

# **WORKERS COMPENSATION AND LABOUR HIRE**

## **OVERVIEW**

The [\*Workers Compensation Act 1951\*](#) (the Act) aims to provide a timely, safe and durable return to work through effective injury management and income support to injured workers. It works in conjunction with the work health and safety legislation to reduce the human and economic cost of work-related injury through improvements to injury prevention and effective return to work principles.

WorkSafe ACT is responsible for the administration of the workers compensation legislation and provides an advisory and inspectorate function on a range of workers compensation and work safety matters to assist employers and workers.


This Guidance Note has been developed to provide general policy guidance on compulsory workers compensation insurance requirements for labour hire companies (particularly in the ICT industry) operating in the ACT, and to clarify who is the employer in differing workplace arrangements. Under the Act, only the entity deemed to be the employer under the Act can initiate workers compensation coverage for their workers and that liability cannot be contracted out.

As part of the insurance requirements, an employer must provide a statement at the end of the policy period for the actual wages paid to workers during the policy period. When an employer submits their actual wage declaration, it **MUST** reflect wages paid in the period to ALL the employer's 'workers' including contractors where applicable under the Act.

WorkSafe ACT are seeing cases where workers are operating under multiple contracts with both labour hire operators and payroll companies, where the labour hire operator attempts to relieve themselves of their workers compensation obligations plus work health and safety responsibilities.

## **WHEN IS A WORKER COVERED FOR WORKERS COMPENSATION?**

In the ACT, a worker may be entitled to compensation from an employer for any physical or mental injury, disease, or aggravation, acceleration or recurrence that occurs:

- 
- while employed
  - by any incident arising out of employment
  - on a journey to or from work.



## WHO IS A WORKER?

A worker is someone who is employed under a contract of service or a contract for labour or substantially for labour only, regardless of whether this is express or implied. A worker is not an individual who is paid to achieve a stated outcome, has to supply all equipment of trade required to carry out the work and would be liable for rectifying any defect. A contract can be made either orally or in writing, and applies to full time, part time and casual workers.

For further information refer to [Workers Compensation Act 1951](#) Chapter 3 and in particular section 8 and section 12 for reference to Labour Hire companies.

## WHO IS CONSIDERED TO BE THE EMPLOYER IN LABOUR HIRE ARRANGEMENTS?

In accordance with section 31 of the Act, an employer is liable for any compensation payable to a worker suffering any work-related injury or disease. Where an employer has a current workers compensation policy, the insurer indemnifies the employer for costs of the claim.

Labour hire is the term applied to the provision of outsourced skilled and unskilled workers (typically blue-collar) hired for short or long-term positions. It is known by other names such as supplementary staffing, labour supply or temping. Labour hire can include entities such as:

- recruitment companies
- employment services
- personnel firms
- consulting firms
- temporary employment agencies
- talent agencies
- any company that has a contract of service or a contract for services directly with a host organisation.

## WHO CANNOT BE AN EMPLOYER IN LABOUR HIRE ARRANGEMENTS?

A payroll company cannot be an employer of labour hire employees because a contract of service or a contract for services does not exist directly between the payroll company and the host organisation. Workers compensation insurance, taken out by a payroll company for labour hire employees, when the payroll company does not have a contract of service or a contract for services directly between the payroll company and the host organisation will be void in accordance with the WC Act and this is further described below.

If a payroll company signs any contract or document to supply a financial service only (like wage deductions) to a labour hire entity, or agrees to become responsible for the employer obligations of another entity such as a labour hirer, then in accordance with the



WC Act these contracts or documents would be considered void and any workers compensation insurance taken out by the payroll company for labour hire employees will not provide coverage for those workers.

## OBLIGATIONS OF AN EMPLOYER CANNOT BE CONTRACTED OUT

Many labour hire companies engage payroll companies using contracts that require payroll companies to agree to be the employer, and they supply the worker to the labour hire company. These contracts then imply that the payroll company is the employer of the worker. In accordance with the Act, the obligations of the employer cannot be contracted out and these contracts would be considered void.

Section 136 of the WC Act states:

- (1) A provision of an agreement or other document is void if it purports to exclude, or limit in any way
  - (a) a right given to a worker under this Act
  - (b) a liability imposed on an employer under this Act.

Where these entities make arrangements with a worker (e.g. a software engineer) to work directly for someone other than the actual labour hire company (e.g. a host employer which could be a government agency, local or a multinational firm), if a contract of service or a contract for services exists with the labour hire company directly and does not exist with the host organisation, the labour hire company would be deemed to be the employer under the Act.

Also, a national or multinational company of any type that engages a worker under a contract of service or a contract for services to work for someone other than the national or multinational company is considered a 'labour hire company'. In these cases, the national or multinational company is a 'labour hire company' and therefore, the employer.

## EXAMPLES: WHO IS THE EMPLOYER?

**Examples are not meant to be fully inclusive of options**


### **Example 1 – Labour hire company conducting 'permanent placements'**

Where the labour hire company (Company A) acts purely to find and place a worker with an employer for a fee, and where the employer then forms a contractual employment relationship directly between the employer and the worker, the labour hire company (Company A) would not be considered to be the employer.

### **Example 2 - A labour hire company supplies labour to a government agency**

A government agency identifies that it requires the services of several software engineers to work as part of a team to introduce an information technology project into service. The





government agency then advises a number of labour hire companies of its need for software engineers with specific skills and experience.

