

### Taken from HMRC Brief 50/90

**Temporary workers: The application of Tax, National insurance and National minimum wage legislation (full article <http://www.hmrc.gov.uk/briefs/income-tax/brief5009.htm>)**

#### Who should read this?

- Those involved directly or indirectly in the provision of temporary workers to end clients – Recruitment Agencies
- End user businesses provided with temporary workers
- Temporary workers

In the last two years HM Revenue and Customs (HMRC) have seen a growth in arrangements which are variously described as 'Travel and Subsistence Schemes' or 'Mobile Worker Schemes'. These schemes are operated by many businesses involved in the supply of temporary workers to end users: Employment Businesses and umbrella companies. The labour supply businesses seek to obtain a tax and National Insurance advantage by the creation of a purported overarching employment contract which is intended to enable temporary workers who would not otherwise be entitled to tax relief on travel and subsistence expenses to gain such tax relief.

These schemes often involve the use of salary sacrifice arrangements and rely for their effectiveness on the fact that HMRC have issued a dispensation in accordance with section 65 Income Tax (Earnings and Pensions) Act 2003.

In many cases such schemes are marketed to workers as representing a tax and National Insurance saving for the worker. However, the major saving is not to the worker, rather to the party who would bear the higher employer's National Insurance contributions costs if it were not for the arrangement.

Following responses to the July 2008 consultation 'Tax relief for travel expenses: temporary workers and overarching employment contracts', HMRC commenced compliance activity to identify and take action against those Employment Businesses and umbrella companies which are operating in contravention of tax, National Insurance or national minimum wage legislation.

Current compliance activity has identified a number of concerns that are the subject of more detailed, ongoing investigation. These include:

- Potentially ineffective overarching employment contracts
- Dispensations which are invalid, or which have been wrongly applied
- Not complying with the terms of the dispensation
- "Expense payments" made tax-free without that level of expense, or in many cases any expense, having been incurred
- Potential illegal deductions from workers' pay
- Ineffective and sometimes unlawful management processes; and
- Breaches of national minimum wage

HMRC are working with other Government Departments, including the Department for Business Innovation & Skills, and Authorities, particularly the Gangmasters Licensing Authority, to identify businesses acting in

contravention of legislation and will penalise breaches of the law as they are identified. In addition, HMRC are also working with end users of temporary labour to raise their awareness of the consequences of sourcing their temporary workers from businesses which act in contravention of the law.

HMRC are concerned that many lower paid workers being paid through such schemes do not understand the arrangements and in many cases are given little choice as to whether or not they are paid through such schemes. There are also concerns about low paid workers in such schemes opting out of the Conduct of Employment Agencies and Employment Businesses Regulations 2003 without fully understanding the implications of what the opt-out means.

End user businesses which use temporary workers paid through Employment Businesses and/or umbrella companies which do not fully comply with their statutory obligations, clearly run a risk of damage to their reputation and their business if HMRC takes action.

HMRC will continue to investigate and challenge non-compliant Employment Businesses and umbrella companies and will report to ministers in due course on the outcome of that action and the extent of issues being discovered. Ministers will then be able to consider the extent to which compliance action is able to address the undesirable effects of these schemes and whether further measures are required.

### **Action you should take**

#### **Workers:**

If you have concerns regarding the minimum wage, your rights as an agency worker or the working time directive, you can report these in confidence to the **Pay and Work Rights Helpline Tel 0800 917 2368**

If you are concerned about other employment rights, you should contact **ACAS Helpline Tel 08457 474747**.

#### **Agencies & End user businesses:**

HMRC produce a leaflet - [Use of Labour Providers: Advice on due diligence \(PDF 110K\)](#), which you are recommended to read.

Who is responsible for matters such as Health & Safety training, general training of workers and provision of security passes?

Do the workers have written terms and conditions of employment?

### Dealing with Labour Provider businesses. How to ensure the integrity of your supply chain.

The following are examples of checks you may wish to undertake to help establish the integrity of your supply chain. This list is not exhaustive and it is your responsibility to decide what commercial checks you need to carry out before dealing with a supplier.

Undertake checks on directors identities  
— *obtain copies of passport etc.*

Obtain copies of Certificate of Incorporation, VAT registration certificate and GLA Licence (*if applicable*).

Verify VAT registration details with HMRC before you use them and make regular checks of VAT registration numbers afterwards (*see below*).

Insist on personal contact with the director of the prospective supplier, making an initial visit to their premises.

Obtain trade reference and letter of introduction on headed paper.

Obtain credit checks from an independent third party.

Obtain the prospective supplier's bank details.

Check details provided against other sources  
*eg website, letterheads, BT landline records.*

Enter into a written contract with the Labour Provider covering matters such as a system for the issue of credit notes and arrangements for dealing with poor work etc.

Does the supplier insist on cash payments?  
*Consider making payments by cheque rather than cash.*

Do the prices charged by the Labour Provider allow them to meet minimum wage requirements, meet their tax liabilities and to make a profit?

Undertake regular checks on workers' status to work in the UK, timesheets, payslips etc.

**In order to verify the VAT status of the labour providers your business uses, we have arranged a central contact point to aid this process.**

Requests for verification should be made to our Coventry Office, by calling: 024 7623 7144 (between the hours of 08.00 and 16.00 Monday to Friday).

