

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 statements 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.



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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 workers paid under an industrial award or agreement, casual workers, and contractors who are remunerated in substance for personal manual labour or services.

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

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 a wage declaration to the relevant workers' compensation insurer.

Good record keeping practices are integral to providing accurate wage declarations. Do not deliberately understate the number of workers supplied to host employers or the amount of wages paid to workers when making declarations.

It is important that estimated and actual wages are calculated and declared accurately. The provision of false wage declarations is an offence and lost premium can be recovered.

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

It is acknowledged there is some confusion and inconsistency in the way labour hire is being classified for premium rating purposes.

When declaring wages of labour hire workers, you should apportion the wages based on the Premium Rating Classification(s) that represents the **predominant business activity of the host employer to which workers are supplied.**

GUIDELINES FOR LABOUR HIRE EMPLOYERS

These Guidelines set out the labour hire coding rules and include templates to assist with wage declarations and apportioning wages based on the Premium Rating Classification(s) of host employers.

Labour hire employers, brokers and insurers should become familiar with the Premium Rating Classification codes for labour hire, described in the Guidelines. A transitional period will apply to ensure all parties have sufficient time to modify systems to report correctly. It is expected new and renewed policies comply with the premium rating classification rules from 1 July 2020.

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, if reasonably practicable, for 12 months from the date of incapacity, or providing suitable duties if the pre-injury position cannot be performed.

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.

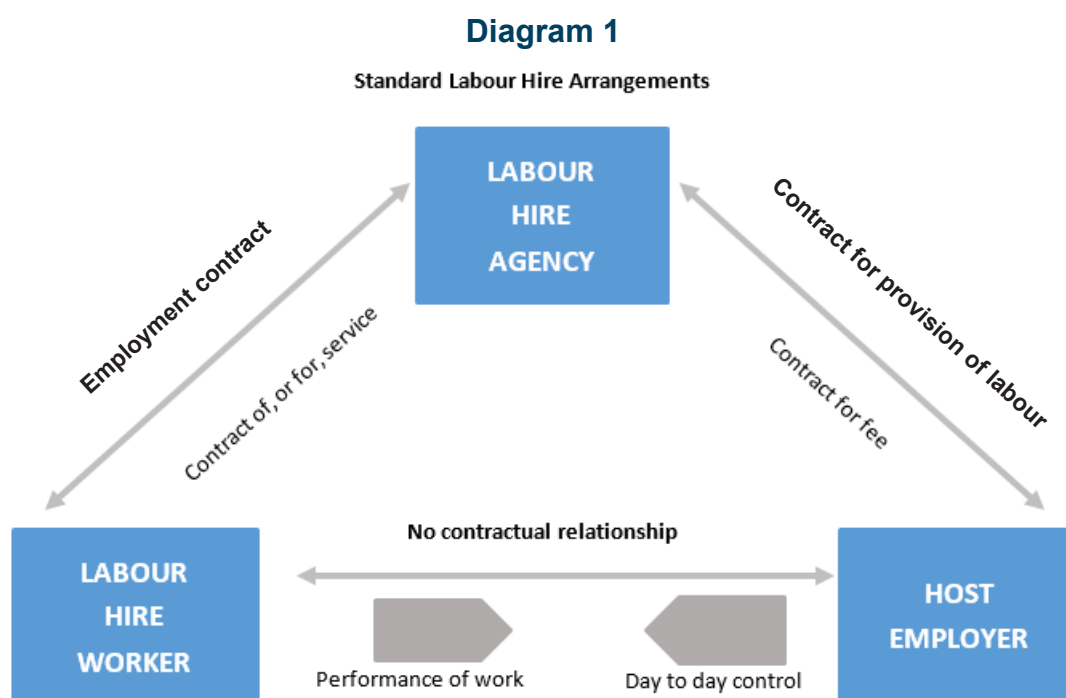
Labour hire employers and coverage of workers

Description of labour hire

The type of labour hire arrangement referred to in these Guidelines involves a triangular relationship in which a labour hire employer supplies the labour of a worker to a “host” employer for an agreed fee.

The standard features of this type of labour hire arrangement are illustrated in Diagram 1 and include the following:

- the contractual and control relationships that normally apply to traditional contracts of service are split
- the worker is 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, and
- 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.



