
Health and safety law, migrant workers and employment agencies

'Who is responsible for the health and safety of migrant workers?'

When a business uses workers supplied by an independent labour provider, the business and employment agency have a responsibility to protect the workers' health and safety, but the principal responsibility rests with the employer.

In practice, determining who the employer is will depend on the facts of each case, i.e. on the nature of and circumstances under which the work is being carried out and the relationship between the parties involved. In some cases workers may be employees of the employment agency, in others of the business using them, but both employer and agency will have some responsibility for the workers' health and safety.

The same health and safety law applies to overseas workers as to the rest of the workforce, including the employers.

A worker is likely to be your employee if:

- You make deductions for national insurance and income tax from the money you pay them;
- You direct and control where, when and how they work;
- You supply most of the materials and equipment they use at work; and
- They cannot supply a substitute when they are unable to work.

To avoid any misunderstanding and confusion, employment agencies and the business user are advised to clarify their relationship and agree their respective responsibilities, including the practical arrangements for the day-to-day management and supervision of the workers. Any agreement should be formalised in writing by way of a contract, service level agreement or other form of agreement.

Effective communication is essential for the management of Health and Safety.

Although health and safety law doesn't generally require workers to be able to speak English, learning English reduces communication difficulties and has been shown to lead to higher productivity and retention rates, as well as promoting integration outside work.

Employers should consider providing English for Speakers of Other Languages (ESOL) courses for workers who need to improve their English.

Further information can be found by contacting:

- Stratford on Avon D.C.

Warwick D.C.

Nuneaton and Bedworth B.C.

North Warwickshire B.C.

- HSE Infoline on 0845 345 0055

Note When a caller does not understand English, a 3-way connection with an interpreter can be set up.

- Or by following the website links:

www.direct.gov.uk/en/Employment/Understandingyourworkstatus/Migrantworkers/index.htm (Information for migrant workers)

www.ukba.homeoffice.gov.uk/workingintheuk/ (UK Borders Agency - Working in the UK)

www.hse.gov.uk/migrantworkers/employer.htm (HSE - Migrant workers: advice for employers)

www.hse.gov.uk/migrantworkers/law.htm (HSE - Further advice and guidance on determining employment status)

www.direct.gov.uk (Easy access to public services)

www.direct.gov.uk/en/EducationAndLearning/AdultLearning/ImprovingYourSkills/DG_10037499 (Improving your English)

www.businesslink.gov.uk