



NZ Health & Safety Guide FOR THE ON-HIRE INDUSTRY



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Table of Contents

<i>Introduction</i>	<i>3</i>
<i>Definition.....</i>	<i>4</i>
<i>Related Legislation</i>	<i>5</i>
<i>Primary Duty of care.....</i>	<i>5</i>
<i>Overlapping Duties.....</i>	<i>6</i>
<i>Consult, Co- Operate and Co- Ordinate.....</i>	<i>7</i>
<i>Risk Management</i>	<i>7</i>
<i>The Client</i>	<i>8</i>
<i>The Work</i>	<i>8</i>
<i>Workplace Monitoring.....</i>	<i>8</i>
<i>Health Monitoring.....</i>	<i>9</i>
<i>The Worker</i>	<i>10</i>
<i>PPE (personal Protective Equipment).....</i>	<i>10</i>
<i>Training, Supervision and Information.....</i>	<i>11</i>
<i>Incident Management.....</i>	<i>11</i>



Introduction

The aim of this guide is to promote and encourage best practice health and safety across all stakeholders within the on-hire worker services industry; to assist all parties involved to understand their legal responsibilities; and to work together to maximise the health and safety of the person performing the work.

The guide contains a plain language explanation of the legal responsibilities of:

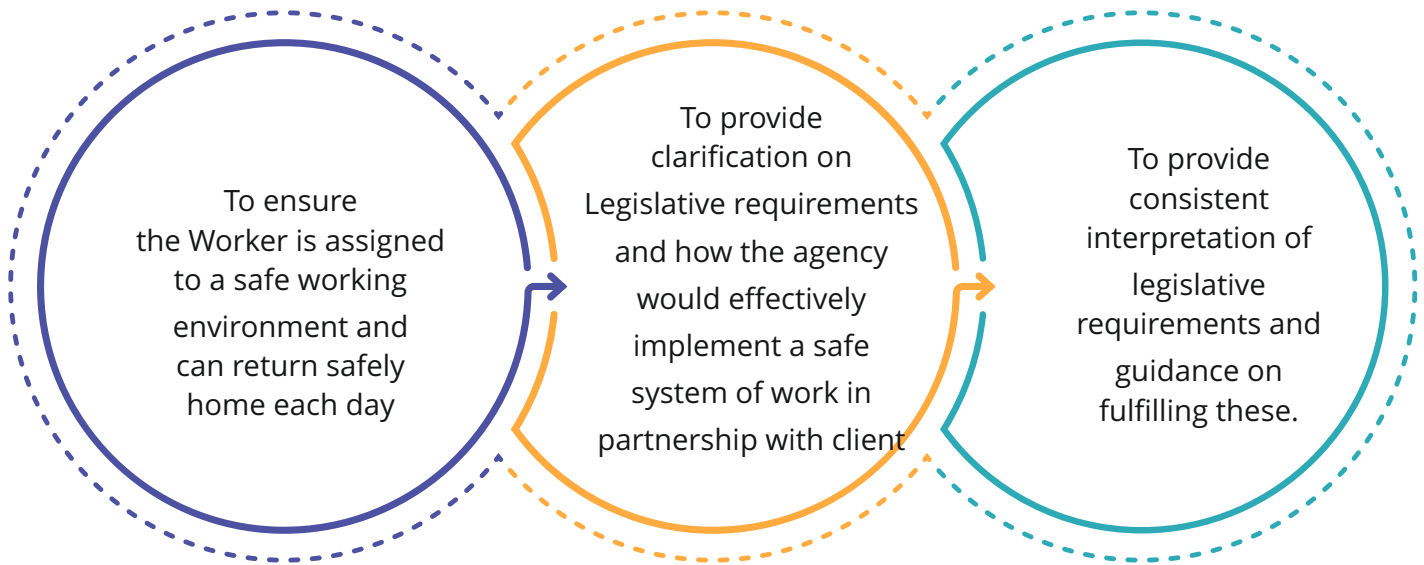
- ▶ The Agency
- ▶ The Client and the person controlling the workplace
- ▶ The Worker (the Agency's employee)

It also provides information and guidance for on-hire Agencies and their Clients, to assist them to fulfil their work health and safety responsibilities, including references to sources of further information in support of this guide.

