



Government of Western Australia
Department of Mines and Petroleum
Resources Safety

MINES SAFETY AND INSPECTION ACT – WHAT EMPLOYEES AND EMPLOYERS NEED TO KNOW

Duty of care – labour hire industry

What is labour hire?

Labour hire refers to the arrangement where a host organisation or person (the client) engages workers from an organisation that specialises in providing labour (the labour hire agency or agent).

The arrangement is characterised by:

- an agreement for remuneration between the client and the agent regarding the supply of a worker to carry out work for the client
- an agreement, which may be a contract of employment, between the agent and the worker to carry out work for the client
- no contract of employment between the client and the worker.

An agent is a person who conducts a business that provides workers, who can be employees or contractors, to carry out work for another employer. This includes a group-training organisation as defined in section 7(1) of the *Industrial Relations Act 1979*.

Labour hire workers are required to perform their tasks for a client, usually under the client's direction.

For example, labour may be hired to operate machinery or equipment owned by the mine, under the supervision of the mine manager and other staff.

Does a labour hire worker have fewer safety rules to follow?

There is sometimes a misunderstanding that engaging a worker through a labour hire agent involves fewer safety and health obligations. However, both the agent and the client have the same general duties of care as those applicable to an employer in areas that each has the capacity to control.

Under contract labour arrangements, where a labour hire organisation provides workers to work at a mine, the client is deemed to be the employer in matters over which it has control.

This means the client is ultimately responsible for the employer's duty of care to the hired workers.

So who is ultimately responsible for safety?

The client is required to provide and maintain a mine working environment where no workers are exposed to hazards.

This includes providing and maintaining safe workplaces, plant and systems of work at mine sites, as well as information, instructions, training and supervision so that employees can work without being exposed to hazards.

Necessary personal protective clothing and equipment must be provided at no cost to employees.

The use, cleaning, maintenance, transportation and disposal of plant and substances must also

be carried out in ways that ensure employees are not exposed to hazards.

In addition, the client must consult and cooperate with any safety and health representatives and other employees regarding occupational safety and health at the mine.



What are the agent's responsibilities?

The labour hire agent is responsible for ensuring the worker is physically and mentally able and competent to do the work specified by the client. Although it is recognised that the agent will not have day-to-day control of the work at the client's workplace, the agent's responsibilities do not stop simply because the work is not carried out at his or her own workplace.

There is much the agent can do, including:

- verifying and matching training, skills and experience of the worker to the needs of the task
- providing general induction and arranging specific induction relevant to the task and the plant to be used at

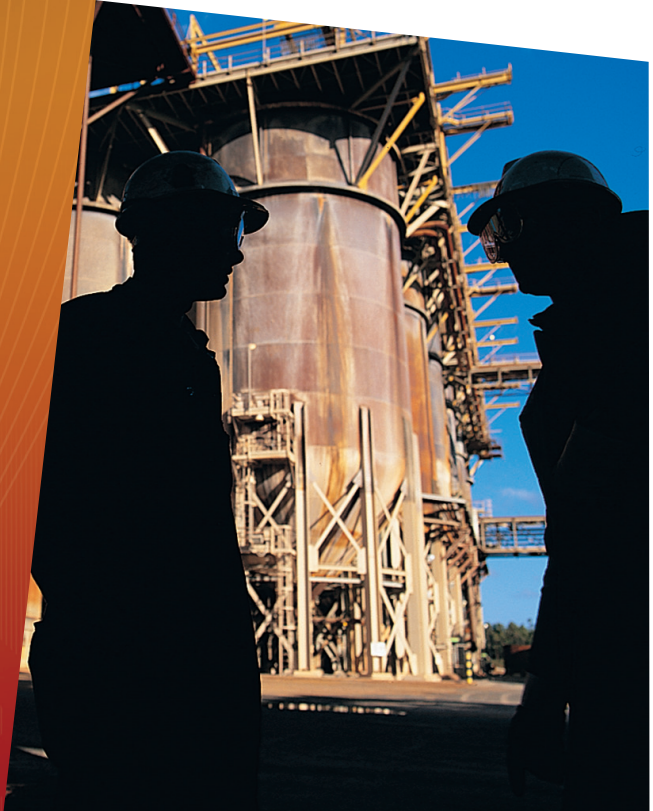
the client's workplace

- ensuring any change of duties does not present a hazard to the workers
- ensuring the supply of information and training so the workers know how to safely carry out their activities
- verifying that the minesite has satisfactory safety and supervisory systems in place to protect the workers
- regular communication with the workers to check they are satisfied with their environment.

What are the client's responsibilities?

The client usually has day-to-day control of the labour hire worker, so there is a lot the client can do to ensure a safe workplace, including:

- ensuring the work environment is safe, including plant and equipment, systems of work and all other matters under the client's control
- providing specific induction for the tasks to be undertaken and the plant to be used
- notifying the agent if any change is being considered
- providing adequate on-site supervision
- ensuring the work of employees does not harm the safety and health of the labour hire workers
- reporting notifiable injuries and diseases to Resources Safety.



What are the worker's responsibilities?

A worker in a labour hire arrangement has the same general duties of care as those of an employee. Workers must take reasonable care of their own safety and health, and that of others in the workplace.

The Act does *not* allow people to contract out of their responsibilities. You cannot formally or informally pass on to someone else your duty of care responsibilities as an employee, contractor, agent, employer or principal.

You always have a duty of care for yourself and those you work with and/or employ.



Want to know more?

For information on safety and health in the mining industry, look at the Resources Safety website at www.dmp.wa.gov.au/ResourcesSafety

The *Mines Safety and Inspection Act 1994* and Mines Safety and Inspection Regulations 1995 are available from the State Law Publisher's website at www.slp.wa.gov.au

The information in this brochure is intended as a general guide only. The relevant Acts and regulations should be consulted for detailed information, or contact your regional inspectorate.

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Revised and reissued July 2011