA. The Act requires PCBUs to eliminate or minimise risks to the health and safety of workers they engaged or whose activities are influenced by the local government while they are working for them.

In the case of labour hire employment, both the labour hire agency and the LGA have a primary duty of care to the worker, and this duty cannot be contracted out or transferred through the labour hire agreement.

LGAs have a broad duty to ensure workplace safety and health. This duty includes various responsibilities that a host employer must fulfill to the best of their ability. These responsibilities include:

- Providing and maintaining a work environment that is free from health and safety risks.
- Providing and maintaining safe plant and structures.
- Implementing and maintaining safe systems of work.
- Ensuring the safe use, handling, and storage of plant, structures, and substances.
- Providing adequate facilities for the welfare of workers while they are at work.

- Providing necessary information, training, instruction, or supervision to protect all individuals from health and safety risks associated with the work being conducted.
- Monitoring the health of workers and the conditions at the workplace to prevent illness or injury arising from the host employer's business or activities.

Additionally, the Work Health and Safety (WHS) Act requires both the labour hire agency and the host employer (LGA) to consult, cooperate, and coordinate their activities to fulfill their duties to the worker. The specific steps to meet these duties may vary depending on the circumstances, but it is important to consider key steps when hosting a labour hire employee.

Working with a labour hire agency

Consider the following	Y / N
Has the labour hire employer been provided with detailed information as to: • the nature of the work to be carried out, and • the working environment in which the worker will be engaged?	Y / N
Have you verified, before the commencement of any work, that the labour hire worker has the necessary qualifications, licences, skills, and training to carry out their work safely?	Y / N
Have you undertaken, in consultation with the labour hire employer, an assessment of the potential risks of injury or harm to which the labour hire worker may be exposed whilst undertaking the work? (this should include an invitation to the labour hire employer to visit the proposed worksite(s) for the purpose of carrying out the assessment)	Y / N
Have you taken steps to ensure that a system of supervision is in place prior to the labour hire worker(s) starting work?	Y / N
Have you taken steps to ensure that a system of hazard identification and monitoring (e.g. the requirement to undertake job safety analyses) is in place prior to the labour hire worker(s) beginning work?	Y / N
Have you considered whether any personal protective equipment is needed for the labour hire worker(s) to undertake their work safely and ensuring that such equipment is provided and used by the worker(s)?	Y / N
Have you taken steps to ensure that the worker(s) are provided with a proper induction before commencing work, identifying the potential hazards and acceptable work practices?	Y / N

The Act imposes a personal responsibility on officers of a PCBU (person conducting a business or undertaking) to exercise due diligence in ensuring that the PCBU complies with its duties and obligations under the Act.

For members this means that this obligation applies to individuals who make or participate in decisions that impact the entire or a significant part of the LGA's business or activities. This can include positions such as:

- chief executive officer,

- executive directors, and
- managers.

The Act also establishes offenses and imposes significant penalties for breaches of the obligations owed by PCBUs and officers. It outlines penalties for various offenses, and the table below provides a summary of some key offenses and their maximum penalties.

Offence	Maximum Penalty
Category 3 breach of duty (s.33) Where the employer fails to comply with a WHS duty.	Individuals: $120,000 fine. Bodies Corporate: $570,000 fine.
Category 2 breach of duty (s. 32) Where the employer's failure to comply with their WHS duty exposed a person to a risk of death or serious harm.	Individuals: $350,000 fine. Bodies Corporate: $1,800,000 fine.
Category 1 breach of duty (s. 31) Where the employer's failure to comply with their WHS duty caused death or serious harm.	Individuals: imprisonment for 5 years and a $680,000 fine. Bodies Corporate: $3,500,000 fine.
Industrial manslaughter (s. 30A) Where the employer's failure to comply with their WHS duty caused death, and the employer knew that their conduct was likely to cause death or serious harm.	Individuals: imprisonment for 20 years and a $5,000,000 fine. Bodies Corporate: $10,000,000 fine.

The WHS Act prohibits the practice of obtaining insurance (this also applies to the LGIS Scheme) to cover any penalties that may be imposed on a PCBU or its officers. This means that executive staff members of a local government authority may face substantial liabilities if they fail to fulfill their duties to ensure the safety and health of labour hire employees. These liabilities are not covered by insurance, making them personally responsible for any consequences resulting from breaches of workplace safety and health regulations.