The aim of the Health and Safety at Work Act 2015 (HSWA) is to ensure work activities are safe and risks are identified and mitigated. It seeks to achieve this by:

- ▶ assigning responsibilities/duties to all people connected with the work activity, including, the Agency, the Client and the Worker;
- ▶ requiring a systematic approach to making the work situation safe and without risk to health; and
- ▶ defining the standard of performance required of the people connected with the work activity.
- ▶ ensuring overlapping duties between the Agency and Client are complied with, through:
 - ▶ Consultation – to make sure everyone associated with the work has a shared understanding of the risks, which Workers are affected and how the risks will be controlled.
 - ▶ Co-operation – to implement arrangements in accordance with agreements reached during consultation with the other duty holder to ensure health and safety of the Worker.
 - ▶ Co-ordination – working together so each person can meet their duty of care effectively without leaving gaps in health and safety protection.

Purpose



Defination

Agency	An organisation which, in return for a fee, on-hire Workers to perform work for a third party (Client) under the third party's general guidance and instruction.
Client	An organisation, including government, engaging and utilising the services of a provider of on-hire Worker services.
Consultants	When the work of two or more businesses (PCBUs) overlap, they must communicate, consult, cooperate and coordinate activities to meet their health and safety responsibilities to Workers and others
PCBU	<p>A person conducting a business or undertaking or PCBU— (a) means a person conducting a business or undertaking—</p> <ul style="list-style-type: none"> ▶ whether the person conducts a business or undertaking alone or with others; and ▶ whether or not the business or undertaking is conducted for profit or gain
On- Hire	The on-hire of a Worker by an Agency to a Client, where such Worker works under the general guidance and instruction of the Client.
Worker	An individual engaged to perform work, on assignment, for a Client of an on-hire firm (Agency) under that Client's general guidance and instruction.

Related Legislation

- ▶ Health and Safety at Work Act 2015 (NZ)
- ▶ Health and Safety at Work
(General Risk and Workplace Management) Regulations 2016 (NZ)

Primary Duty of care

The Act places a primary duty of care on an Agency, as a PCBU. A primary duty of care is also owed to the Worker by the Client (who also has PCBU responsibilities).

The Agency and the Client must ensure, so far as is reasonably practicable, the health and safety of Workers.

To fulfil the primary duty of care, the Agency and the Client must ensure, so far as is reasonably practicable,

- ▶ the provision and maintenance of
 - ▶ a work environment that is without risks to health and safety; and
 - ▶ safe plant and structures; and
 - ▶ safe systems of work; and
 - ▶ The safe use, handling, and storage of plant, substances, and structures
- ▶ the provision of
 - ▶ adequate facilities for the welfare at work, including access to those facilities; and
 - ▶ any information, training, instruction, or supervision that is necessary to protect all persons from risks to their health and safety from work carried out
- ▶ that the health of Workers and the conditions at the workplace are monitored for the purpose of preventing injury or illness of Workers arising from the conduct of the business or undertaking.

The Agency generally has limited control over the workplace in which the Worker is placed. It is agreed the Worker is under the direction of the Client while on the worksite. This does not absolve the Agency of their duty to 'ensure' the health and safety of Workers. Whilst the Agency has limited control over the Client's workplace, the Agency maintains their primary duty of care and exercise their duty so far as is reasonably practicable. As such, the Agency gather information from the Client about the work and work environment to ensure the Client is providing and maintaining a healthy and safe workplace for the Worker. The Agency gather information about, and make an assessment of the Client's health and safety management system including (but not limited to):

- ▶ The work and health and safety risks associated with the work, and how the risks will be managed by the Client;
- ▶ The workplace including the physical and psychological work environment and assess the workplace for any risk to health and safety;
- ▶ Any skills, knowledge, competency, experience, certification and training the Worker will require to safely perform the tasks

Example

The agency gather info and assesses the client's safe system of work, work environment, facilities, plant and structure to ensure these are controlled and maintained appropriately and do not present the health and safety risk to the workers. This may include review of client H&S system documentation and a visit to client's workplace.

