

Employing workers from overseas

Guidance for employers in agriculture and food processing



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Introduction

The number of workers from abroad (migrant workers), particularly from Eastern Europe, has increased in recent years. At the beginning of 2007 there were approximately 1.5 million migrant workers in the UK, employed in most industrial sectors, but in particular in agriculture and food processing, construction, healthcare, hospitality and catering, and contract cleaning. Some are self-employed, some are employed directly and some are on permanent contracts, but many are supplied on a casual or temporary basis by independent labour providers based in the UK or abroad.

This leaflet gives essential guidance to employers, employment agencies, employment businesses, gangmasters and other labour providers on their responsibilities for the health, safety and welfare of temporary (including migrant) workers.

Labour providers and users

A labour provider is a person or company who supplies workers to a third party. This includes employment agencies, employment businesses (see www.berr.gov.uk/employment/index.html) and gangmasters.

A gangmaster is someone who supplies a worker to another person to do work to which the Gangmasters (Licensing) Act 2004 applies (see www.gla.gov.uk).

A labour user (user) is a person who hires or uses workers supplied by someone else.

Health and safety law and the allocation of duties and responsibilities between labour providers and users can seem complicated. In many cases, the employer, for the purposes of health and safety legislation, is likely to be the user rather than the labour provider, particularly where the user controls and directs the activity. However, this will not always be the case.

There is no simple answer to the question 'Who is responsible for the health and safety of temporary and migrant workers?' It depends on the relationship between the labour provider and user and the circumstances under which the work is being carried out.

Labour providers and users should clarify and agree their relationship and their respective responsibilities for health and safety. Both parties need to consider:

- if the workers are to be employed directly or if the workforce (or part of it) is to be supplied by a labour provider;
- who exercises direction and control over the work on a day-to-day basis;
- if the labour provider is based in the UK or abroad. Unless a labour provider

based abroad has a UK-based representative, the user will have to take full responsibility for the health and safety of any labour supplied;

- that 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. This may affect the allocation of responsibilities for health and safety. You can get more information from the Department for Business, Enterprise and Regulatory Reform (BERR) (formerly the DTI);
- before workers start at the workplace if any special vocational qualifications or skills are needed for the job. If so, make sure that any worker supplied has the necessary qualifications or skills;
- the language skills of workers before they start work, particularly their understanding of spoken and written English;
- what information, instruction and training need to be provided at the workplace. You will need to think about how best to provide this, and how to ensure it has been understood.

Risk assessment

Assessing the risks from work activities is a legal requirement, but it is also the key to managing health and safety.

Effective management of workplace risks reduces the potential for accidents and ill health that can not only ruin lives but also seriously affect your business if output is lost, or plant and machinery damaged. Even if the injuries are not serious, they can result in a significant increase in insurance costs and you may be prosecuted.

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. The Health and Safety Executive (HSE), trade associations and other organisations have published extensive advice on how to carry out risk assessments.

Make sure:

- before they start working for you, that the risks to which migrant workers are likely to be exposed have been assessed and any necessary control measures have been identified;
- the control measures have been implemented and arrangements are in place to maintain them. These will almost certainly include providing necessary information, instruction, training and supervision. They may also include providing safe plant, equipment, substances for use at work, personal protective equipment (PPE) and emergency procedures etc;
- you take account of the needs of non-UK nationals and consider:
 - language issues. Not all migrants speak English and the ability of those who do varies widely. Some who speak English cannot read it;
 - basic competencies including literacy, numeracy, physical attributes, general health, relevant work experience etc; and
 - whether their vocational qualifications are compatible with those in the UK, eg lift truck driving certificates obtained abroad. In general, vocational qualifications obtained abroad are not recognised in the UK. If in doubt, seek advice from trade associations, training and awarding bodies or HSE;
- the risk assessments are regularly reviewed to ensure they keep pace with any changes to processes or working practices.

Information, instruction, training and supervision

Any new workers, whether directly or indirectly employed and irrespective of whether they are migrants or UK citizens, should be provided with the information, instruction and training they need to work safely.