Obligation to cover workers

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

Labour hire businesses are required to hold workers' compensation insurance where there is in existence a contract of, or for, service between the labour hire company and the worker. The contract may be express or implied.

Many working arrangements are covered including workers paid under an industrial award or agreement, casual workers, and contractors who are remunerated in substance for personal manual labour or services.

Labour hire businesses also have an ongoing liability where the services of a worker are temporarily lent or let on hire to another person. This applies to most typical labour hire arrangements involving the supply of labour to a host employer.

For more information about the definition of 'worker' and the types of employment required to be covered see ['Covering your Workers'](#) or watch our [educational videos](#) available under the 'Resources' section of the WorkCover WA website.

Avoidance arrangements

The workers' compensation legislation in WA 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, safety and health obligations

Labour hire employers and host employers both have responsibilities under Western Australian (WA) workplace safety and health legislation for the safety of labour hire workers. A labour hire employer cannot 'pass on' its legal duty of care, even if the host employer agrees to this.

The same general duties of care that apply to an employer under WA Occupational Safety and Health (OSH) laws apply to both the labour hire employer and the host, in relation to matters over which each has the capacity to exercise control. Even though the labour hire employer will not always have direct control or management of the workplaces involved, the duty of care remains as an employer to its workers.

For further information see OSH and Labour Hire Workers at:

https://www.commerce.wa.gov.au/sites/default/files/atoms/files/labour_hire_2013.pdf

Labour hire employer ID

The WorkCover WA Number (WCN) assigned to insured employers has been modified so that labour hire companies can be identified. The labour hire indicator will assist in monitoring labour hire insurance arrangements, claims experience and injury management performance.

Wage declarations and industry classification for insurance and premium assesment

Labour hire employers must take out and maintain a workers' compensation insurance policy to cover their workers.

As part of the process of taking out and renewing insurance employers must submit a wage declaration to the relevant insurer.

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

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

Wage declarations

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

When the policy period expires, an employer must submit a declaration stating the actual gross wages paid in the prior insurance period, and an estimate of wages for the next insurance period.

The term 'wages' includes:

Gross wages, salaries, remuneration, commissions, bonuses, overtime, allowances and the like, directors fees, superannuation contributions (except those made by force of law), all other benefits paid (whether at piecework rates or otherwise, and whether paid in cash or in kind) to or in relation to a worker before deduction of income tax.

Non-compliance with wage declarations

If a labour hire employer provides a declaration or statement to an insurer that the insurer believes is defective the insurer may require an audit to be undertaken of the labour hire business.

The provision of statements that an employer knows are false is an offence and may result in prosecution.

Additionally, WorkCover WA may recover underpaid premiums where an employer has wilfully or inadvertently understated the aggregate wages or the number of workers engaged.

Industry classification and reporting

Western Australia has an industry based premium rating system for workers' compensation insurance. The Premium Rating Classification (PRC) codes which are used by WorkCover WA to code employers' industries are adapted from the 2006 edition of the Australian and New Zealand Standard Industrial Classification (ANZSIC) Coding System. 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 premium 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 wages paid to workers by an employer in a particular industry are calculated on the same rate. An understanding of industry classification and WorkCover WA's PRC codes is therefore important as the wages 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.

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

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.

A sample declaration showing wages declared against multiple PRCs can be found at Appendix Three.

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 support tools on WorkCover WA's website.

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

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*.

N.B – 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, OHS 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*.

N.B – 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.

N.B – 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 wage declarations that correctly apportion wages 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.

The following templates will assist labour hire companies with their reporting obligations, and to make accurate declarations and account for any variations in wages and host employer PRCs.

- *Labour Hire Worker Placement Log* – see template in Appendix One. This assists with tracking the placement of workers with host employers, commencement and cessation dates, and wages paid relative to the placement and insurance period.
- *Labour Hire Wage Declaration and Premium Rating Classification* – see template in Appendix Two and sample in Appendix Three. This assists with the provision of the wage declaration and is what insurers would expect to see when the labour hire employer is taking out or renewing workers' compensation insurance. It identifies the host employer(s) business name, the relevant PRC(s), and the aggregate wages corresponding to each PRC.

Key points – wage declarations and industry classification

- ✓ When declaring wages of labour hire workers, apportion the wages 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 wages 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 wages or workers supplied to host employers when making declarations.
- ✓ Do not deliberately assign wages against an incorrect PRC code (for example, one with a lower recommended premium rate).

