

Draft guidance for small and medium size businesses in agriculture and related industries on employing temporary & migrant workers

TERMS USED

Employer – not defined at law but commonly held to be a person or corporate entity who hires the services of another person (an employee or worker)

Employment Agency and Employment Business – as defined for the purposes of the Employment Agencies Act 1973 and associated regulations. Further information can be found at:

www.dti.gov.uk/employment-agencies/know-your-rights

Gangmaster – a term commonly associated with agriculture and the processing of agricultural produce. A person acts as a gangmaster if he supplies a worker to another person to do work to which the Gangmasters (Licensing) Act 2004 applies. Further information can be found on the Gangmasters Licensing Authority website at [:www.gla.gov.uk](http://www.gla.gov.uk)

Labour Provider – a person or corporate entity that supplies workers to a third party. The provider may be an employment agency or business or a gangmaster.

Labour User – a person who hires or uses workers supplied by a third party.

1. CONTRACTURAL RELATIONSHIPS

Key Message(s)

Who is responsible for the health and safety of temporary and migrant workers?

Need to agree and clarify the relationship and responsibilities for health and safety between the labour user and any labour providers.

Issues:

- Do you directly employ temporary (including migrant) workers or is your workforce (or part of it) supplied by an employment agency, employment business, gangmaster or other form of labour provider?
- Is the labour provider based in the UK or abroad?
- Employment Agencies and Employment Businesses have specific legal responsibilities under the Conduct of Employment Agencies and Employment Businesses Regulations 2003 to provide information to businesses, which use their workers.
- Both labour providers and hirers (labour users) need to do the following to protect their workers:
 - Check before they start at the workplace that they have any special occupational qualifications or skills needed for the job.
 - Check the language skills of workers before they start work – in particular their understanding of written and spoken English.

- Check what information and training will be provided at the workplace, and in what format, to ensure that it is appropriate for the workers being supplied.

2. RISK ASSESSMENT

Key Message(s)

Risk assessment is the key to effective management of health and safety and is a legal requirement.

Effective management of workplace risks reduces the potential of accidents and ill health that can not only ruin lives but also affect your business if output is lost, or plant and machinery damaged. Even if the injury(ies) are not serious, they can result in a significant increase in insurance costs and may result in you being taken to court

Issues:

- An assessment of risk is no more than a careful examination of what, in your workplace, could cause harm to people. It allows you to weigh up whether you have taken enough precautions or need to do more to prevent harm. The aim is to make sure that no-one gets hurt or becomes ill.
- Make sure before they start work that that the risks to which temporary (and migrant) workers are likely to be exposed whilst working for you have been carried out.
- Make sure the assessments take account of the needs of non-UK nationals, in particular of:
 - language issues
 - basic competencies including literacy, numeracy, physical attributes, general health, relevant work experience etc. and
 - issues of compatibility/equivalence of vocational qualifications e.g. lift truck driving qualifications obtained abroad?
- Make sure that any control measures identified in the risk assessment have been implemented and are maintained.
- Make sure the assessments are regularly reviewed to ensure they keep pace with any changes to processes or working practices?

3. INFORMATION, INSTRUCTION, TRAINING & SUPERVISION

Key Message(s)

Have the workers been provided with necessary and relevant information as to risks, instruction, induction and other health and safety training?

Do you have you a system in place, which allows you to assess the level of understanding gained from the training and instruction delivered?

Issues:

- Induction training
- Job related training

- Make sure they understand the information and instructions they need to work safely and that they have had any necessary training Has it been provided in a comprehensible format?
- Remember to consider any language needs there may be for agency workers who do not speak English well or at all
- Methods of delivery
- What steps have been taken to ensure that it has been understood and is acted upon?
- Are the workers adequately supervised and can they communicate with their supervisors?
- How and to whom can they raise any concerns about their health and safety?

4. DIVERSITY

Key Message(s)

Employers have a legal duty to provide information, instruction, training and supervision in an understandable format for all their workers, irrespective of national origin, gender, disability, first language, literacy etc.

Issues:

Consider in particular:

- Make sure you consider the visitors and members of the public who might be affected by your work.
- Make sure you give special consideration to workers who are young, inexperienced, and new to the particular job, trainees or doing work experience.
- Workers who have a disability.
- You may also need to take into account workers':
 - Nationality
 - Culture
 - Language
 - Gender
 - Age
 - Religious belief
- Make sure that information/instructions are pitched appropriately, given the level of training, knowledge and experience of the employees.
- Make sure that any information/instructions are provided in a form, which takes account of any language difficulties or disabilities. N.B.Information can be provided in whatever form is most suitable in the circumstances, as long as it can be understood by everyone. For employees with little or no understanding of English, or who cannot read English, employers may need to make special arrangements. These could include providing translation, using interpreters, or replacing written notices with clearly understood symbols or diagrams.

5. CONTROL MEASURES

Key Message(s)

Have the key control measures identified by your risk assessments been fully implemented?

Are arrangements in place to ensure the control measures are being properly used and maintained?

Issues:

- If relevant, has necessary and suitable PPE been provided without cost to the workers?
- Has suitable provision for toilet and washing facilities been made? Remember to include remote worksites away from the main business base.
- If relevant, have appropriate and suitable arrangements been made to transport workers to and from their place of work? Are the drivers suitably qualified? Are the vehicles suitable and properly maintained?
- Is there agreement on arrangements for providing any necessary health surveillance or computer screen eyesight tests and for providing/maintaining any personal protective equipment needed?
- Are procedures in place to review the control measures to ensure that they are being implemented correctly, that they remain appropriate to the task and that they are being maintained?

6. RECORDS / RECORD KEEPING

Key Message(s)

There is a legal requirement to keep some records and report certain events e.g. work-related accidents and cases of ill health.

Systems must be put into place to ensure that labour users and labour providers exchange relevant information to ensure that legal requirements (such as accident reporting) can be met.

Issues:

- Are suitable arrangements in place for recording and reporting accidents and cases of ill health?
- Are suitable arrangements in place for first aid (including hospital) treatment, and any necessary health surveillance?
- Are accurate records of the hours worked kept and available for inspection? Do the terms and conditions under which the workers are employed comply with the Working Time Regulations 1998?
- Agree on arrangements for reporting relevant accidents to the enforcing authority.

7. OTHER MATTERS

Key Message(s)

Labour providers and users need to ensure that between them the relevant legal requirements are met and the health, safety, and welfare of workers is protected.

Issues:

- Has provision been made to ensure that Employers' Liability Insurance is in place that covers the workers on the labour user's premises?
- Where domestic accommodation is provided for the workers, if appropriate and required, are copies of current gas safety certificates made available?
 - Remember to consider any language needs there may be for agency workers who do not speak English well or at all
 - Check before they start at the workplace that they have any special occupational qualifications or skills needed for the job