OVERVIEW

The [Workers Compensation Act 1951](https://act.gov.au/workers-compensation) (the WC Act) aims to provide 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 WC 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.

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:

- during the course of employment; or
- by any incident arising out of employment; or
- 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.

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

In accordance to section 31 of the WC 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 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; and
- payroll companies (if an associated entity).

OBLIGATIONS OF AN EMPLOYER CANNOT BE CONTRACTED OUT

Within the territory, it is known that many labour hire companies engage payroll companies utilising contracts that require payroll companies to agree to be the employer and that they supplied the worker to the labour hire company. These contracts then purport that the payroll company is the employer of the worker. In accordance with the WC Act the obligations of the employer cannot be contracted out and these contracts are 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; or

(b) a liability imposed on an employer under this Act.

Where these entities make arrangements with a worker (i.e.: a software engineer) to work directly for someone other than the actual labour hire company (i.e.: 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 will usually be deemed to be the employer under the Act.

In addition to the above, 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 the “labour hire company” and is the employer.

Where a labour hire company (Labour Hirer 1) “on hires” a worker to another labour hire company (Labour Hirer 2) such that the worker works under a contract of service at Labour Hirer 2’s client site (the Host Organisation), those labour hirers 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 Labour Hirer 1 has no employer responsibilities.
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 acts purely to find and place a worker with an employer for a fee, and where the employer then forms a contractual employment relationship direct between the employer and the worker who is not performing work for the labour hire company, the labour hire company 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 a number of 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 then arranges a contract of service or a contract for services for the worker to work at the government agency site. The government agency does not form contractual relationships with the worker.

The labour hire company is the employer for the purpose of obtaining compulsory workers’ compensation insurance for that/those workers under the contract with the government agency.

**Example 3 - A payroll company being an associated entity supplies labour to a government agency for IT project**
A government agency identifies that it requires the services of a number of information technology project managers 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, which includes the associated payroll company, being an entity of a labour hire company, of its need for project managers with specific skills and experience.

The labour hire companies, and the associated payroll company 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 the associated payroll company (as labour hire) to supply one or more specified workers.

The associated payroll company then arranges a contract of service with the specified individual to work at the government agency site. The government agency does not form contractual relationships with the workers.

The associated payroll company would be the employer because it is acting as a labour hirer. That payroll company would be the employer for the purpose of obtaining compulsory workers’ compensation insurance.
Example 4 - A labour hire company requires a payroll company to deliver payroll services 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 either chooses a payroll company 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 labour hire company to provide payroll as a service to the worker for the labour hire company.

In this example:

- The labour hire company has a contract with the host organisation to supply the specified worker.
- The worker has a contract of service or a contract for services with the labour hire company to work at the host organisation.
- The payroll company is not the “employer” because (amongst other things):
  - It has no relationship with the host organisation or receive the benefit of the worker’s services.
  - It has no control over the worker.
  - It 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).
  - It has no knowledge of work being done.
  - It 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 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 is not the employer and should not take out workers compensation insurance to cover another employer’s worker/s.

Example 5 – 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 in this example, not operating as a labour hire company, is an example of encouraging another company to reduce or avoid its employer obligations for workers compensation.

The labour hire company 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 should not take out workers compensation insurance for workers not under their control. Should the payroll company use any form of deceptive means to obtain workers compensation insurance, the policy could be void, the labour hire company would remain the employer and be accountable for all costs if the worker is injured.
An example for a payroll or labour hire company of deceptive means would be where, say, a firm establishes numerous companies and is the sole point of contact that coordinates all employer obligations for those other companies, including arranging the casual employment of another employer’s workers in one of the companies in an attempt to transfer the liability for obtaining compulsory workers’ compensation insurance from the 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 be accountable for all costs should the worker be injured.

Example 6 – 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 reasons in Example 5 above.

The large national company or multinational is the employer for the purpose of obtaining compulsory workers’ compensation insurance no matter what form of contract is used in an attempt to contract out their liabilities.

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

Should you require further information or require further clarification on this publication, please contact WorkSafe ACT on 6207 3000.

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.