For practical guidance on minimising the risk of breaching workplace safety and health regulations, should refer to the section, 'Practical guidance'.

THIRD PARTY INJURY

When third parties are injured from actions of labour hire workers

In certain situations, a host employer (LGA) can be held responsible for the actions of the labour hire workers it hires. This is usually the case when one of the following conditions is met:

1. The relationship between the host employer and the labour hire worker is such that the host employer is considered the true employer of the worker at the time of the accident, rather than the labour hire agency.
2. The host employer creates or allows circumstances that enable the worker to cause harm or damage to third parties.

Vicarious liability for workers' actions

Figuring out whether the relationship between a labour hire worker and a host employer is classified as a principal-contractor or employer-employee involves considering several factors. These factors include, but are not limited to:

1. The extent to which the host employer has the right to control the actions of the workers in the workplace.
2. The method of payment for the worker's services.
3. The provision and maintenance of equipment used by the worker.
4. The level of discretion the worker has in performing tasks and deciding their work hours.
5. The worker's ability to delegate assigned tasks.
6. The party responsible for salary and tax payments.

If the circumstances show that the host employer should be considered the employer of the labour hire worker, the host employer will be held liable for any legal obligations or liabilities the worker has towards third parties. **This is known as vicarious liability.**

Two examples of situations where a host employer has been found vicariously liable for its labour hire workers are provided in case study four (4) and five (5).

Case Study 4:

Mt Owen Pty Ltd v Parkes [2023] NSWCA 77

The facts

Mt Owen Pty Ltd (**Mt Owen**) operated the Glendell Coal mine in New South Wales. Mt Owen had an agreement with Titan Technicians Enterprise Pty Ltd (**Titan**) for the provision of labour hire employees to work at the mine.

On 29 July 2017, one of the workers supplied to Mt Owen by Titan, Mr Glen Parkes, was injured when another worker supplied by Titan, Mr Mitchell Kemp, dropped the blade of a bulldozer that he and Mr Parkes were servicing onto Mr Parkes' right leg.

Mr Parkes sued each of Mt Owen, Titan and Mr Kemp for negligence. All the parties accepted that Mr Kemp was negligent. The issue between the parties were:

(a) whether, and to what extent, Mt Owen or Titan were vicariously liable for the actions of Mr Kemp; and

(b) the existence and apportionment of liability between Mt Owen and Titan for their own negligence.

The decision

The court found that the circumstances of his work were such that Mr Kemp's employment was 'transferred' to Mt Owen and that Titan was thus not vicariously liable for his actions.

Materially, the court drew this conclusion from the fact that Mr Kemp:

a) had been working at Mt Owen's site for over three (3) years,
b) had during that time been under the direct supervision of Mt Owen's staff, and
c) were required to adhere to follow Mt Owen's workplace practices and procedures, including completion of Mt Owen's job safety analyses.

That finding was upheld on appeal.

Apportionment

With respect to Mt Owen and Titan's direct liability, it was found that:

I. both Mt Owen and Titan were negligent in preparing and signing off on a job safety analysis which did not require confirmation that tradespeople were beyond the footprint of the bulldozer before implements were moved;
II. that part of the liability attributable to Mr Parkes' negligent actions was 60% of the total;
III. each of Mt Owen and Titan should bear equal responsibility (20%) for the remaining liability on account of their negligent preparation and approval of the defective job safety analysis.

The finding that the job safety analysis was defective was overturned on appeal. Mt Owen was accordingly found to be responsible for 100% of Mr Parkes' losses.

Case Study 5:

Placer (Granny Smith) Pty Ltd v Specialised Reline Services Pty Ltd [2010] WASCA 148

The facts

David Murphy was injured in an accident at a Laverton goldmine on 16 March 1999.

He was injured when two metal plates slipped from a crane sling and fell on him. Mr Murphy was employed by the respondent, Specialised Reline Services Pty Ltd (**SRS**). A Mr Leach was the crane operator at the time of the accident. He was the employee of the second appellant Drake Personnel Ltd (**Drake**). The first appellant Placer (Granny Smith) Pty Ltd (**Placer**) was the operator of the goldmine which had retained SRS and Drake to work on the site.

