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## HEALTH AND SAFETY OF TEMPORARY WORKERS

### RESPONSE BY THE ASSOCIATION OF LABOUR PROVIDERS TO THE HSE ON HEALTH AND SAFETY LEGISLATION THAT IMPLEMENTS THE TEMPORARY WORKERS DIRECTIVE [91/383/EEC]

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#### Introduction

On 18<sup>th</sup> December 2012 the Health and Safety Executive (HSE) wrote to the Association of Labour Providers (ALP) requesting its views on how employment businesses are coping with health and safety legislation that implements the Temporary Workers Directive [91/383/EEC] in respect of workers placed with a user business/hirer and whether the framework of legislation to protect temporary workers in the workplace is effective, or can be improved.

The Association of Labour Providers (ALP) represents over 270 labour providers, which together supply the majority of seasonal and agency workers to the agricultural and food processing industries.

#### ALP Response

The majority of labour providers that supply labour into the food and agricultural sectors are relatively small in terms of annual turnover. This is demonstrated by the following breakdown of Gangmasters Licensing Authority licence holders:

Turnover	GLA Licence Holders
Over £10m	24
£5-10M	25
£1 - £5m	156
Under £1m	1037

Prior to the establishment of the Gangmasters Licensing Authority it was common within the sector:

- For temporary agency workers to receive little or no health and safety induction training
- For induction training to be unpaid
- For agency workers to pay for their own Personal Protective Equipment
- For there to be no agreed arrangements in place between employment businesses/labour providers and client/hirer for the assignment of responsibility for managing the day to day health and safety of the agency workers

Whilst there have been improvements in the health and safety arrangements for temporary agency workers in recent years there is still some way to go, more especially within agriculture and within small to medium sized organisations (this latter point as reflected across the economy).

It is not the norm within the smaller labour providers to see well developed Health & Safety Management Systems which systematically translate regulations and policy into operational procedures and daily activities.

All but the very largest employment businesses/labour providers do not have dedicated Health and Safety managers. It is not common for the smaller labour providers to have explicitly appointed a competent person under the Management of Health and Safety at Work Regulations 1999.

Health and safety training and competence assessment for supervisors and consultants is at best irregular and often lacking.

The Association of Labour Providers has sought in part to address this and through its workshop, "Complying with the GLA Licensing Standards", has trained many hundreds of food and agricultural companies and labour providers in the requirements of legislation to ensure the health and safety of workers placed with a user business/hirer which relate to the requirements in respect of the Temporary Workers Directive.

Profit margins in labour providers are tight and there is a need to respond quickly to surges in demand for labour from hirers in response to operational need, seasonal requirements or consumer demand. Perceived over-developed health and safety induction requirements may be seen to impinge on both margins and operational responsiveness.

Clear, concise but complete HSE guidance for employment businesses / labour providers and client/hirers with regards to implementing health and safety arrangements for agency workers is notable by its absence. This has been disappointing. The ALP has sought to work with the HSE to develop this since May 2010. Formal discussions have now commenced.

Whilst the UK regulations implementing the Temporary Workers Directive do not include the requirements under the Gangmasters Licensing Act 2004, it is in fact this last piece of legislation, and more directly the enforcement of it (and the perception of the consequences were it to be enforced) that has driven the greatest improvement in compliance with health and safety within labour provision to food manufacturing and agriculture.

The requirements under the Gangmasters (Licensing Conditions) Rules 2009 are transferred into GLA Licensing Standards. These more clearly lay out the obligations as follows:

#### 6.1 Assigning Responsibility and Assessing Risk

A licence holder must co-operate with the labour user to ensure that:

- responsibility for managing the day to day health and safety of the workers has been agreed and assigned,
- a suitable and sufficient health and safety risk assessment has been completed (and recorded where required) before work commences, and
- any risks identified are properly controlled.

#### 6.2 Instruction and Training

■ A licence holder must co-operate with the labour user to ensure responsibility for:

- any health and safety training, including induction training, deemed necessary to carry out the work safely has been agreed and assigned,
  - making sure that the workers provided have received any necessary health and safety training, including induction training, appropriate to the site(s) at which they are working and the work they have been employed to do, and
  - making sure all information and training is comprehensible.
- No charge may be made for providing health and safety training. Any time spent training should be treated as an extension of time at work.

#### 6.3 Safety at Work

A licence holder must co-operate with the labour user to make sure that:

- adequate and appropriate Personal Protective Equipment (PPE) is provided. Employees and workers who would be legally regarded as employees for health and safety purposes must be provided with PPE without charge,

- adequate arrangements have been made to provide welfare facilities (sanitary conveniences, washing facilities, drinking water, facilities for changing clothes and for rest and consuming food and drink) where it is reasonably practicable to do so or if it is legally required, and
- adequate arrangements have been made for first aid and the recording and reporting of reportable incidents at work.

