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HEALTH AND SAFETY COMMISSION

The publication of HSE guidance for managing the health and safety of agency workers

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Cleared by Jonathan Rees on XX June 2006

Issue

1. Publication of HSE guidance on managing the health and safety of agency workers, for employment businesses and those using agency workers supplied by them.

Timing

2. Routine.

Recommendation

3. That the Commission notes the publication of the guidance.

Background

4. The Commission has previously agreed with view (given most recently in HSC/04/62) that the framework of health and safety legislation is adequate to ensure the proper protection of agency workers. At the same time, it has also noted that more and better guidance is needed to make clearer the responsibilities of the various parties involved. This paper announces the publication of guidance (attached as Annex 1) now being published to meet this need.

Argument

5. There has been broad consultation about the content of the guidance with the employment/recruitment industry, Trade Unions, and Small Business Trade Association Forum (SBTAF) member associations in sectors where use of agency workers is prevalent. Because the realities of relationships between employment businesses and those using agency workers supplied by them are complex and varied, we have emphasised the need for both parties to co-operate to ensure good health and

safety management, rather than trying to lay down set responsibilities based on criteria such as the employment status of the worker. This approach has also been adopted in guidance for the food and drink industry recently launched by Bill Callaghan at the North West Food Alliance, part of which deals with this issue. Stakeholders are content with this approach.

6. The guidance was soft-launched at the end of May 2006, and will be web-only in the first instance. It is hosted by the DTI's Small Business Service website, www.businesslink.gov.uk, and linked from HSE's site (the Small Business and Worker Involvement webpages). We will alert the Small Business Advisers network to the guidance for possible promotion through their own channels, and similarly the Trades Unions. The industry's main trade body, the Recruitment Employers' Confederation, has been actively involved in consultation and has agreed to promote the guidance among its members. HSE has offered to participate in a stakeholder event (projected for later in the summer), at the request of stakeholders involved in earlier consultation on the guidance.
7. The guidance is intentionally generic. There are already indications that it will prompt the development of industry-generated, sector-specific guides, and we have agreed to act as consultee on these as the need arises. Case studies to amplify the guidance will be prepared shortly for use on the Businesslink website.

Consultation

8. HSE (FOD, HID, Construction).

Action

9. To note at this stage. The recently announced DTI initiative on vulnerable workers (MISC/06/07), which contains proposals in relation to agency workers, will make it important to keep the guidance under review.

Contact

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GUIDANCE ON MANAGING AGENCY WORKERS' HEALTH AND SAFETY – TEXT VERSION OF WEB GUIDANCE

Level 1

Level 1 heading: Agency workers' health and safety

Content body:

If you supply or use agency workers you need to be aware of your responsibilities for their health and safety.

Agency workers can face particular problems because, for example, they may not be familiar with the business they are working in or its particular hazards. The risks can be reduced through effective partnership and co-operation between the employment business and the user business and by following best practice in areas such as risk assessment and communicating health and safety information.

Throughout this guide, we use 'agency workers' to mean people who obtain work through an employment business (referred to in this guidance as the 'agency').

Employment and user businesses subject to Gangmasters Licensing Authority requirements must also comply with relevant licence conditions that may be set by the Authority.

Helplines: HSE Info Line 08453 450 055

Actions:

Read about employing agency workers on the DTI website

[http://www.dti.gov.uk/er/agency/faq_workers.htm]

Download the five steps to risk assessment from the HSE website (PDF)

[<http://www.hse.gov.uk/pubns/indg232.pdf>]

Download an introduction to health and safety from the HSE website (PDF)

[<http://www.hse.gov.uk/pubns/indg259.pdf>]

Descriptive text for guide: What user businesses and agencies must do to protect agency workers' health and safety

Level 2.1

Level 2.1 heading: Understand your duties in relation to agency workers' health and safety

Content body:

When a business uses agency workers, the business and the agency have a shared duty to protect their health and safety.

Some health and safety responsibilities depend on whether you are the employer. This is determined by the circumstances of each individual case. (and you should be aware that agency workers could be considered your employees for health and safety purposes even if they are not for tax and National Insurance).

So agency workers might be employees of the agency, or employees of the business using them (in both cases, under a contract of employment), or (in some limited cases) self-employed/freelance. If you are the employer, you cannot transfer your health and safety responsibilities to another person or business.

However, even though employment status can be important, and the actual legal responsibility cannot be given to someone else, the most important thing is for both the user business and the agency to clarify and agree at the start of a contract the **practical arrangements** for day-to-day supervision, direction and control of the work agency workers will be doing.

For more information on determining employer status, [read the guidance on the HSE website](http://www.hse.gov.uk/enforce/enforcementguide/investigation/status/specific.htm).