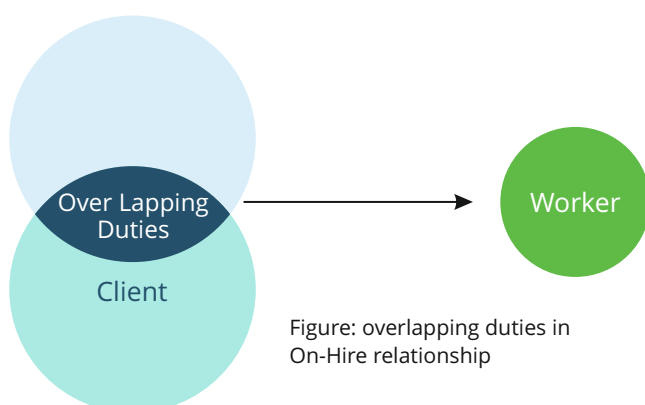
NOTE: section 36 of the Act sets out the primary duty of care of a person conducting a business or undertaking

Overlapping Duties

The health and safety duties of an Agency and a Client are:

- ▶ Joint;
- ▶ Overlapping;
- ▶ and Non-transferrable

This means that in an on-hire arrangement, the Agency cannot transfer their primary duty of care to the Client, and the Client cannot transfer their primary duty of care to the Agency. The Agency and the Client must work together by consulting, cooperating and coordinating activities to meet their health and safety responsibilities to Workers.



Example

Agency will provide the general health and safety induction to the workers and will ensure there is a process in place for the client to provide site- specific H&S safety induction.

The agency and client must carry out their overlapping duties to the extent they have the ability to influence and control the situation.

Consult, Co- Operate and Co- Ordinate

The Agency and the Client will commence consultation, co-operation and co-ordination activities when they become aware, they are or will be involved in an on-hire arrangement. Consultation starts during the planning of an assignment (the work), to ensure health and safety measures are identified and implemented from the start.

A need for further consultation may arise when circumstances change over the period of the assignment, including the work, the work environment, and the people involved in the work.

Co-operation and co-ordination with the Agency and the Client will be an ongoing process throughout the time in which they are involved in an on-hire arrangement and share the same duty.

Co-operation may involve implementing arrangements in accordance with agreements reached during consultation. In an on-hire arrangement, co-operation also means the Agency and the Client will not obstruct communication between each other and respond to reasonable requests from one another to assist them in meeting their duty.

Co-ordination activities requires the Agency and the Client to work together so each can meet their duty of care effectively without leaving gaps in health and safety protection. This includes making sure the measures the Agency and the Client each put in place work effectively together to control the risks and protect the health and safety of the Worker.



Legislative Reference

Section 34 of the Act explains the responsibilities of a PCBU to consult other PCBU's with the same duty

Risk Management

The Agency has a duty to ensure the health and safety of Workers during their assignment with the Client. In some circumstances, this may mean not placing a Worker at the Client's workplace or withdrawing a Worker from a Client's workplace, where the Agency believes there is a health and safety risk or where risks have not been adequately controlled.

The Client

Before placing Workers with a Client, the Agency will find out about the Client and undertake an initial health and safety assessment in relation to providing Workers to the Client.

The Agency would:

- Seek evidence from the Client that they have a structured approach to managing health and safety at the workplace i.e. a practical health and safety system.
- Consider the Client's previous health and safety performance, such as incidents, notices, convictions and identify what learnings/changes have occurred/resulted.
- Clarify expectations with the Client about the responsibilities of each party and how overlapping duties will be fulfilled.
- Confirm the Client's commitment to provide the Worker with adequate information, instruction, training and supervision as is necessary to ensure the health and safety of the Worker when performing the tasks of the assignment.

