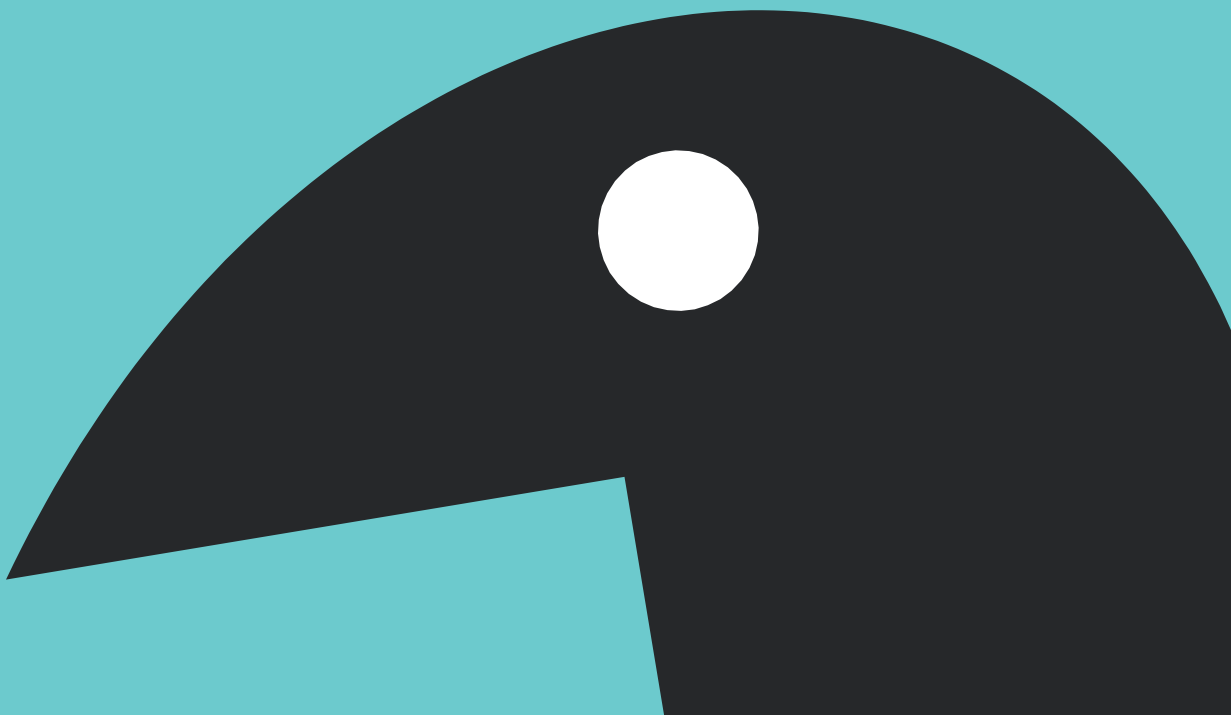


Ready Set Recruit

Building your Temporary Workforce Business
Compliance Handbook



BUILDING YOUR TEMPORARY WORKFORCE BUSINESS

Compliance Handbook

Labour hire and temporary workforce models are complex. Understanding your legal obligations and ensuring your business is structured to meet them is critical. Your compliance systems should be easy to use for your employees and your clients and capable of scaling as you increase the size and scope of your workforce.

1. Employment & Safety Compliance

Casual vs permanent employment vs payrolling

It's critical to be clear on your business model and services before creating a temporary workforce. It's alarmingly common for businesses to outsource the administrative duties associated with employing staff (such as payroll) and assume they have no other obligations to staff. Generally speaking, the law will consider the contractual and practical arrangements when determining who the actual employer is.

- A **casual employee** does not have a firm commitment in advance from an employer about how long they will be employed for, or the days (or hours) they will work. A casual employee also does not commit to all work an employer might offer. They are not paid sick leave or annual leave and generally do not need to provide notice to end the employment.
- **Full-time** and **part-time employees** have ongoing employment (or a fixed-term contract) and can expect to work regular hours each week. They are entitled to paid sick leave and annual leave. Full-time and part-time employees must give or receive notice to end the employment.