When making requests, it would be beneficial to have the following information to hand for each Labour Provider:

- Name
- Address
- VAT registration number

You may be asked additional questions regarding these suppliers such as contact details, directors, supply dates, number of staff being supplied etc.

Again, the checks contained in this document are suggestions for the kind of checks you could make to help avoid dealing with high-risk businesses and individuals.

**You should keep a full record of the checks you have made to establish the legitimacy of the supplier.**

### Reporting a Fraud

If you have information regarding a fraud involving Labour providers, please contact the Customs Hotline which is open 24 hours a day, 7 days a week.

Secure website: <http://www.hmrc.gov.uk/customs-hotline/>

Freepost    Freepost SEA 939  
                  PO Box 100  
                  Gravesend  
                  Kent  
                  DA12 2BR

Telephone    0800 595000

# Use of Labour Providers

Advice on  
due diligence



# Who should read this?

This guidance applies if you use labour supplied by a third party, supply or make arrangements to supply labour.

HMRC has identified increasing problems with fraud and unpaid taxes through the use of Labour Providers – in the agricultural and food processing sectors, construction, hotels and leisure, security and other labour intensive industries.

HMRC is taking steps to combat these losses by tackling specific schemes to defraud – including the use of false invoices and hi-jacked VAT registrations.

It is good commercial practice for all businesses to carry out checks to establish the credibility and legitimacy of their supplies, customers and suppliers. However, these checks will need to be more extensive in business sectors where there are greater commercial risks or vulnerability to fraud and other criminality.

You should seek to avoid involvement in supply chains where VAT and/or other taxes will go unpaid.

**Where it can be shown that you knew or should have known that transactions you entered into were connected with fraudulent evasion of VAT, you will lose your right to recover the VAT incurred on those transactions.**

Failure to carry out appropriate checks may be evidence that you knew or should have known of the fraud.

HMRC is unable to tell you exactly what checks you should undertake.

The examples contained in this notice are only guidelines for the kind of checks you could make to help you avoid dealing with high-risk businesses and individuals.

The checks you will need to make, and the extent of them, will vary depending on the individual circumstances. You should ask the most appropriate questions required to protect yourself in the particular circumstances of your individual transactions.

Production of a definitive checklist would merely enable fraudsters and those willing to turn a blind eye, to ensure that they can satisfy such a list.

**Types of questions you should be asking:**

**Does the Labour Provider need/have the appropriate Gangmaster Licensing Authority (GLA) licence?**

It is illegal to use workers or services supplied by an unlicensed labour provider in the regulated sector of agriculture, forestry, horticulture, shellfish gathering and food processing & packaging. The maximum penalty is 6 months imprisonment and a fine. (*Source: GLA website*)

**What is the history of the business?**

Is the business registered in the UK or overseas?

Is it a live company on the Companies House register?

What do you know about the directors and their background in the industry?

Have you visited the trading premises?

*Are they consistent with the business of finding and employing workers? For example, are there sufficient backroom staff, phones, desks, filing cabinets etc? Or is the business operating from an accommodation address with one desk and one phone?*

How many workers for hire do they employ in total?

Do they themselves obtain workers from other Labour Providers/sub-contractors?

If so, are the fees that they are proposing to charge realistic?

*ie will they meet statutory minimum wage and taxation obligations, whilst also allowing each party to achieve a profit?*

How did they approach you?

*eg did they just walk in off the street or were they recommended to you?*

Has the business got trade references from other businesses they supply workers to?

*If so, obtain copies.*

Have they got Employer's Liability Insurance?

Has the Labour Provider been set up to specifically supply workers to your business alone — or do they also supply Labour to other businesses?

**Is it a replacement business?**

**ie are they proposing to supply you with the same workers as you were using before?**

If so, ask for an explanation of why this has occurred.

Why did the previous business cease trading?

*Was it because of the inability to pay its creditors which may include tax debts?*

**What is the financial status of the business?**

Have the directors got the financial resources (capital) to supply you with workers?

Are you making payments to a third party?

*ie a factoring agent. If so, why?*

Have normal commercial practices been adopted in negotiating prices?

Is the business VAT registered and set up for PAYE? *Obtain a copy of the VAT certificate? Does the address match the place of business you visited?*

Is the business paying its workers the National Minimum Wage?

Are you paying the business an hourly rate for labour that allows them to meet their tax obligations and make a profit?

*As at October 2008 according to the Association of Labour Providers website a minimum of £7.22 an hour (£7.34 from 1st April 2009) is needed to cover costs and tax obligations, on top of which the profit has to be negotiated.*

Is the Labour Provider supplying transport and accommodation to its workers?

*If so, you need to consider the risks associated with this, ie the possibility of foreign low paid workers being employed and exploited and breaches of National Minimum Wage and PAYE regulations.*

**What do you know about the workers being supplied?**

Do they have the right to work in the UK?

*What checks do you make to ensure this and protect your own business?*

What checks are carried out by the Labour Provider on their workers?

*Are they sufficient? Again, what checks do you make to ensure this?*

Do the workers need a licence themselves?

*ie Security Industry Authority licence. If they don't hold the required licence, you shouldn't be using them.*

Should the employees be security vetted for the type of work they are doing for you? *If so, how is this done and by whom?*

Are any of them self employed? *ie registered for the Construction Industry Scheme — CIS.*