



On-Hire Employees – Your Responsibilities as the host employer

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If you are engaging workers via the on-hire employee services industry (also known as labour hire or agency employees), then you need to be aware of your responsibilities as the host employer.

The on-hire business, as the employer, is responsible for meeting all of the employment entitlements of the employee. However, both the on-hire business and host organisation have obligations in relation to workplace health and safety. Similarly, host organisations have obligations under State and Commonwealth legislation to ensure on-hire employees are not subjected to discrimination and sexual harassment, as well as obligations under the *Fair Work Act* in relation to general workplace protections, including unlawful workplace discrimination.

As a host organisation you need to be aware that you could be liable for contraventions of the *Fair Work Act* (*Section 550 – Involvement in Contravention Treated in Same way as Actual Contravention*). For example, if an on-hire employee not receiving their entitlements under the NES or modern award.

As a host organisation, you need to ensure your on-hire company is paying the correct entitlements ie wages, overtime, penalties etc. It is not good enough or acceptable to say 'I just pay a lump sum off a tax invoice every month' – ignorance is not a defense. As per the following section of the *Fair Work Act* below:

550(2) A person who is **involved in** a contravention of a civil remedy provision if, and only if, the person:

(c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention;

You are still responsible to ensure the on-hire company are paying the correct wages as per the identified industrial instrument. Otherwise, if they are not correctly paying you could find your business involved in civil or criminal proceedings. For more information on workplace obligations regarding on-hire employees click on the following link:

<http://www.fairwork.gov.au/about-us/policies-and-guides/fact-sheets/rights-and-obligations/on-hire-employee-services-workplace-obligations>

How can I protect my business?

If you do enter into an agreement with an on-hire business for the supply of on-hire employees you need to have in place a 'Service Agreement'. These agreements, in addition to other items, can simply outline the responsibilities of both parties to the agreement, the industrial instrument applicable and the method for invoicing and payment. Most legitimate on-hire companies should have a document that they use for these agreements, if not contact Briskmark and we can supply your business with a sample document you can use to adapt for your particular needs.

Click on the following link for information re a recent case involving Coles and their trolley collector sub-contractors:

<http://www.fairwork.gov.au/about-us/news-and-media-releases/2014-media-releases/october-2014/20141007-coles-eu-presser>