



Guidelines for Labor Hire Employers

A workers compensation and injury management scheme that works for all



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Labour hire workers, or ‘on hire’ workers, are employed and paid by labour hire companies but work at client organisations known as host employers.

Labour hire employers have obligations to take out workers compensation insurance for workers supplied to host employers and provide accurate remuneration declarations for premium assessment purposes. They also have obligations to compensate injured workers and support their return to work.

These Guidelines clarify obligations of labour hire employers under the workers compensation legislation.

Part 1: Summary of key obligations

Labour hire workers, or 'on-hire' workers, are employed and paid by labour hire companies but work at client organisations known as host employers.

Key obligations are summarised below and explained further in these Guidelines.

Cover your workers

As a labour hire company you must cover workers employed or engaged by you and on-hired to host employers.

Many working arrangements are covered including full-time and part-time employees, casual employees, seasonal and piece workers, and certain contractors.

Avoidance arrangements, or "sham contracting arrangements", are prohibited.

For further information refer to the *WorkCover WA Explanatory Guide: Who is a Worker & Employer?* published at workcover.wa.gov.au

Maintain full insurance

All employers must maintain insurance for the full extent of their liability to pay compensation and damages to workers.

When taking out and renewing insurance you must submit remuneration declarations in the approved form to the relevant workers compensation insurer.

Good record keeping practices are integral to providing accurate remuneration declarations.

Do not deliberately understate the number of workers supplied to host employers or the amount of remuneration paid to workers when making declarations.

It is important the estimated and actual amount of remuneration payable is calculated and declared accurately. The provision of false remuneration declarations is an offence and lost premium can be recovered.

For further information refer to the *WorkCover WA Remuneration Guidelines* published at workcover.wa.gov.au

Having effective records is particularly important for labour hire companies that supply large numbers of workers with host employers in diverse industries.

There can sometimes be confusion and inconsistency in the way labour hire arrangements are classified for premium rating purposes.

The general principle when declaring remuneration of labour hire workers, is to apportion remuneration based on the Premium Rating Classification(s) that represents the **predominant business activity of the host employer to which workers are supplied.**

For further information refer to the *WorkCover WA Industry Classification Order* published at workcover.wa.gov.au

Labour hire employers, brokers and insurers should become familiar with the premium rating codes for labour hire set out in the *WorkCover WA Industry Classification Order* (and described in these Guidelines), as well as what constitutes 'remuneration' as set out in the *WorkCover WA Remuneration Guidelines*.

Participate actively in injury management and return to work

You have the same claim and injury management responsibilities as any other employer under the workers compensation legislation.

This includes establishing injury management systems and return to work programs for injured workers.

It also includes keeping an injured worker's pre-injury position available (unless it is not reasonably practicable to do so) or providing a suitable position for the worker.

A worker cannot be dismissed solely or mainly due to the worker's incapacity for work and cannot be dismissed for any reason unless the employer has given the worker notice in the approved form at least 28 days before the dismissal takes effect.

Labour hire employers and host employers are strongly encouraged to work cooperatively in the return to work process and should not wait until a worker is fully fit for work before considering return to work options or the provision of suitable duties.

If a worker has an incapacity for work as a result of an injury from employment for work done for the host, the host is required to cooperate with the labour hire employer to assist them to comply with their obligations to establish and implement a return-to-work program and provide the pre-injury position or a suitable position.

