

Labour hire and return to work

Labour hire workers, also known as 'on-hire workers', are paid by a labour hire employer, but work at organisations referred to as 'host employers'. Labour hire employers and host employers each have legal responsibilities to protect the health and safety of labour hire workers, as well as return to work obligations under the *Accident Compensation Act 1985* (the Act).

A host employer must, to the extent reasonable, cooperate with the labour hire employer in meeting the labour hire employers return to work obligations and facilitating a worker's return to work. Assisting workers back to work can help increase productivity and benefits the worker by reducing the financial and health impacts on them and their family.

The Act does not transfer the duties of the labour hire employer to the host employer.

This fact sheet contains information to assist **labour hire** and **host employers** meet their legal obligations and return injured workers to work.

Return to work obligations under the Act

Labour hire employer obligations

The **labour hire agency** must:

- provide their worker with suitable and pre-injury employment for a minimum of the employment obligation period
- plan for their worker's return to work
- assess and propose options for suitable employment
- consider reasonable workplace support, aids or modification to assist their worker's return to work
- provide their worker with clear, accurate and current details of the return to work arrangements
- monitor their worker's progress
- consult with their worker, their worker's doctor or healthcare provider and/or occupational rehabilitation provider, if one is involved, about their worker's return to work
- nominate a Return to Work Coordinator who has an appropriate level of seniority and is competent to assist them in meeting their return to work obligations
- make specific return to work information available to all workers, including information about the employer's return to work obligations and how they will meet these

Host employer obligations

If a worker's injury was caused while let on hire to the host employer, the **host employer** must to the extent reasonable:

- cooperate with the labour hire employer to meet their obligations to provide employment, plan return to work and consult about their worker's return to work

While every host employer's circumstances are different, the following are examples of how host employer can cooperate with a labour hire employer:

- immediately notifying the labour hire employer if the worker is injured
- providing the labour hire employer with a nominated workplace contact for return to work issues
- providing the labour hire employer and other parties involved in the return to work process with reasonable access to the workplace, if required, to facilitate the worker's rehabilitation and return to work
- being available for discussions initiated by the labour hire employer about providing suitable or pre-injury employment, return to work planning and consultation
- providing the labour hire employer with information regarding the worker's return to work and rehabilitation progress where the worker is performing suitable or pre-injury employment

When cooperating with the labour hire employer on return to work activities, the host employer must also be mindful to comply with privacy laws regarding the worker's confidential information.

Factors affecting host employer cooperation

In deciding whether a host employer has, to the extent reasonable, cooperated with a labour hire agency, a variety of factors will be taken into account. The following are factors that may impact on the host employer's ability to cooperate with a labour hire agency:

- the nature of the labour hire arrangements
- support provided by the labour hire employer for their worker's rehabilitation and return to work
- cooperation of the labour hire employer with the host employer
- whether the host employer has access to relevant information from the labour hire employer. For example, the worker's medical restrictions or information regarding suitable duties from the worker's doctor or healthcare provider
- the availability of suitable and pre-injury employment within the host employer's workplace
- the host employer's financial circumstances and the estimated cost of providing the worker with suitable employment

What to do if a host employer is not cooperating in return to work

If a labour hire employer believes that a host employer is not cooperating with them to the extent that is reasonable, they can talk to their WorkSafe Agent or contact the WorkSafe Advisory Service.

Employer penalties

Labour hire and host employers who breach their return to work obligations risk financial penalties and possible prosecution. These can be penalties up to 180 penalty units for a natural person and up to 900 penalty units for a body corporate per offence. For more details on penalty units, visit the WorkSafe website worksafe.vic.gov.au.

Further information

The following WorkSafe publications can provide further information:

- *What to do if a worker is injured – A guide for employers*
- *Host Employers: Managing the safety of labour hire workers*
- *Labour hire agencies: Managing the safety of on-hired workers.*

You can also:

- contact your Agent
- visit our website at worksafe.vic.gov.au
- call the WorkSafe Advisory Service on **(03) 9641 1444** or freecall **1800 136 089**
- email info@worksafe.vic.gov.au
- contact your industry group representative