[<http://www.hse.gov.uk/enforce/enforcementguide/investigation/status/specific.htm>]

Helplines: HSE Info Line 08453 450 055

Actions:

Read the guidance on employment status on the HSE website

[<http://www.hse.gov.uk/enforce/enforcementguide/investigation/status/specific.htm>]

Read about employing agency workers on the DTI website

http://www.dti.gov.uk/er/agency/faq_workers.htm

Also on this site (Related guides):

Employment status

Register for health and safety

Your responsibilities for health, safety and the environment

Level 2.1 Descriptive text: User businesses and agencies share responsibility for agency workers' health and safety

Level 2.2

Level 2.2 heading: Health and safety risk assessment for agency workers

Content body:

By law, businesses must ensure that they assess health and safety risks.

Businesses using agency workers

If agency workers are on your site (either under your direct employ or through another company), your assessment needs to take them into account. You should take into account the special problems they may face. For example, they will know less about your business than ordinary employees, and so could be at greater risk.

Your risk assessment must take into account any special cases such as pregnant women, people who work alone or people who may not speak English as a first language. For more information on risk assessments, see our guide [risk assessment - an overview](#).

You must also give agency workers and the agency information about risks and measures taken to control them before the start of the placement. For more information, see the page in this guide: [agency workers and health and safety information and training](#).

Agencies

If you provide agency workers to other businesses, you too have responsibilities. You should firstly ensure the user business has carried out an assessment, and given you the findings, which you should pass on to agency workers.

You may also need to assess the risks workers face in the user business's workplace before you place workers with that business for the first time. If the user business doesn't volunteer the information you need, you will have to decide whether you need to make a site visit to complete your own risk assessment.

You are most likely to need to do this if you are providing workers for higher-risk industries such as construction, or where the risks are complex, and less likely if the environment is a simpler, low-risk one such as office work. If you are not competent to do the assessment yourself, you must arrange for someone else to do it for you. This could (by agreement) be the business that will use the worker, or someone else competent to do so.

You should also monitor user businesses' overall health and safety performance. For example, you could ask them to give you copies of all accident and illness reports involving your agency workers, together with an indication of the causes and what they have done to stop them happening again.

Helplines: HSE Info Line 08453 450 055

Actions:

Read about employing agency workers on the DTI website

http://www.dti.gov.uk/er/agency/faq_workers.htm

Download the five steps to risk assessment from the HSE website (PDF)

[<http://www.hse.gov.uk/pubns/indg232.pdf>]

Download an introduction to health and safety from the HSE website (PDF)

[<http://www.hse.gov.uk/pubns/indg259.pdf>]

Also on this site (Related guides):

Risk assessment - an overview

Your responsibilities for health, safety and the environment

Operate a health, safety and environment policy

Employing young people

Recruiting and employing disabled people

Ensure the safety of lone workers

Level 2.2 Descriptive text: Employers and agencies must include agency workers in risk assessments

Level 2.3

Level 2.3 heading: Co-operate to protect agency workers' health and safety

Content body:

Responsibility for agency workers' health and safety is often shared regardless of where contractual obligations lie. The business using the workers, the employment agency and the workers themselves can all have responsibilities. Co-operation is essential.

From the start, every interested party needs (and is required by law) to share information. For example, if the user business wants workers for a particular role, they should tell the agency about any risks to health and safety involved, and any special qualifications or skills required to carry out the work safely.

This will help the agency put forward people with the right training, qualifications and experience. Similarly, the agency should tell the user business about workers' skills and qualifications, to help all concerned decide what additional training the workers may need.

Sharing information with the workers themselves is also vital. See the page in this guide on [agency workers and health and safety information and training](#).

Continuing co-operation throughout placements will help ensure that responsibilities are clear. It also allows everyone involved to co-ordinate health and safety activities such as giving information, instruction, training and supervision. Nobody should just assume that someone else is taking care of it: for clarity, who actually provides it can be spelt out in contractual arrangements - bearing in mind that the **legal responsibility** as employer cannot be passed on.

It's a good idea to regularly review the effectiveness of your arrangements. For example, the end of a work placement is a natural time to do this. You should try to identify any problems, and discuss the reasons for them. This will help you take steps to improve health and safety for the future.

Helplines: HSE Info Line 08453 450 055

Actions:

Read about responsibilities for co-operation over exchange of information in relation to agency workers on the DTI website

<http://www.dti.gov.uk/er/agency/ShorterGuidanceFinal.htm>

Also on this site (Related guides):

Risk assessment - an overview

Your responsibilities for health, safety and the environment

Operate a health, safety and environment policy

Level 2.3 Descriptive text: Shared responsibility requires a co-ordinated approach to health and safety

Level 2.4

Level 2.4 heading: Agency workers and health and safety information and training

Content body:

Each new work placement poses health and safety risks. It's essential that the business using the workers, the agency and the workers themselves share information to ensure worker health and safety is properly protected.