Part 2: Labour hire employers and coverage of workers

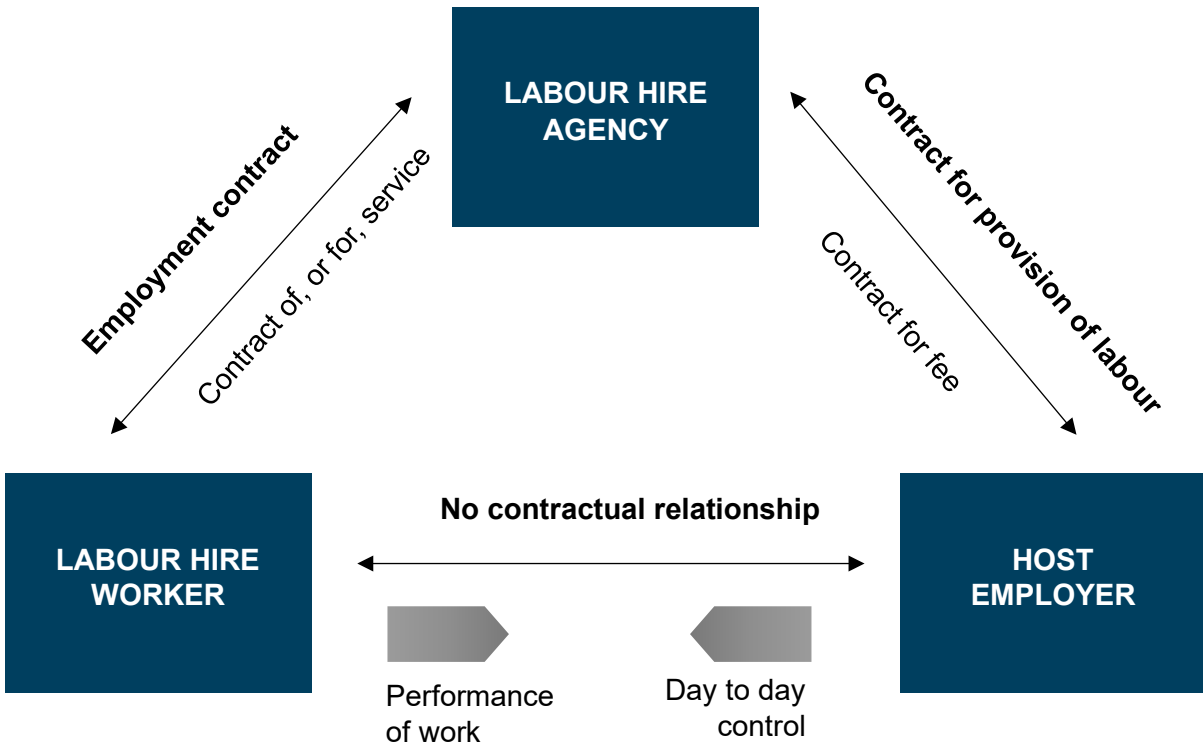
Description of labour hire arrangements

A labour hire arrangement is where a person is employed or engaged by a labour hire company that is supplied to, and is under the control of, a host employer.

The standard features of labour hire arrangements are illustrated below and include the following:

- the contractual and control relationships that normally apply to traditional contracts of service are split
- the worker may be under the direction or control of the host employer in relation to the performance of work, but is not engaged in any contractual or employment relationship with the host employer
- the worker is paid by the labour hire employer and has a direct contractual or employment relationship with them
- the host firm pays the labour hire employer (a contract fee) for the labour provided by the worker and also has a direct contractual relationship with the labour hire employer.

Figure 1: Standard Labour Hire arrangements



Obligation to cover workers

The Act defines labour hire employment as employment of an individual (the employee) under a contract of employment pursuant to which the services of the employee are temporarily lent or let on hire by the employer (the labour hirer) to another person (the host).

If employment is labour hire employment, the employee is a worker for the purposes of the Act. Many working arrangements are covered including full-time and part-time employees, casual employees, seasonal and piece workers, and certain contractors. The labour hirer (and not the host) is the worker's employer for work done personally by the worker for the host, but only if there is no contract between the worker and the host for the work to be done for the host.

Avoidance arrangements, or "sham contracting arrangements", are prohibited.

For more information about the definition of 'worker' and the types of employment required to be covered see the *WorkCover WA Explanatory Guide: Who is a Worker & Employer?* published at workcover.wa.gov.au.