If you or your client is considering engaging the services of a third-party payrolling company, it is very important to be clear on the scope of services provided and who will be responsible for ensuring all employment obligations are met.

Contractor vs Employee

To work out what your obligations will be as an employer, it's important to know whether your workers are employees or independent contractors. The definitions of 'employee' and 'contractor' can vary across government regulations and also from state to state, and can have different consequences for you as employer.

For example, someone defined as a contractor for tax and super purposes may be an employee for workers' compensation insurance. And in some cases, workers considered to be contractors may be employees for superannuation purposes.

Workplace Health & Safety

You have clear obligations to ensure the health and safety of your workers, even though you generally will not have direct control or management of the workplace they are placed in. You must:

- ✓ Ensure the workplace and its operations are safe prior to placement
- ✓ Ensure the worker has appropriate training and experience for the role they will be in, along with any relevant licenses
- ✓ Provide a general induction and ensure the client provides a site-specific induction
- ✓ Continue monitoring the health and safety of your workers during their placement
- ✓ Consult with the client to ensure they are meeting their own obligations to your workers

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It is vital that you consult with your client prior to the placement of temporary workers on their site and then on an ongoing, regular basis to ensure your employee will be safe and well at work. It is generally the employer's responsibility to provide any personal protective equipment needed, so it is important to agree on commercial arrangements for this prior to a placement.

If at any time you have imminent concerns about your workers' safety, you should remove them from site and address these issues immediately with the client.

Casual conversion

If your temporary employees are covered by a modern award and they are considered a 'regular casual employee' they have a right to request their employment status be transferred from casual to permanent. A 'regular casual employee' is someone who has worked for a period of 6, 12 months or more with a pattern of hours that is ongoing, regular and systematic. The specific terms of casual conversion differ from award to award so it is important that you consider the right to request conversion under the relevant award. The ability to refuse a request also varies across the awards, but is generally quite restrictive.

It is important to ensure your clients understand these provisions also and that you have considered the appropriate way forward if a request is made.

Appropriate Workplace Behaviour

Your employees have rights under various pieces of legislation to be treated equally, fairly and without discrimination. They also have the right to work free from bullying. Providing training on these topics to ensure all your workers understand the role they must play to ensure the workplace is free from discrimination, harassment or bullying is an important part of your obligations as their employer. You should include training on these topics as part of your induction package and require a refresher at least every two years.

It is also important to ensure your clients have systems and policies in place to meet their obligations to your workers on their sites.

Pay & conditions

Every employee in Australia is covered by 10 minimum employment standards contained in the National Employment Standards (NES). These standards include annual leave, personal leave, redundancy and other entitlements. Casual employees only get NES entitlements relating to:

- unpaid carer's leave
- unpaid compassionate leave
- community service leave
- the Fair Work Information Statement.

In some states and territories long serving casuals are eligible for long service leave.

Where there is an expectation of ongoing work for a casual and the casual has been employed regularly and systematically for at least 12 months, they have extra entitlements under the NES to access parental leave and request flexible working arrangements.

An employee's minimum wages, including penalty rates and overtime, will come from the award or registered agreement that covers their employment. An award will automatically apply to an employee if:

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- it covers the business they are working for and the work they are doing, and
- there is no registered agreement that covers the business.

You can't use or include any conditions in an employment contract, enterprise agreement or other registered agreement that:

- provide a pay rate that is lower than the rate in the relevant award
- are less than the national minimum wage or the NES
- exclude the NES altogether.

Casual employees are entitled to a higher hourly pay rate than equivalent full-time or part-time employees. This is called a 'casual loading' and is paid because they don't get benefits such as sick or annual leave

Casual employees are entitled to superannuation payments provided they are paid \$450 or more (before tax) in a calendar month.