Make sure:

- you provide essential induction training;
- you provide any necessary job-related/vocational training;
- you provide relevant information about the risks to which they may be exposed and the precautions they will need to take to avoid those risks;
- you consider the needs of workers who may not speak English well, if at all. You may need to provide information and instruction using visual, non-verbal methods such as pictures or signs or learning materials such as videos/DVDs/CD-ROMs in multiple languages;
- you consider the need for translation services. It may be acceptable to use the services of existing bilingual or multilingual employees to translate simple, non-technical information, instruction or training materials. For more complex and particularly technical training requirements, it is advisable to use an accredited translator. You can get further information on language skills and translation services from the National Centre for Languages (www.cilt.org.uk);
- the migrant workers have received and understood the information, instruction and training they need to work safely. Consider what you need to do to ensure it has been understood and is acted upon;
- the workers are adequately supervised and can communicate with their supervisors;
- the workers know how and with whom they can raise any concerns about their health and safety and about any emergency arrangements or procedures.

Control measures

Where your risk assessment has identified the need for control measures, you will need to ensure they have been fully implemented and are being properly used and maintained. Further advice and guidance is available from HSE, trade associations and other sources.

Make sure:

- that any machinery guarding or other safety devices, vehicles, lifting equipment, ventilation plant, ladders, fixed or mobile elevated work platforms, fixed and portable electrical equipment, guards and barriers and other work equipment are in good condition, and are being properly used and maintained;
- that, if required, any necessary and suitable personal protective equipment has been provided and maintained without cost to the workers;
- suitable arrangements have been made for first aid (including hospital) treatment;
- provision has been made for toilet and washing facilities. Remember to ensure facilities have been provided at remote worksites away from the main business base;
- where relevant, appropriate arrangements have been made to transport workers to and from their place of work. Are the drivers suitably qualified? Are the vehicles fit for purpose and properly maintained?
- there is agreement on the arrangements for providing any necessary health surveillance or computer screen eyesight tests;
- there are procedures to review the control measures to ensure they remain appropriate and are being implemented correctly.

Record keeping

The law requires you to keep certain records and report certain types of events, eg work-related accidents and cases of ill health. There must be systems to ensure that users and labour providers exchange relevant information so that legal requirements (such as accident reporting) can be met.

Labour providers and users need to make sure:

- the terms and conditions under which the workers are employed comply with relevant employment law, eg the Working Time Regulations 1998;
- accurate records of the hours worked are kept and are available for inspection;
- suitable arrangements are in place for recording accidents and cases of ill health and reporting relevant accidents to the enforcing authority.

Other requirements

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. They should also make sure:

- Employers' Liability Compulsory Insurance is in place that covers the workers while working on the user's premises;
- where domestic accommodation for the workers is provided (if appropriate), copies of current gas safety certificates are readily available.

Useful links

Advisory, Conciliation and Arbitration Service (acas)

Provides independent, up-to-date advice and guidance on employment relations:
www.acas.org.uk Tel: 08457 47 47 47

Businesslink

Help and advice on developing your business for small and medium-sized companies: www.businesslink.gov.uk Tel: 0845 600 9006

Department for Business, Enterprise and Regulatory Reform (BERR)

Leads work to create the conditions for business success through competitive and flexible markets that create value for businesses, consumers and employees:
www.berr.gov.uk Tel: 020 7215 5000

Gangmasters Licensing Authority

Authority set up to curb the exploitation of workers in the agriculture, horticulture, shellfish-gathering and associated processing and packaging industries:
www.gla.gov.uk Tel: 0845 602 5020

National Farmers' Union (NFU)

Provides professional representation and services including advice and guidance on health and safety to its farmer and grower members:
www.nfuonline.com Tel: 02476 858500

Trades Union Congress (TUC)

Has member unions representing over six and a half million working people:
www.tuc.org.uk Tel: 020 7636 4030

HSE has published a pocket card for employees from overseas, which is available from HSE Books:

Working in the UK from overseas? Your health and safety at work in agriculture and food processing Pocket card INDG410 HSE Books 2007 (single copy free or priced packs of 25 ISBN 978 0 7176 6241 8 including four copies in English, and three each of translated versions in Bulgarian, Latvian, Lithuanian, Polish, Romanian, Russian and Ukrainian) www.hse.gov.uk/pubns/indg410.pdf

Further information

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For information about health and safety ring HSE's Infoline Tel: 0845 345 0055 Fax: 0845 408 9566 Textphone: 0845 408 9577 e-mail: hse.infoline@natbrit.com or write to HSE Information Services, Caerphilly Business Park, Caerphilly CF83 3GG.

This leaflet contains notes on good practice which are not compulsory but which you may find helpful in considering what you need to do.

This leaflet is available in priced packs of 15 from HSE Books, ISBN 978 0 7176 6258 6. Single free copies are also available from HSE Books.

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