The Equality and Human Rights Commission (EHRC) 2011 report of the inquiry into recruitment and employment in the meat and poultry processing sector highlighted health and safety weaknesses and recommended that:

27. The Health and Safety Executive (HSE) address the issues raised by our inquiry through targeted compliance and enforcement action.

28. Processing firms take steps to safeguard the health and safety of agency workers, including: always providing work agencies with a health and safety risk assessment before sourcing their workers working with agencies to make sure agency workers get the training and equipment they need to carry out their work safely ensuring health and safety training is clearly understood by all participants, including those with limited English language skills.

29. Processing firms take steps to safeguard the health and safety of pregnant workers, including: carrying out individual risk assessments for pregnant staff, including agency staff, and providing suitable conditions for pregnant women to continue work, where possible.

The industry has made progress on these Recommendations. The EHRC review of the inquiry had as an outstanding action only that “HSE provides feedback on its findings to the Commission, particularly in relation to the treatment of pregnant workers and the provision of PPE to all workers.”

With regard to how employment businesses / labour providers liaise with the client / hirer to obtain information about any special occupational qualifications or skills needed to carry out the work safely; any health surveillance required; any specific features of the job likely to affect health and safety; risks to workers’ health and safety and measures taken to protect them to discharge the responsibility for risk assessment under relevant legislation, we would make the following points:

- Liaison and provision of information about any special occupational qualifications or skills needed to carry out the work safely (regulation 15(2)(a))
  - With regard to most work within the food and agricultural sectors (excepting specialist skilled roles and vehicle driving) there are no special occupational qualifications or skills needed. This question may be asked by the labour provider of the hirer as part of a checklist at the contract set up stage. Often this is not asked where the labour provider has not formalised its procedures. It would be rare for the hirer to take control of the provision of this information.
  - Where this information has been provided the labour provider would detail this on the Assignment Details form and verify during the interview selection process that the worker was in possession of the qualifications or skills required.
- Liaison regarding and provision of any health surveillance required
  - This is often not understood or considered by the parties as it is not specifically referred to in the Gangmasters Licensing Standards. Where this is considered it tends to be within client/hirers where there is a particular risk e.g. poultry or shellfish; or where there is a developed occupational health function or where there has previously been a problem.
- Liaison regarding and provision of any information on specific features of the job likely to affect health and safety; risks to workers’ health and safety and measures taken to protect them to discharge the responsibility for risk assessment under relevant legislation

- Such matters are specifically referred to in the Gangmasters Licensing Standards 6.1 and 6.2 and this has led to improved compliance in the last few years.
- Challenges exist for labour providers where:
  - Hirers / clients have themselves not undertaken suitable and sufficient health and safety risk assessment
  - Hirers / clients have not implemented adequate controls
  - Hirers / clients are not aware of their obligations under regulations 12 and 13 of the Management of Health and Safety at Work Regulations 1999 to pass information to the labour provider
  - Hirers / clients have not developed job specific health and safety training or do not consider it their responsibility to provide this to agency workers
  - The ability of migrant workers with limited English to understand the controls in place
- Labour providers seek to obtain this as part of a checklist at the contract set up stage and often in the form of the standard induction that the client / hirer provides to its own workers. This would then be replicated for the temporary workers.
- It is a matter of agreement between employment businesses/labour providers and client/hirers as to who provides the induction training. The length, completeness and quality of induction training can be of varying standards. Methods of assessment of comprehension of training tend not to be too developed.
- Processes for updating risks and controls are often not formalised. In some cases this may be reviewed on an annual basis. In other cases it will not be looked at as formal health and safety review processes do not exist.

In conclusion:

- Arrangements for the management of health and safety of agency workers have improved within the food and agricultural sectors since the Gangmasters Licensing Authority has incorporated this within their licensing standards.
- Standards vary greatly between employment businesses/labour providers or client/hirers and broadly there are improvements still to be made.
- The framework of legislation to protect temporary workers in the workplace is not effective on the basis that it is not clearly understood by employment businesses/labour providers or client/hirers.
- This could be improved in future legislative amendments by clearly laying out the obligations that fall on the host employer and those that fall on the employment businesses/labour provider.
- In the interim the HSE is able to improve the current position by:
  - Implementing measures of accidents to agency workers as a discrete category within its processes
  - Providing clear guidance for employment businesses/labour providers and client/hirers as to their respective responsibilities with regard to the management of health and safety of agency workers.
  - Supporting this guidance with model templates and online training.