The Work

The Agency has a responsibility to identify the hazards of any assignment that the Client wants to fill and subsequent risk level of those hazards. When taking an assignment brief from the Client, the Agency would find out in detail about the tasks that the Worker will undertake for that assignment.

- Confirm the client will provide site- specific induction and any training if required
- Confirm what PPE is required and who will provide them
- Identify the Health and Safety
- Obtain clear job description, hours and location, fitness level required to fill the role, skills and training required to perform the tasks

Workplace Monitoring

Workplace Monitoring

The Agency's duty of care to the Worker continues throughout the duration of the Workers assignment with the Client. During the assignment the Agency will:

- Consult with the Client and Worker on any changes which may affect the Worker's health and safety. For example, this may include consultation about the use of plant and equipment not identified prior to assignment;
- Ensure that as part of the Terms & Conditions the Client must notify any changes to the Agency;
- Monitor the workplace for new hazards to health and safety and consult with the Client about how they will be addressed. This may include regular visits to the Client workplace;

- ▶ Take effective action when the Worker or Client identifies hazards or raises concerns about health and safety;
- ▶ Ensure Workers to maintain contact with the Agency and to provide feedback on health and safety matters in the Client workplace

Verifying the effectiveness of prevention measures is a responsibility of both the Client and the Agency. Other monitoring visits may be triggered by incidents, changes to operating conditions or changes in Worker assignments.

Example

Agency establish a schedule to visit the client's workplace, to monitor the conditions of workplace to ensure that it is without risk to the H&S to the workers.



Legislative Reference

Section 36 of the Act places a duty on the PCBU to ensure, so far as is reasonably practicable that the health of Workers and the conditions at the workplace are monitored for the purpose of preventing injury or illness of Workers arising from the conduct of the business or undertaking

Health Monitoring

Health monitoring is a way to check if the health of Workers is being harmed from exposure to substances hazards to health while carrying out work and aims to detect early signs of ill-health or disease.

Example

Examples of health monitoring include spirometry testing to detect early changes in lung function, audiometric testing to detect early hearing loss.

Health monitoring does not include fitness for work examinations, or wellbeing checks (example: cholesterol checks) or programmes (example: promoting healthy living).

The Agency and the Client are responsible to ensure the monitoring of health in relation to exposure to significant health hazards and retaining results from any monitoring of Workers. An agency and Client must ensure that health monitoring is carried out under the following circumstances:

- ▶ if the Worker carries out ongoing work using a substance hazardous to health that needs health monitoring (as specified in a safe work instrument) and there is a serious risk to the Worker's health because of exposure to that substance.

- ▶ If the Worker carries out licensed asbestos removal work at a workplace and is at risk of exposure to asbestos when carrying out the work.
- ▶ If the Worker carries out other ongoing asbestos removal work or asbestos-related work and is at risk of exposure to asbestos when carrying out the work.

Note: There are additional requirements for health monitoring for work involving asbestos – see the Approved Code of Practice Management and removal of asbestos.



Legislative Reference

Regulation 32 of the Regulations places duties on a PCBU relating to exposure monitoring

The Worker

The Agency will ensure that they have in place a robust interview and employment process, including professional reference checks, to determine the Worker's knowledge, qualifications, licences, skills and training in order to perform the work adequately without risks to health and safety.

As such, the Agency makes sure:

- ▶ Communicate to the Client any gaps exist between skills and knowledge desired by the Client and those possessed by the Worker and consider these when selecting the right person for the assignment
- ▶ Confirm with the Client any on-the-job training they will provide the Worker during the period of the assignment to ensure the Worker has the required skills to perform the work safely.

