

Article Information

Author: Tim Capelin

Service: Employment & Labour

Update on licensing and registration in the labour hire industry - Overview of new Queensland Legislation

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Queensland has now become the first Australian State to pass legislation establishing a licensing scheme for labour hire operators. The Queensland legislation will commence on 16 April 2018. The legislation requires all labour hire providers to be licensed and makes it unlawful for a person to enter into an arrangement for the provision of labour hire services with unlicensed providers. This change in legislation will have a significant impact on the labour hire industry in Queensland.

Tim Capelin, partner and **Amrita Howell, associate**, discuss the implications for labour hire companies and host companies.

Labour hire services

The definition of labour hire services in the Queensland legislation is very broad. Under the legislation, a person provides labour hire services if, in the course of carrying on a business, the person supplies to another person a worker to do work.

The legislation makes it clear that a person will be considered to be providing labour hire services regardless of:

- whether or not the worker is an employee;
- whether or not a contract has been entered into;
- whether the worker is supplied by the provider to another person directly or indirectly; or
- whether the work is under the control of the provider or someone else.

However, a person does not provide labour hire services merely because the person is:

- a private employment agent under the *Private Employment Agent Act 2005* (QLD);
- a contractor carrying out construction work under the *Building and Construction Industry Payments Act 2004* (QLD) and engages subcontractors to carry out work; or
- prescribed by the regulations.

The legislation excludes workers who do not receive payment from the provider for example volunteers or work experience students.

Presently, the legislation covers unintended arrangements, for example where an employee is seconded to perform work for another company. However, the legislation also provides that regulations may exclude other people in certain circumstances so it is possible the scope of the coverage may be narrowed in the coming months.

Criteria to obtain a licence

In order to obtain a licence, the following people will be required to pass a fit and proper person test:

1. each applicant;
2. the proposed nominated officer for the application (if this is a person other than the applicant); and
3. if an applicant is a company - each person who is an executive officer of the company.

The following factors will be considered in order to determine whether a person is a fit and proper person to provide labour hire services:

1. the person's character, including, for example, the person's honesty, integrity and professionalism;
2. whether the person has a history of compliance with relevant laws or can demonstrate that they can comply with relevant laws;
3. whether the person previously held a licence which has been cancelled, suspended or had conditions imposed on it under the legislation;
4. whether the person has been convicted of an offence against a relevant law or law that effects the person's suitability to provide labour hire services;
5. if an individual - whether the person has been insolvent;
6. whether a corporation has been placed into administration, receivership, or liquidation under the Corporations Act while the person was an executive officer;
7. whether the person has been disqualified from managing corporations; and
8. whether the person is under the control of, or substantially influenced by, another person that is not a fit and proper person to provide labour hire services.

Whilst the "fit and proper" test is aimed at ensuring the operator complies with and has a history of complying with relevant laws (including workplace laws), the criteria above is also aimed at preventing "phoenixing" - the practice of deliberately liquidating a company for the purpose of avoiding payment of liabilities and then creating a new company to continue trading.

As at 1 July 2017, the maximum penalties for providing labour hire services without a licence are \$130,439.10 for an individual, or three years imprisonment or \$378,450.00 for a corporation. Similar penalties apply if a person receives labour from an unlicensed provider or if a person enters into an arrangement designed to avoid obligations under the legislation.

The legislation also makes it an offence to advertise the provision of labour hire services, unless the person is a holder of a licence. The maximum penalty for this offence is \$25,230.00.

Reporting requirements and powers of inspectors

The legislation also has fairly onerous reporting requirements. Labour hire operators will be required to report every six months in relation to a number of labour hire activities including:

- 1.the number of workers supplied by the operator;
- 2.details of the arrangement between the operator and the workers (for example whether the operator employs the workers);
- 3.the location where the work will be carried out;
- 4.details in relation to any accommodation provided;
- 5.the operator's compliance with relevant laws; and
- 6.disclosure of disciplinary action, enforcement action, notifiable incidents under Work Health and Safety Laws, and the number of workers compensation applications the operator has received.

The legislation also permits appointed inspectors to enter premises in certain circumstances and require the occupier of the premises to produce documents or provide reasonable help to the inspector.

Further, if an inspector believes that an offence has been committed and a person may be able to give information about the offence, inspectors can require the person to give information or attend an interview to answer questions or produce documents.

A failure to comply with requirements of an inspector can result in a maximum penalty of \$25,230.00.

Notes for Labour Hire Companies and Host Companies

Labour hire operators in Queensland should start considering the criteria noted above in order to apply for a licence. From 16 April 2018 labour hire operators in Queensland will have 60 days to lodge an application for a licence. The Queensland Government has confirmed that if an application is made within the 60 day period the obligations and penalties under the legislation will not apply until the licence has been determined.

Labour hire operators in other States and Territories should also take note of the changes in Queensland. South Australia has already introduced a similar Bill to parliament and Victoria has confirmed it too will introduce legislation establishing a licensing scheme for labour hire operators in the near future. It is possible that other States and Territories will soon follow, particularly those with Labor Governments.

Organisations that use labour hire services will need to ensure that their provider is licenced. This should be done by seeking a copy of their licence prior to engaging them and with each invoice.

Should you have any questions concerning how the decision may affect your business, please contact a member of Piper Alderman's Employment Relations team.