Mr Murphy sued Placer, SRS, Drake and Mr Leach for damages. The claim against Placer was based on a breach of the *Mine Safety & Inspection Act 1994* (WA) (**MSI Act**) as was the action against Drake, Mr Leach and SRS. Placer, SRS and Drake denied that they were negligent or in breach of their duty. Mr Leach did not file a defence or participate in the court proceedings.

Placer and Drake ultimately admitted liability to Mr Murphy and settled Mr Murphy's claim by agreeing to pay $4,173,720.07. Placer and Drake then claimed that SRS should make a contribution under s 7 of the *Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947* (WA) (**Contribution Act**).

Placer also claimed damages for alleged breach of contract by SRS which involved the same general allegations. Groves DCJ dismissed all claims against SRS. This decision was appealed.

Decision at appeal

The Court of Appeal (heavily informed by the High Court's decision in *Kondis v State Transport Authority* (1984) 154 CLR 672 (**Kondis**)) held that Mr Murphy's injury did not arise from a failure by SRS to coordinate the activities of other contractors. SRS had not engaged with Placer or Drake, and there was no suggestion that SRS had attempted to delegate its duty to provide a safe system of work.

It was held that Mr Murphy's injuries were caused by a casual act of negligence by two workers – neither of which were engaged by SRS. The Court of Appeal held that (in the circumstances of this case), an employer will not be vicariously liable for a casual act of negligence of a worker who is not his servant

The allocation of responsibility for directing and supervising a labour hire worker is crucial in figuring out their exposure to third parties. The 'Practical guidance' section of this guidebook provides practical steps to minimise the likelihood of such exposure.

These steps include:

1. Incorporating specific terms in the labour hire contract, such as clarifying that there should be no transfer of employment from the labour hire agency to the host employer.
2. Giving the labour hire agency oversight of the worker's actions while they are on the host employer's site(s).
3. Ensuring that the labour hire agency is involved in conducting site inspections and hazard assessments.
4. Directing the labour hire employer to provide necessary equipment for the worker to use on-site.
5. Ensuring that the labour hire employer is responsible for the payment of wages, rather than the host employer.

Circumstances which may give rise to third party liability

A host employer can be held liable to third parties for the actions of labour hire employees if they create or maintain circumstances that allow employees to engage in harmful conduct.

These circumstances may arise when the host employer:

- Does not properly vet potential contractors and engages a labour hire agency or worker who lacks the necessary qualifications or experience for the work.
- Fails to provide adequate supervision for labour hire employees, especially when the labour hire agency is unable to provide supervision.
- Provides inadequate equipment to labour hire employees, resulting in injury to third parties.

The specific circumstances that may give rise to such liabilities cannot be fully addressed. However, there are precautions that host employers should consider minimising their exposure to third parties. These steps are outlined in the 'Practical guidance' section of this guide.

Broadly, the primary focus should be on keeping good health and safety procedures to prevent harm in the first place. Additionally, host employers can mitigate liabilities by following the steps outlined in this section to retain responsibility with the labour hire employer as much as possible. Finally, host employers should consider obtaining indemnities from the labour hire agency to cover any liability that may arise from the conduct of the labour hire worker.

PRACTICAL GUIDANCE

Risk is inherent in the use of labour hire. While the risk is unavoidable, there are practical steps which members (host employers) can take to minimise the likelihood of it eventuating.

Step 1: Do your due diligence

Before entering into a labour hire agreement, carefully consider the tasks that need to be done and whether any specialised skills or training are necessary to perform the tasks safely. Once this consideration has been made, make sure that only contractors with the appropriate qualifications are engaged.

Members should also investigations to make sure that any labour hire provider they use is financially stable and has adequate insurance coverage, such as workers' compensation, public liability, and professional indemnity insurance. This helps reduce the risk of the member being unable to rely on the labour hire agency for indemnity or contribution due to financial limitations. These insurance policies should also include provisions that protect the interests of the host employer such as specific notation of a “Principal Indemnity Extension for Act and Common Law” benefits with a waiver of subrogation.

