



On-hire employee services - workplace obligations

On-hire employee services and the national system

Most private sector employers throughout Australia (excluding sole traders, partnerships and other unincorporated entities in Western Australia) fall under the national workplace relations system and are covered by the *Fair Work Act 2009*. This affects employer and employee rights and obligations.

This guide has been prepared to assist employers of on-hire employees (also known as labour hire or agency employees) and their clients to understand minimum obligations under the *Fair Work Act 2009* and awards and how they apply to on-hire employees and their employers.

This guide does not provide information about on-hire workers that are engaged as independent contractors. Further information for contractors is available at www.fairwork.gov.au/contractors.

The on-hire employee services industry includes businesses that employ workers and provide a service to other organisations (host organisations) by assigning those workers to perform work for that host organisation. The host organisation pays the on-hire business a fee for providing on-hire employees to work for them. On-hire employees are employed by the on-hire business; they are not employees of the host organisation.

As the employer, the on-hire business is responsible for ensuring employees receive their minimum employment entitlements at all times.

How do awards and agreements apply to on-hire workers?

On-hire employees will be covered by the relevant award and the National Employment Standards (NES) regardless of the employment arrangements that are in place at the host organisation. On-hire employees will not be covered by an enterprise agreement made between a host organisation and its own direct employees unless the on-hire business itself is a party to the agreement.

An on-hire business may have its own enterprise agreement which will apply to an on-hire employee if it covers the work they perform. Depending on the provisions of the enterprise agreement, it may replace the provisions of the award.

On-hire businesses may provide similar terms and conditions as those contained in a host organisation's enterprise agreement. However the on-hire business must still ensure the

on-hire employees receive at least the minimum entitlements in the relevant award and NES or, where the on-hire business has its own enterprise agreement, that agreement. Put simply, an on-hire business cannot legally apply a host organisation's enterprise agreement in all circumstances.

Example 1

Alice runs an on-hire business supplying employees to the manufacturing and construction industries. Previously, Alice's employees were award free, and she paid them based on the employment arrangements in place at the host organisation.

From 1 January 2010, Alice's employees became covered by the NES and the relevant award that applies to the work they perform. Alice checks the rates of pay and entitlements of all her on-hire employees to ensure they are receiving their minimum entitlements under the NES and awards. Alice finds that her current employment arrangements meet all the minimum requirements and she decides to continue paying her employees based on the host organisation's arrangements. Alice should review her employment arrangements regularly to ensure they continue to meet the minimum requirements in the awards and NES.

Obligations of host organisations to on-hire workers

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 organisations have obligations in relation to workplace health and safety. Workplace health and safety is regulated by state and territory workplace health and safety authorities. For further information about workplace health and safety, please contact your state or territory workplace health and safety authority.

Similarly, host organisations have obligations under State and Commonwealth equal opportunity legislation to ensure that on-hire employees working in their workplaces are not subjected to discrimination or sexual harassment.

Host organisations also have obligations under the *Fair Work Act 2009* in relation to general workplace protections, including unlawful workplace discrimination.

Host organisations should be aware that they may be liable for contraventions of the *Fair Work Act 2009* (such as an on-hire

employee not receiving their entitlements under the NES or award) if they are involved in the contravention. Involvement in a contravention can include inducing the contravention through threats or promises, being knowingly concerned in or party to the contravention, or conspiring with others to bring about the contravention.

Example 2

Alex owns an on-hire business supplying staff to a wide range of service industries. Alex assigns workers to a new client and pays them in accordance with the applicable award. The client discovers that the overtime rates being paid to Alex's on-hire employees are more beneficial than those being paid to the host organisation's employees under the host organisation's enterprise agreement. The host organisation threatens to terminate the contract for supply of on-hire services unless Alex agrees to pay his on-hire employees the rate contained in their own enterprise agreement, despite this being a contravention of the award.

The host organisation may be contravening the *Fair Work Act 2009* for coercing Alex to pay his on-hire employees less than the award, and could be subject to civil penalties.

Minimum entitlements for on-hire workers

The *Fair Work Act 2009* establishes a safety net of employee entitlements with the NES and awards. Employees in the on-hire industry who are covered by the national workplace relations system are entitled to the minimum conditions in the NES and the relevant award or enterprise agreement.

Employees must receive at least the minimum entitlements in the NES at all times. The minimum entitlements in the NES prevail over any instrument (including an award, agreement, former state award or state agreement or contract of employment) that is less beneficial than the entitlements under the NES.

Most industries are also subject to an award. Awards are industry or occupation-based, and apply to employers and employees who perform work covered by the award.

Most awards provide coverage for on-hire workers. In general, on-hire workers will be covered by the award that applies to the type of work that they perform.

Example 3

Jim is employed by an on-hire business. Jim's employer assigns him to a supermarket to perform general retail duties such as serving customers and replenishing stock on the shelves. While working at the supermarket, Jim would be entitled to the minimum rates of pay and conditions in the General Retail Industry Award. If Jim's employer later assigned him to a hospitality business, such as a hotel, Jim would be entitled to the minimum rates of pay and conditions in the Hospitality Industry (General) Award.

Employers in the on-hire industry should ensure they are keeping appropriate written records, such as pay slips and time and wage records. The records must be legible, in English and be kept for seven years.

Further information

The Fair Work Ombudsman has a number of tools available to calculate base rates of pay for most awards. These tools, along with some information provided by you, can quickly and easily help you find the right pay. Visit www.fairwork.gov.au/pay for further information, or contact the Fair Work Infoline on 13 13 94.

The Australian Building & Construction Commission (ABCC) can provide information and advice to building industry participants and investigate contraventions of relevant workplace laws in the building and construction industry. On-hire businesses and employers in the building and construction industry can contact ABCC on 1800 003 338 or visit www.abcc.gov.au.

Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: **13 13 94**

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