

## Labour hire: issues and responses

Labour hire is a form of indirect employment relationship in which an agency supplies workers to work at a workplace controlled by a third party (the host), usually in return for a fee from the host. Labour hire arrangements are similar to employment placement services, and comprise a part of the employment services industry. However, it may be assumed that when an employment placement agency secures a worker a job, their relationship is likely to finish. With labour hire arrangements, the three-way relationship between host, agency and worker will continue for the period of the assignment.

The most recent Australian Bureau of Statistics data on number employed through labour hire arrangements suggests that 290 100 employees were ‘on-hired’ through agencies in June 2002 and 162 000 workers were paid by labour hire firms in November 2001 (almost doubling from 84 300 some three years earlier). The Australian Council of Trade Unions (ACTU) estimates that one in five workplaces uses labour hire, while in the largest workplaces (by employment) more than half use labour hire agencies. While reasons for the growth of labour hire vary, it appears

that companies will turn to employment services after their own company’s internal personnel management or human resource management functions have been reduced or contracted out.

The Bureau of Statistics estimates that the value of the employment services industry in 2001–02 was \$10.2 billion, although it notes that the industry generated a 30 per cent increase in income over the three years 1998–99 to 2001–02. The growth of this industry has generated concerns for Labor governments in particular, as unions have put political and industrial demands on governments to curb the use of labour hire. Also, the recent debate over the casualisation of the workforce is one manifestation of the growth of labour hire.<sup>1</sup> Labour hire workers may be denied access to the benefits of the collectively negotiated labour agreements of the principal business and these businesses may deny responsibility for the welfare of this class of worker, particularly in the areas of health and safety and training.<sup>2</sup> The problems for injured labour hire workers are compounded in that they are less likely to have a specific work site to which to return for rehabilitation and return-to-work duties.

One issue that unions often raise is that labour hire workers at a particular site may be paid the award rate, while their directly employed colleagues at the same site may be paid at a higher enterprise bargaining rate.<sup>3</sup> As labour hire workers have pursued grievances over their employment terms or health and safety issues, industrial tribunals in a number of cases have also questioned the use of a labour supply intermediary, and have chosen to impose some employer obligations on the host business. It should be stressed that such approaches do not constitute the norm, as one of the key ongoing issues with labour hire is whether the worker is: an employee, an independent contractor or a dependent contractor. The definition of the form of employment or engagement has major consequences in respect of related rights; for example, only employees can commence legal action against an unfair dismissal. The growth of unstable, non-regular work routines has implications for the living standards of agency workers.<sup>4</sup> It also has implications for potential union members and the administration of trade unions. ACTU Congress policy has reflected concern with labour hire and, generally, unions have sought to ‘rope-in’ the major labour

hire firms into the relevant industry awards, or to create special purpose labour hire awards that may have reference to the industry awards.

The focus in 2004 will be on a NSW Labor Council test case on casual and labour hire work, which will be heard by the NSW Industrial Relations Commission. This case seeks, among other things, the conversion of labour hire employment to direct employment after six months of work. The federal government has signalled its intention to intervene in this case, which is scheduled to begin in May 2004.

Employment placement or labour hire arrangements have benefits for workers in the sense of having an agent scouting for work and perhaps tailoring the conditions—say, short hours or temporary periods—to suit the worker. For businesses the immediate advantage is ‘numerical’ flexibility, particularly the ability to add labour during periods of demand, while not increasing the prime workforce numbers. In many respects then, labour hire appears to be a feature of a modern labour market.

Australia is noted in international comparisons of the conditions of temporary work as having few restrictions on the use of temporary contracts. The OECD has undertaken studies of the strictness of labour law in the use of temporary workers. In Australia, there are no restrictions on the type of work or areas of economic activity where temporary work agencies may choose to operate. From the OECD’s perspective: ‘[Australia’s]

labour law neither specifies a maximum number of successive contracts or contract renewals’.<sup>5</sup>

Against this relatively liberal background, governments have taken initiatives to curb the worst features of the labour hire industry. The New South Wales Government conducted an inquiry into the labour hire industry in 2001 ([NSW Labour Hire Task Force Report](#)), but has been reluctant to implement all of its recommendations, although a tripartite council governing the industry has been formed. A key recommendation was registration of businesses operating to supply labour. Queensland expanded its industrial relations law in 1999 to govern the operation of the labour hire industry. Victoria will conduct its own inquiry into labour hire in 2004. South Australia has also considered the growth of ‘atypical’ employment in a recent review of the state’s industrial relations system and laws. Tasmania has sought to remove an exemption on the payment of payroll tax by labour hire firms, thus increasing their cost of operation. Western Australia has included labour hire employment within its definition of an employer. State governments may be able to control the worst features of labour hire by placing conditions on the agencies through registration or by amending state labour laws. (The exception may be Victoria, which transferred its industrial system to the Commonwealth in 1996.) However, as almost all the states have either acted to control or review the labour

hire industry, a national inquiry into its operation would seem warranted.

1. See, for example, Ken Phillips, ‘[Casual alternative wrongly demonised](#)’ *Australian Financial Review*, 22 January 2004.
2. Note the [evidence](#) of Sally-Ann Taylor, Australian Manufacturing Workers Union (AMWU) to the Senate Community Affairs Committee Inquiry into Poverty and Financial Hardship, 26 May 2003, p. 302.
3. *ibid.*
4. Note the evidence of Dale Carter to the Senate Community Affairs Committee: ‘...although the workload at my childcare centre has increased in recent months, management at the centre have decided to reduce staff hours. The decision came closely after the announcement of the recent living wage increase’, 26 May 2003, p. 318.
5. *OECD Economic Surveys: Australia* (OECD, Paris, 2003), pp. 99–101.

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