You must keep employee records for seven years and provide pay slips.

2. Commercial Compliance

Terms of Business

When it comes to your temporary business, the risks are quite different for an agency that has traditionally provided permanent recruitment services.

As this guide points out, a temporary workforce is predominantly your direct employees. This straight away adds that layer of risk to your business that needs to be mitigated via appropriate legal terms – matters like safety and adverse action against your employees by your client for which you carry liability as the employer, as well as how you will manage the employment relationship.

You need to consider how the temporary labour model works and why your clients might not understand the distinction. A temporary worker is performing tasks for your client. You as the agency are not the expert in these tasks. Your client may be used to dealing with service providers that deliver their service on-site and get paid to deliver outcomes. Your service is the on-hiring and management of contingent workers.

Finally, there are many hidden or indirect costs that can end up causing margin erosion and disputes with clients. Your terms should make clear what costs you will bear in providing your service and what costs your clients should bear. Think PPE, police checks, medical checks, travel, overtime and wage rises as categories of costs that will impact your margin if not clearly delineated in your Terms.

The last word on Terms of Business – understand them so you can confidently explain them to your clients and minimise having to make changes that leads to slow sales and 'winning' bad business. If they are difficult to understand then you should re-consider how they are written. You can also consider a Q&A or user guide document for your clients and your consultants to make it easier to explain your Terms of Business and your services.

Insurances

If you going to start providing temporary workers, you should immediately consult a good insurance broker. You will need to consider State based Workers' Compensation insurance, the type of business that now needs to be endorsed on your public liability insurance, as well as whether you will need professional indemnity coverage.

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You should keep in mind that not every risk is able to be insured, so again, good Terms of Business can help minimize these risks. Also, you don't want to agree to cover a loss beyond your insurance cover such as agreeing to cover your client's negligence. Therefore, ensure your Terms of Business and any other contract you may be asked to sign won't expose you financially and always line up with your insurance cover.

3. Labour hire specific compliance

Labour Hire Licensing Schemes

Victoria and Queensland have legislation either in force or due to start that requires labour hire businesses to be licensed. Obtaining a license is primarily based on financial viability, as well corporate and safety compliance. QLD is in full operation and Vic is to commence in April 2019. The schemes impose regular reporting to government and involve large fines for companies and individuals that either provide labour hire services without a licence, or deal with someone who isn't properly licensed.

You should also consider how the schemes apply to the use of intermediaries such as payroll providers and not assume you are exempt from holding a licence because you use these types of services.

4. Privacy compliance

The small business exemption and recruitment and staffing businesses

The Privacy Act contains an exemption for businesses that have an annual turnover of less than \$3million per year. However, there is also a catch-all provision that overrides the small business exemption. Unfortunately for recruitment and staffing businesses, the catch-all provision states that the Privacy Act applies:

if a business discloses, or collects, personal information about another individual for a benefit, service or advantage.

In broad terms the nature of a temporary business is to collect information from candidates in anticipation of assignments, and this personal information is disclosed to clients for the provision of services.

The best approach is to consider the Privacy Act to applies to your temporary business. Also, when candidates and clients are confident about how you handle their personal information, they are more likely to trust you and your brand.

Useful Resources

- State safety regulator websites eg: [WorkSafe Victoria Labour Hire Guide](#)
- [Fair Work Commission](#) – national workplace relations tribunal dealing deals with awards and agreements
- [Fair Work Ombudsman](#) – providing information, investigation and mediation of workplace rights and obligations
- [Pay and conditions tool](#)
- [Guide to employing people](#)
- [The Office of the Privacy Commissioner](#) – privacy law guides & resources

Trusted Partners

- [WorkPro](#) – one powerful platform to streamline background checks, manage licenses and deliver training to staff – all in one place

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Types of Information covered by the Privacy Act

'Personal information' is defined in the Privacy Act as:

information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not and whether the information or opinion is recorded in a material form or not.