The labour hire companies identify individuals that best meet the government agency's needs and provide details of the individuals to the government agency.

The government agency interviews a select few of the individuals and a contract is negotiated between the government agency and a labour hire company to supply one or more specified workers.

The labour hire company (Company A) then arranges a contract of service or a contract for services for the worker to work at the government site. The government agency does not form contractual relationships with the workers.

The labour hire company (Company A) is the employer for the purpose of obtaining compulsory workers' compensation insurance for that/those workers under their contract with the government agency.

### **Example 3 - A payroll company supplies labour**

If a payroll company supplies labour then for the purposes of this Guidance Note they then revert to being a labour hire company for the purposes of establishing 'employer'. Example 2 above explains role of labour hire.

### **Example 4 – Chain of on hire**

When a labour hire company (Company A) 'on-hires' a worker to another labour hire company (Company B) such that the worker works under a contract of service at Company B's client site (the host organisation), both Company A and Company B should seek legal advice as to which entity is responsible for workers compensation insurance of the worker/s in question. It should not be assumed that Company A has no employer responsibilities.

The Payroll Tax Act refers to a chain of on-hire document. This document has no place in the application of the WC Act. A chain of on-hire cannot be used to transfer employer obligations to a payroll company.

### **Example 5 - A labour hire company requires a payroll company to deliver payroll services only to one or more of its workers**

In Example 2, if one or more of the labour hire workers indicate that they have specialist payroll needs and request that the labour hire company's employer obligation of payroll be performed by a payroll company, as a service to the labour hire company, then a payroll company may become involved as described below.

The labour hire company (Company A) either chooses a payroll company (Company B) to provide this service or provides the worker with a list of payroll companies they can consider. A payroll company is then contracted by the contractor or labour hire company to provide payroll only as a service to the worker for the labour hire company.

In this example:

- The labour hire company (Company A) has a contract with the host



organisation to supply a worker/s or the specified worker.

- The worker has a contract of service or a contract for services with the labour hire company (Company A) to work at the host organisation.
- The payroll company (Company B) is not the 'employer' because (amongst other things):
  - Company B has no relationship with the host organisation or receive the benefit of the worker's services.
  - Company B has no control over the worker.
  - Company B did not engage the worker (even though it may have a contract with the worker and that contract may purport to create an employment relationship between them).
  - Company B has no knowledge of work being done.
  - Company B has no ability to fulfil any form of duty of care to worker as required under any legislation.

Section 136 of the Act prohibits entities contracting their liabilities under (the Act) to third parties.

The labour hire company (Company A) is the employer for the purpose of obtaining compulsory workers' compensation insurance no matter what form of contract is used to engage the services of the payroll company. The payroll company (Company B) is not the employer and cannot take out workers compensation insurance to cover another employer's worker/s and any workers compensation insurance taken out by the payroll company (Company B) for labour hire employees will be considered void.

**Note:** A chain of on-hire documents as used in the Payroll Tax Act, cannot be used to transfer employer obligations to a payroll company, and is void for purposes of WC Act even if signed by a payroll company.


**Example 6 – A payroll company advertises its services in a way that indicates it can provide workers compensation insurance to another employer's workers within the ACT**

The payroll company (Company B) in Example 5 is not operating as a labour hire company, it is an example of encouraging another company to reduce or avoid its employer obligations for workers compensation. Under the WC Act any workers compensation insurance taken out by Company B for labour hire employees will be void, and the labour hire company (Company A) would remain the employer and be accountable for all costs if the worker is injured.

The labour hire company (Company A) is the employer for the purpose of obtaining compulsory workers' compensation insurance no matter what form of contract is used to engage the services of the payroll company.

**Example 7 – Attempt to avoid employer obligations**





An example of a payroll, labour hire or other entity utilising 'deceptive means' may be where a firm establishes numerous companies and is the sole point of contact that coordinates all employer obligations for those other companies. This includes arranging the casual appointment of a sole trader or another employer's workers in one of the companies in an attempt to gain compulsory workers' compensation insurance and/or transfer the liability from the actual employer to one of the numerous companies. These policies could be void if insurer was not given correct information and all actual employers involved could remain the employers of their workers and therefore being accountable for all costs should the worker be injured.

### **Example 8 – Large national companies and multinationals**

Some large national companies and multinationals do not identify themselves as labour hire companies, however they often arrange with a worker to work under a contract of service or a contract for services at a host where the worker does not form a contractual relationship with the host organisation. Quite often the large national company or multinational will attempt to contract the services of a payroll company to take its employer obligations.

In this example the payroll company is not the 'employer' as per the examples above.

The large national company or multinational remains the employer for the purpose of obtaining compulsory workers' compensation insurance despite the use of a 'contract' to contract out their liabilities under the Act.

## **INSPECTORS**

Inspectors are appointed under the Act to ensure compliance with the legislation. They also investigate worker complaints, undertake investigations in relation to prosecutions, and provide information on workers compensation matters to the general public.

## **FOR FURTHER INFORMATION**

For more information, please contact WorkSafe ACT on 13 22 81.

Note: This is general policy advice on what the regulator would consider when forming a view on which employer has workers' compensation obligations in circumstances involving a labour hire company, host employer and third-party payroll company. Examples are not meant to be fully exhaustive and are for assistance only.