Avoidance arrangements

The Act has protections for workers and sanctions for employers engaged in 'avoidance arrangements'. Avoidance arrangements are those that are contrived to enable an employer to have the benefit of a worker's services without having liabilities and duties as the worker's employer under the Act. It is an offence for an employer to engage in avoidance arrangements and the Act imposes a liability on employers to pay compensation to workers injured performing work under an avoidance arrangement.

This would apply if workers or contractors were asked to form their own company or sign agreements stating they are not employees or workers of the labour hire company, but the facts indicate otherwise.

Workplace health and safety obligations

Labour hire arrangements in WA are covered by the *Work Health and Safety Act 2020* (WHS Act) and associated regulations.

The primary duty of care under the WHS Act is owed by a PCBU to a 'worker', which includes a labour hire worker. All labour hire PCBUs and PCBUs who use labour hire workers (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.

For further information on labour hire PCBUs see:

<https://www.commerce.wa.gov.au/worksafe/labour-hire-arrangements>

Labour hire employer ID

The WorkCover WA Number (WCN) assigned to insured employers provides for labour hire companies to be identified. The labour hire indicator assists in monitoring labour hire insurance arrangements, claims experience and injury management performance.

Part 3: Remuneration declarations and industry classification for insurance purposes

Remuneration declarations

The Act requires employers when taking out and renewing a workers compensation policy to provide a declaration of aggregate remuneration in respect of workers employed or engaged by the employer. The declarations must be in the approved form and can be found on the WorkCover WA website:

- *IN1 - Declaration of estimated remuneration (for the forthcoming policy period)*
- *IN2 - Declaration of actual remuneration (for the previous policy period)*

Labour hire employers, like any other employer, must provide the remuneration declarations as and when required.

The following issues have been identified with some labour hire employers in the past:

- not declaring or under declaring remuneration, or encountering difficulties with accurately declaring remuneration
- declaring remuneration in an incorrect industry class
- declaring remuneration based on the position description of the worker rather than the correct method of using the classification associated with the host employer
- lack of appropriate records about supply of workers with host employers.

It is important that declarations of estimated and actual remuneration are calculated and declared accurately, as the declaration will affect the premium applied to the workers compensation insurance policy.

The WorkCover WA Remuneration Guidelines set out what constitutes 'remuneration' to assist employers to provide a remuneration declaration to their insurer when applying for the issue or renewal of a workers compensation insurance policy.

Non-compliance with remuneration declarations

It is important the information you provide in the remuneration declaration is accurate and does not contain any false, misleading or incomplete information.

If a labour hire employer provides a declaration or statement to an insurer that the insurer believes is false or misleading the insurer may require an audit to be undertaken of the labour hire business. The insurer may also recover underpaid premium where an employer has provided a false or misleading declaration or statement and as a result has been charged a lesser premium than would otherwise be payable.

An employer who fails to provide the remuneration declaration or provides information in the declaration that the employer knows to be false or misleading in a material particular also commits an offence.

A fine of up to \$10,000 in respect of each of the employer's workers to whom the offence relates may apply.

Industry classification and reporting

The *WorkCover WA Industry Classification Order* provides for the assignment of WorkCover WA premium rating codes (PRCs) to identify an employer's industry for the purpose of calculating premiums for workers compensation policies.

The industry based premium rating system is primarily based on the Australian and New Zealand Standard Industrial Classification coding system (ANZSIC 2006). The system identifies groups of businesses that carry out similar activities. There are 517 industry classes.

WorkCover WA publishes recommended premium rates corresponding to the 517 industry classes. The recommended premium rates provide a basis for assessing premiums at an industry level, though the actual amount of premium charged by insurers at the employer level is dependent upon a range of risk and commercial considerations.

For workers compensation premium rating purposes, all aggregate remuneration paid to workers by an employer in a particular industry is calculated at the same rate. An understanding of industry classification and WorkCover WA's PRC codes is therefore important as the remuneration declared at policy inception and renewal must correspond with the correct industry class. There are specific industry classification rules for labour hire arrangements.