You will need to think in particular about what health and safety information, instruction and training workers need (whether you are the user business or the agency), and clarify who will provide it to meet the legal duties you both have under the Management of Health and Safety at Work Regulations 1999.

User businesses have a responsibility to give appropriate instructions and readily understandable information (both to the workers and the agency) about the risks agency workers may face when working in their business, about any special occupational skills or qualifications needed to do the work safely, and about health surveillance requirements.

Agencies have the same duties if the workers are their employees. Additionally, the user business should tell the agency about any special features of the job that may affect agency workers' health and safety. The agency must pass this information on to the workers.

You should check that workers have **understood training** once it's been given and are continuing to follow procedures correctly.

Consultation

Consultation with the workforce is key to bringing about improvements in health and safety. Involving workers in taking decisions about the ways that health and safety risks at work are controlled means that they will be more likely to work in a safe and healthy way.

Whether you are a business using agency workers or an agency, you are legally obliged to consult them about health and safety if they are your employees.

It is good practice to consult workers who may not be your employees where the placement is long-term, though this should not in itself be seen as implying contractual obligations. For more information, see our guide [communicate your health and safety procedures](#).

Even when agency workers are not legally your employees, it is good practice to consult and involve them - they need to feel 'part of the team'.

Helplines: HSE Info Line 08453 450 055

Actions:

Read guidance on providing health and safety training from the HSE website (PDF)
[<http://www.hse.gov.uk/pubns/indg345.pdf>]

Download the legal requirements for consulting staff from the HSE website (PDF)
[<http://www.hse.gov.uk/pubns/indg232.pdf>]

Read about responsibilities for liaison over arrangements for sharing relevant health and safety information in relation to agency workers on the DTI website

<http://www.dti.gov.uk/er/agency/ShorterGuidanceFinal.htm>

Read guidance on safety representatives on the HSE website

[<http://www.hse.gov.uk/workers/safetyreps.htm>]

Read HSE guidance on involving workers

<http://www.hse.gov.uk/workers/index.htm>

Also on this site (Related guides):

Communicate your health and safety procedures

Display the right signs and notices

Working with employee representatives

Risk assessment - an overview

Your responsibilities for health, safety and the environment

Operate a health, safety and environment policy

Level 2.4 Descriptive text: Communication and instruction is essential for agency workers' health and safety

Level 2.5

Level 2.5 heading: Ensure agency workers use health and safety equipment and follow procedures

Content body:

Businesses using agency workers must ensure that the workers have the same level of health and safety protection as ordinary employees.

For example, if user businesses provide employees with Personal Protective Equipment (PPE) such as protective clothing, agency workers will also need PPE if they are exposed to the same risks.

Legal responsibility for providing this free of charge lies with whoever is the worker's employer - this might be the agency or the user business. If you're not the employer, you may agree to provide what is necessary (whether you're a user business or an agency).

Factors such as length of placement and the extent to which the worker is likely to remain in the sector for which particular PPE is required will clearly need to be considered in discussions with other parties involved.

However, if you are the employer, you can't pass on the legal responsibility. In only a few cases, where workers are genuinely self-employed, will they be responsible for providing their own PPE. For more information, [download the guide to the PPE regulations from the HSE website](http://www.hse.gov.uk/pubns/indg174.pdf) (PDF). [http://www.hse.gov.uk/pubns/indg174.pdf]

Similarly, agency workers who use computers and similar equipment with screens will need suitable workstations and rest breaks. Both the user business and the agency have responsibilities. The employer is responsible for paying for eye and eyesight tests. For more information, [download the leaflet on working with VDUs from the HSE website](http://www.hse.gov.uk/pubns/indg36.pdf) (PDF). [http://www.hse.gov.uk/pubns/indg36.pdf]

The more hazardous the work your business does, the more you need to do. There are specific requirements in relation to (for example) chemicals, the use of work equipment and machinery, manual handling, the use of electricity, and the comfort of the working environment.

Businesses using agency workers and agencies themselves need to work together to ensure that the right equipment is provided and procedures are followed. For more information, see the page in this guide on how to [co-operate to protect agency workers' health and safety](#).