Injury management and return to work

Key compensation and injury management obligations

Labour hire employers have the same claim and injury management responsibilities as any other employer under the workers' compensation legislation.

The following are mandatory requirements for labour hire employers:

- establish an [Injury Management System](#)
- forward claims to the insurer within five days
- commence making income replacement payments (weekly payments) as soon as advised to do so by the insurer, and continue to make payments on the worker's usual pay days
- establish and implement return to work programs for injured workers
- keep the injured worker's pre-injury position available, if reasonably practicable, for 12 months from the date of incapacity, or provide suitable duties if the pre-injury position cannot be performed, and
- notify the worker and WorkCover WA if the employer intends to dismiss the worker within 12 months from the date of incapacity for work.

Return to work programs and suitable duties

The [Workers' Compensation Code of Practice \(Injury Management\) 2005](#) (the Code) outlines the requirements for the establishment, content and implementation of Return to Work Programs. The Return to Work Program must include:

- the labour hire employer's business name and the name of the injured worker
- a description of the goal of the program
- the actions to be taken to enable the worker to return to work and who is to take them
- a statement as to whether the worker agrees to the content of the program.

As a minimum, the labour hire employer must ensure the content of the Return to Work Program meets the requirements of the Code. A labour hire employer may include additional arrangements to suit their particular business.

A [*Template Return to Work Program*](#) is available to assist in developing an appropriate program.

Labour hire employers must keep an injured worker's position available during the worker's incapacity (where reasonably practicable) for 12 months from the day the worker is entitled to receive weekly payments.

If the injured worker attains partial or total capacity to work during this time, the labour hire employer must provide their original position (where reasonably practicable), or another of equal status and pay for which they are qualified and capable of performing.

It is recognised that labour hire employers may be dependent upon host employers for meeting this requirement, and host employers may be reluctant to take a worker on unless fully fit for work.

Labour hire employers and host employers are strongly encouraged to work cooperatively in the return to work process (see below for expectations of host employers).

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

Expectation of host employers

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

However, if an injury occurred while a worker was supplied to a host employer the host should cooperate with the labour hire employer and its insurer in relation to the worker's claim, injury management and return to work.

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 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, and
- provide reasons to the labour hire employer for a decision to not provide the injured worker with suitable duties.

Appendix 1

Labour Hire Worker Placement Log - Template						
Policy period (1 July - 30 June)						
Worker Name	Host employer business name	Host employer premium rating classification	Date worker commenced with host	Date worker ended placement with host	Estimated total wages [year]	Actual total wages [year]

Appendix 2

Labour Hire Wage Declaration and Premium Rating Classification (PRC) – Template

To be completed at inception and renewal of workers' compensation insurance

Name of Labour Hire Company:

Host employer(s) business name	PRC & description	Estimated total wages 2018/19	Actual total wages 2018/19	Estimated total wages 2019/20	Comments/notes on variations

Appendix 3

Labour Hire Wage Declaration and Premium Rating Classification (PRC) - Sample

To be completed at inception and renewal of workers' compensation insurance

Name of Labour Hire Company:

Host employer(s) business name	PRC & description	Estimated total wages 2018/19	Actual total wages 2018/19	Estimated total wages 2019/20	Comments/ notes on variations
	24620 - Mining and Construction Machinery Manufacturing	\$2,300,000	\$3,000,000	\$3,000,000	More workers supplied to meet demand
	24690 - Other Specialised Machinery and Equipment Manufacturing	\$200,000	\$200,000	\$200,000	
	22930 - Metal Coating and Finishing	\$0	\$0	\$400,000	New host employer
	09110 - Gravel and Sand Quarrying	\$156,200	\$60,320	\$0	Host employer required only 2 workers for 6 months in prior year, rather than 12 as estimated
	22210 - Structural Steel Fabricating	\$0	\$310,000	\$350,000	2 new host employers; 5 workers engaged post estimate in prior year
	22220 - Prefabricated Metal Building Manufacturing	\$0	\$660,000	\$800,000	3 new host employers; 8 workers engaged post estimate in prior year
	72910 - Other Administrative Services	\$435,000	\$435,000	\$500,000	Own staff