PRC coding rules for labour hire

Different PRC industry classification rules apply to the following labour hire arrangements:

- labour hire employers supplying predominantly non-clerical staff to host employers
- labour hire employers supplying predominantly clerical staff to host employers
- workers engaged by a labour hire company to provide administrative services that support the operation of the labour hire company but are not supplied to a host employer, and
- companies whose predominant activity is recruitment and job placement services.

1. PRC for labour hire company supplying non-clerical workers to host employers

Where a labour hire company supplies workers (other than predominantly clerical staff) to a client host employer's business on a fee or contract basis and the work is performed under the supervision of the host employer or at the host employer's work site, the relevant PRC is the one that represents the predominant business activity of the host employer to which workers are supplied.

This category applies to most labour hire arrangements.

Example – non clerical workers supplied to a host employer

A labourer, project manager, engineer and accountant are supplied to a mineral exploration business. The appropriate industry classification is 10120 (Mineral Exploration) and all of the workers' wages would be assigned and declared under the same industry class.

The example above would apply where all workers are supplied to a single host employer, or a number of host employers, in the same industry class. In practice, labour hire companies generally service many clients in diverse industries and place large numbers of workers with large numbers of host employers. Where workers are supplied to host employers in diverse industries there will be multiple PRC codes that apply over the course of the labour hire company's insurance policy period.

To better understand the industry based premium rating system and to locate the appropriate PRC(s) associated with a host employer's predominant business activity refer to the PRC coding flowchart in section 5 of the *WorkCover WA Industry Classification Order*.

A host employer's PRC may also be confirmed with them (if they employ workers directly and therefore have a workers compensation policy).

Use the PRC code that applies to the predominant business activity of the host employer, not the occupation of the worker.

2. PRC for labour hire company supplying predominantly clerical workers to host employers

Where a labour hire company supplies predominantly clerical workers to a host employer's business on a fee or contract basis and the work is performed under the supervision of the host employer or at the host employer's work site, the relevant PRC is *72120 Labour Supply Services (Predominantly Clerical Staff)*.

Example – labour hire company supplies predominantly clerical staff to host client

A labour hire company specialises in supplying clerical staff (e.g. receptionists, office assistants) to host employers. The appropriate industry classification is *PRC 72120 Labour Supply Services – Predominantly Clerical Staff* and each worker's wages would be declared under *PRC 72120*.

Use PRC 72120 only if the labour hire company supplies predominantly clerical staff to host employers over the course of the insurance period.

3. PRC for providing administrative support to labour hire company but are not supplied to host employers

A labour hire company's staff that support the administration of the labour hire company and are not supplied to any third-party host employer, are to be classified under *PRC 72910 Office Administrative Services*.

Example – labour hire company's administrative and support staff

In addition to supplying workers to host employers, a labour hire company employs a number of staff including payroll staff, WHS officers, business development and client liaison officers to support and manage the operations of the labour hire company. These workers support the labour hire company and are not supplied to a host to undertake work. The appropriate industry classification is *PRC 72910 Office Administrative Services*.

Use PRC 72910 Office Administrative Services in relation to workers providing administrative and support services to the labour hire company.

4. PRC 72110 Employment Placement and Recruitment Services

This PRC applies to *Employment Placement and Recruitment Services (PRC 72110)*.

This applies to companies whose predominant business activity is recruitment and job placement services to either employers or potential employees, and includes the formulation of job descriptions, the screening and testing of applicants and the investigation of references. This is distinguishable from labour hire in that an employment placement and recruitment company does not have any employment relationship with the worker being placed.

Employment Placement and Recruitment Services (PRC 72110) should not be used by labour hire companies whose predominant business activity is supplying workers to a host employer.

Record keeping and reporting

Good record keeping practices are integral to providing accurate remuneration declarations that correctly apportion remuneration of workers placed with host employers with the relevant industry classification.