Step 2: Get the contract right

Members often put themselves at unnecessary risk by not clearly defining the roles, rights, and obligations of both themselves (the host) and the labour hire employer. While there are practical limitations to what can be negotiated in a labour hire agreement, it is important to consider including terms so that the following apply to the labour hire employer:

1. an obligation to conduct risk assessments before their employees start working.
2. responsibility for ensuring that their employees are properly trained and qualified for the work they do for the host employer.
3. retains the responsibility for providing a safe workplace environment for their employees.
4. the right to conduct periodic inspections of the host's workplace at mutually convenient times.
5. consult with the host employer about the safety and health of their employees while they are at the host's workplace.
6. provide personal protective equipment for their workers while they are at the host's workplace.

Members should strongly consider taking legal advice before they sign agreements with labour hire providers. The agreements, if structured properly, can deal with the proper allocation of risk and risk transfer, and can save the parties considerable time and expense if an injury to a labour hire employee becomes litigious.

Further to the above, members should consider including indemnities in favour of the host employer whenever possible. These indemnities should ideally cover any liability that the host may have for injuries, losses, or damages sustained by the labour hire employee while working for the host, as well as any liabilities to third parties arising from the labour hire arrangement.

On the other hand, members should try to avoid entering into agreements that provide indemnities in favour of labour hire agencies.

It’s important to note that any liability incurred by the member solely as a result of granting such an indemnity will generally not be covered by LGIS Liability.

However, it is important to recognise that there are practical limitations to the protection provided by indemnity clauses. As mentioned earlier in this guide:

1. Indemnity clauses do not apply to fines or penalties imposed under the WHS Act.

2. Indemnity clauses are only effective if the party providing the indemnity has the financial ability to meet their liability. If the labour hire agency does not have sufficient insurance coverage, assets, or ceases operations, the indemnity may not be of practical benefit.
3. Indemnity clauses cannot be used to avoid the obligations imposed by the Workers Compensation Act.

Step 3: Talk to the labour hire employer

If it's not already been included in the labour hire agreement the following should be done:

- Provide the labour hire employer with detailed information about the worksite and the specific work that will be done on-site.
- Invite the labour hire employer to conduct a pre-commencement inspection of the site and raise any safety concerns they may have.
- Discuss any specialised equipment, including PPE that the worker will need to do the job on the host's site.

This is important for two reasons:

1. it helps bring any issues to the attention of the host employer, and
2. ensures that the labour hire agency maintains some responsibility for the health and safety of its employees.

Step 4: Before the job starts

Before the worker starts their job, make sure that they are qualified for the task and familiar with your worksite and practices.

These steps should ideally include:

1. Verifying that the worker has the necessary certifications and keeping copies of them.
2. Providing the worker with the host employer's workplace safety protocols.
3. Giving the worker a site induction before they begin work. This should involve a tour of the workplace and identification of any known hazards that cannot be avoided.

It is important to continue consulting with the worker about safety hazards even after they have started working. This may involve having the worker regularly analyse job hazards and safety, as well as conducting "toolbox" meetings as appropriate for the workplace.

Step 5: Monitoring and supervision

All employees, including labour hire workers, should be properly supervised while at work. Make sure that trained personnel are present on-site to observe the workers and provide instructions on safe working methods. The member should take reasonable measures to ensure that labour hire workers are adequately supervised and guided to work safely.

REFERENCES

The following have been used as reference in writing this guide

- *Workers Compensation Act and Injury Management Act (1981) WA;* Sections 175, 175(6), 175(1), 175(2), 93K.
- Kondis v State Transport Authority (1984) 154 CLR 672.
- Podbrebersek v Australian Iron & Steel Pty Ltd (1985) 59 ALJR 429 at 494; Parlin v Choiceone Pty Ltd [2012] WASCA 19 at [32] and [69].
- Work health and Safety Act (2020) WA; Sections 5; 5(5); 7; 7(1)(d); 17, 18 and 19; 16; 14 and 272; 19(3); 46; 27; 4A (3), 272A.
- Stevens v Brodribb Sawmilling Co Pty Ltd (1986) 160 CLR 16 at 24; Mt Owen Pty Ltd v Parkes [2023] NSWCA 77.