The Privacy Act also has a special category of 'sensitive information'. This is because the mishandling of this type of information can generally have a more detrimental impact on the individual.

'Sensitive information' includes:

information about an individual's racial or ethnic origin, political opinions, professional or political or religious affiliations or memberships, sexual orientation or practices, criminal record, health, genetics and/or biometrics.

In most cases, the Privacy Act prohibits the collection of sensitive information unless the individual to whom it relates consents to the collection and the information is reasonably necessary for business to be the collecting that sensitive information.

In usual cases, an agency will be collecting personal information and sensitive information from candidates and temporary workers; for example, via health questionnaires and police checks.

Steps you should take

When setting up your temporary business, you should consider the following:

- Develop and implement a privacy policy that applies to your business i.e. accurately sets out what information you collect, why you collect, how you will use it and how complaints and access will be granted to individuals in respect of their information you hold
- Develop and implement candidate collection and consents for the types of information you are collecting and disclosing (remember, collecting sensitive information requires express consent)
- Develop and implement staff training around appropriate collection and handling procedures for personal and sensitive information
- Ensure clients are aware of their obligations in respect of information you disclose to them
- Develop and implement an enquiries and complaints handling procedure
- Consider what cloud systems you use and therefore where you are 'disclosing' personal and sensitive information. Is it going offshore? You will have to disclose this in your Privacy Policy and look at your contract terms regarding your disclosure of personal information to them
- The reasonable steps will you take to protect personal information from misuse, interference and loss and from unauthorised access, modification or disclosure i.e IT security and physical safeguards

The Office of the Privacy Commissioner has a lot of good resources and guides for further reading and information.

DISCLAIMER

Content

The content in this Handbook has been prepared by Corvus Group Australia Pty Ltd ACN 616 553 747.

General Advice Warning

The information contained in this Handbook is general in nature and does not take into account your personal or business situation. You should consider whether the information is appropriate to your needs, and where appropriate, seek professional advice from qualified advisers.

Legal and other matters referred to in this Handbook are of a general nature only and are based on Corvus' interpretation of laws existing at the time and should not be relied upon in place of appropriate professional advice. Those laws may change from time to time.

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COMPLIANCE CHECKLIST

1. Employment & Safety Compliance

Engagement Models

- ✓ Define your business model and align your workers engagement types to this
- ✓ Define the scope of your arrangements with any third-party providers and enter legal terms
- ✓ Implement effective employment contracts for your external workforce if employing direct
- ✓ Consider employment terms and remuneration arrangements with any internal employees

Work Health & Safety

- ✓ Implement policies and procedures to inspect client workplaces
- ✓ Implement safety inductions for workers
- ✓ Implement ongoing worker consultation arrangements
- ✓ Ensure the worker is trained and qualified to perform the role safely

Casual conversion request process

- ✓ Understand casual conversion provisions that apply to your business
- ✓ Ensure you and your client are clear on how requests to convert will be handled

Appropriate workplace behavior

- ✓ Implement policies and training on anti-discrimination, harassment and bullying
- ✓ Ensure your clients advise you of any performance concerns and complaints appropriately to allow you to address them

Pay & conditions clarity

- ✓ Ensure your pay and conditions are NES and award/agreement compliant
- ✓ Review all engagement models regularly to ensure they still reflect the current circumstances

2. Commercial Compliance

Terms of business

- ✓ Insert appropriate temporary workforce services into your TOBs
- ✓ Develop a user guide/Q&A type document for consultants and clients that explains your services and terms

Insurances

- ✓ Source industry appropriate insurance cover (consider using a broker)
- ✓ Develop a summary of key cover for client discussions and risk management

3. Labour Hire Specific Compliance

- ✓ Obtain license if required
- ✓ Comply with reporting requirements

4. Privacy Compliance

- ✓ Implement a privacy policy that covers temporary workforce services and publicise on website
- ✓ Implement a collection notice for your candidate registration step
- ✓ Review IT security arrangements and use of cloud providers i.e. Office365