In the labour hire industry it is acknowledged the supply of workers may be short term, unknown in advance for some workers, or not align with the period of insurance cover.

Having effective records is particularly important for labour hire companies that supply large numbers of workers with host employers in diverse industries.

Maintaining a record of labour hire worker placements may assist with tracking the placement of workers with host employers, commencement and cessation dates, and remuneration paid relative to the placement and insurance period. The record may be a useful reference when making remuneration declarations. See template in Appendix 1.

It is a requirement under the Act that employers maintain records relating to the number of workers employed, the appropriate industry classification, and total remuneration paid or payable for each period of insurance. Records must be retained for not less than 7 years.

Key points – remuneration declarations and industry classification

- When declaring remuneration of labour hire workers, apportion the remuneration based on the relevant PRC(s) of the host employer(s).
- If, over an insurance policy period, a worker is placed with two or more host employers in different industries (PRCs), identify each host employer and PRC and apportion the worker's remuneration relative to the period of each placement and period of insurance cover.
- If, over an insurance policy period, a worker does not take up a placement or is subsequently placed with a different host employer and different PRC than previously declared, update the next declaration to account for the change.
- Do not deliberately understate remuneration or workers supplied to host employers when making declarations.
- Do not deliberately assign remuneration against an incorrect PRC code (for example, one with a lower recommended premium rate).

Part 4: Injury management and return to work

Labour hire employers have the same claim and injury management responsibilities as any other employer, including establishing and implementing injury management systems and return to work programs for injured workers.

Return to work programs

Return to work programs assist workers to return to work in a timely, safe and durable way. Return to work programs must be in the approved form as published on the WorkCover WA website:

- *IM1 Return-to-work program*

There is flexibility for return to work programs to meet the needs of employers and workers.

Maintenance of pre-injury position

Labour hire employers must keep an injured worker's pre-injury position available (unless it is not reasonably practicable to do so) for 12 months from the day on which the worker first has an incapacity for work.

If a worker does not have capacity to work in the pre-injury position over the 12-month period, or it is not reasonably practicable to provide the pre-injury position to the worker, the employer must provide a suitable position to the worker.

A suitable position is a position for which the worker is qualified, capable of performing and is comparable in pay and status to the worker's previous position.

A worker cannot be dismissed solely or mainly due to the worker's incapacity for work and cannot be dismissed for any reason unless the employer has given the worker notice in the approved form at least 28 days before the dismissal takes effect. See approved form:

- *CN8 – Intention to dismiss worker*

Cooperation between labourer hire and host employer

It is recognised that labour hire employers may be dependent upon host employers for assisting with the labour hire employer's injury management and return to work obligations.

The workers compensation legislation does not transfer the compensation or injury management obligations of labour hire employers to host employers.

However, if a worker has an incapacity for work as a result of an injury from employment for work done for the host, the host is required to cooperate with the labour hire employer to assist them to comply with their obligations to establish and implement a return-to-work program and provide the pre-injury position or a suitable position.

Cooperation and participation of the host employer can be a significant factor in facilitating an injured worker's return to work.

The following are examples of how a host employer can cooperate with the labour hire employer and its insurer, and participate cooperatively in the return to work process:

- respond as soon as possible to the labour hire employer's request for cooperation
- provide information to the insurer of the labour hire employer regarding the injury and how it occurred (and, if necessary, authorising witness statements to be provided by the host employer and its employees)
- provide the labour hire employer with a nominated workplace contact for return to work issues
- provide the labour hire employer and other parties involved in the return to work process with reasonable access to the workplace
- be available for discussions initiated by the labour hire employer on providing duties, return to work planning and consultation
- provide the labour hire employer with information regarding progress of the injured worker's rehabilitation and their return to work duties
- explore with the labour hire employer options for providing suitable duties at the host's workplace, consistent with the injured worker's capacity
- explore solutions with the labour hire employer that address barriers to the injured worker's return to work
- provide reasons to the labour hire employer for a decision to not provide the injured worker with suitable duties.