Helplines: HSE Info Line 08453 450 055

Actions:

[Download the guide to the PPE regulations from the HSE website](http://www.hse.gov.uk/pubns/indg174.pdf) (PDF)
[http://www.hse.gov.uk/pubns/indg174.pdf]

Download the leaflet on working with VDUs from the HSE website (PDF)

[<http://www.hse.gov.uk/pubns/indg36.pdf>]

Download the guide to the COSHH regulations from the HSE website (PDF)

[<http://www.hse.gov.uk/pubns/indg136.pdf>]

Read about employing agency workers on the DTI website

http://www.dti.gov.uk/er/agency/faq_workers.htm

Also on this site (Related guides):

Protect yourself

Ensure your employees are operating computers safely

Manage harmful substances safely

Risk assessment - an overview

Your responsibilities for health, safety and the environment

Operate a health, safety and environment policy

Level 2.5 Descriptive text: Equipment and procedures for protecting agency workers' health and safety

Level 2.6

Level 2.6 heading: Monitor agency workers' health and safety

Content body:

Depending on your assessment of the risks, you may need to carry out health checks on employees (whether you are the **user business** or the **agency**). For example, you might need to do this if employees work with chemicals that can damage health. While health checks are not a substitute for controlling risks, they can help you tell whether your controls are working.

If you are the user business and you conclude that health checks are necessary, you may want to include, as best practice, agency workers even if they are not your employees: you should co-ordinate with the agency about arrangements for this and make sure that all parties are clear about who will provide it if it's required.

Don't forget that you need to give workers readily understandable information about these health checks, too, whether they're your employees or those of the agency.

In some cases, you may decide that all that's needed is to check sickness records and reports of diseases. In other cases, you may need direct checks such as inspections for skin rashes. For more information, [download the guide to understanding health surveillance at work from the HSE website \(PDF\)](http://www.hse.gov.uk/pubns/indg304.pdf).
[<http://www.hse.gov.uk/pubns/indg304.pdf>]

Agencies

If the agency workers you supply are your employees, you are responsible for any health checks needed.

Before placing workers with a user business, you need to check with the user business whether they will be doing work that requires health checks. If so, you'll need to get information from the user business about what's involved. You might be able to arrange for the user business to do the checks on your behalf - but you are still responsible for making sure they are done if the workers are your employees.

You may also need to organise some health checks yourself. For example, you might arrange annual medical checkups for workers who are exposed to potentially serious health hazards, such as asbestos or radiation.

When accidents at work happen, it may be an agency worker who is injured or made ill. The user business and the agency should clarify with each other, before placement, who is the "responsible person" for any necessary RIDDOR (Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995) reports in respect of agency workers, and ensure that all relevant information is exchanged so that RIDDOR forms can be completed in full. See our guide Record and report an accident or incident for further information on RIDDOR.

Helplines: HSE Info Line 08453 450 055

Actions:

Download the guide to understanding health checks at work from the HSE website (PDF)

[<http://www.hse.gov.uk/pubns/indg304.pdf>]

Read about employing agency workers on the DTI website

http://www.dti.gov.uk/er/agency/faq_workers.htm

Also on this site (Related guides):

Report and record an accident, incident or near miss

Risk assessment - an overview

Your responsibilities for health, safety and the environment

Operate a health, safety and environment policy

Level 2.6 Descriptive text: Health checks can be an important part of meeting your health and safety responsibilities

Level 2.7

Level 2.7 heading: Control agency workers' working hours

Content body:

The Working Time Regulations set limits on working hours. They also set out workers' entitlement to rest breaks and to holidays. Unless agency workers are genuinely self-employed (running their own business), they are covered by the regulations.

The worker's employer is responsible for complying with the regulations. For more information on the requirements, see our guide to [hours, rest breaks and the working week](#).

You need to be careful. There are special rules for young workers and night workers. Also, if workers work for more than one business, their total working hours could exceed the limit. You should make reasonable enquiries of agency workers about whether they are working elsewhere and take reasonable steps to ensure that their weekly average of 48 working hours is not exceeded. Or ask the worker to make an agreement that the limit should not apply in their case.

If you are an agency that places workers you employ with other businesses, you are responsible for managing their working time. You must work with the businesses using your workers to ensure that they provide the right rest breaks and other entitlements.

Helplines: HSE Info Line 08453 450 055

Actions:

Read a guide to the Working Time Regulations on the DTI website

[http://www.dti.gov.uk/er/work_time_regs/wtr0.htm]

Read about employing agency workers on the DTI website

http://www.dti.gov.uk/er/agency/faq_workers.htm

Also on this site (Related guides):

Hours, rest breaks and the working week

Risk assessment - an overview

Your responsibilities for health, safety and the environment

Operate a health, safety and environment policy

Level 2.7 Descriptive text: Limits on agency workers' working hours