PPE (PERSONAL PROTECTIVE EQUIPMENT)

The Agency and the Client must ensure that any PPE provided to the Worker, is –

- ▶ selected to minimise risks to health and safety, including by ensuring that the equipment is –
 - ▶ suitable, having regard to the nature of the work and any hazard associated with the work; and
 - ▶ a suitable size and fit and reasonably comfortable for the Worker who is to wear or use it; and
- ▶ maintained, repaired, or replaced so that it continues to minimise risk to the Worker who uses it, including by ensuring that the equipment is—
 - ▶ clean and hygienic; and
 - ▶ in good working order; and
- ▶ worn or used by the Worker, so far as is reasonably practicable; and

- ▶ compatible with any other personal protective equipment that is required to be worn or used by the Worker.
- ▶ Where the Worker is provided with PPE, the Agency and the Client must ensure through consultation, co-operation and co-ordination, the provision of training and instruction to the Worker on:
 - ▶ the proper wearing or use of PPE; and
 - ▶ the storage and maintenance of PPE.

There is an option for the Worker to provide their own PPE, however this is acceptable only when the Worker genuinely and voluntarily chooses to provide their own PPE for their comfort or convenience and the PCBU is satisfied it is fit for purpose. Where a Worker provides their own PPE this should be documented by an Agency and the Client as being the Workers preference to provide their own PPE.



Legislative Reference

Regulation 15 of the Regulations explains the general duty of PCBU to provide personal protective equipment

Regulation 16 of the Regulations provides for a Worker to choose to provide personal protective equipment

Regulation 17 of the Regulations explains other duties of PCBU relating to personal protective equipment

Training, Supervision and Information

The Agency and the Client have a shared responsibility to ensure Workers are provided with information, training, instruction or supervision they need to protect them from health and safety hazards arising from their work. Since an Agency will have a very limited control over the Client's workplace, Agency will provide basic H&S induction to the worker. An Agency will ensure there is site-specific induction and training in place at Client's workplace where applicable.



Legislative Reference

Section 36 of the Act places a duty on the PCBU to ensure, so far as is reasonably practicable the provision of any information, training, instruction, or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking

Incident Management

As the Agency and Client share a duty of care for the health and safety of a Worker, the Agency have processes in place to ensure the Client and the Worker are aware of the requirement to report to the Agency any circumstance a Worker is involved in an incident (including a near hit). This will have been agreed during the Client supply agreement/terms of trade. It may also be required that the Worker reports any incidents to the Client and completes documentation and enters into incident investigations the Client may require.

The Agency have a process in place to carry out an incident investigation in consultation, co-operation and co-ordination with the Client. The Agency and Client shall consult, cooperate and coordinate with each other to share learnings from incident investigations.

Notifiable Events

If the incident is a 'notifiable event', the Agency and the Client have a duty to ensure WorkSafe is notified. A notifiable event means any of the following events that arise from work:

- ▶ The death of a person; or
- ▶ A notifiable injury or illness; or
- ▶ A notifiable incident



Legislative Reference

Section 25 of the Act provides the meaning of notifiable event

Section 24 of the Act provides the meaning of notifiable incident

When a notifiable event occurs involving a Worker at work, the Agency and the Client must consult, cooperate and coordinate with each other, as soon as possible after becoming aware of the notifiable event. There is no requirement for both parties to notify, however confirmation must be obtained/provided to the Agency/Client who will notify and that the notification has occurred

Example

- 1) An incident occurs at a Client workplace which leads to the Worker requiring 12 stitches to the palm of the hand. The Client calls the Agency to report the incident to them and at the same time they have a discussion and determine the event is notifiable. The Client volunteers to notify the event to WorkSafe given they are in control of the work area. They notify and send confirmation to the Agency. Following the event the Agency and Client communicate and consult on the investigation process and corrective actions to be implemented.
- 2) An incident occurs at a Client workplace which leads to the Worker requiring 12 stitches to the palm of the hand. The Worker calls the Agency to report the incident to them. The Agency calls the Client to discuss the incident and the Agency notifies WorkSafe. The Agency provides the Client with confirmation once this has been done. Following the event, the Agency and Client communicate and consult on the investigation process and corrective actions to be implement



Legislative Reference

Section 56 of the Act requires that WorkSafe is notified if someone has been exposed to a serious and immediate risk of harm because of a workplace incident.