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E-alert: Labour Hire Licensing Act (Qld) 2017 – Single employer entity groups beware?

By ,

On 8 September 2017, the first scheme to license the labour hire industry in Australia passed through Queensland's parliament.

The scope of the LHL Act goes far beyond normal labour hire businesses and requires all businesses to review their operations to assess whether they are in fact providers of labour hire services, even internally within their own groups.

A new mandatory scheme will soon –

- require all labour hire providers to:

  be licenced;

  demonstrate in the licensing process that persons involved in management of the labour hire provider are "fit and proper" persons;

  comply with ongoing reporting requirements; and

- ban businesses from entering into labour hire arrangements with unlicenced providers.

The LHL Act, absent significant restrictions imposed by regulations before implementation, will apply broadly and capture businesses (including those in very common corporate group structures where labour is provided by one entity to the group) that may not consider themselves a labour hire provider.

Who is a provider of labour hire services?

The foundation of the LHL Act is the definition of who is a provider of labour hire services. Section 7 provides:

> *A person (a provider) provides labour hire services if, in the course of carrying on a business, the person supplies, to another person, a worker to do work.*

Whilst section 7 includes some very limited exceptions, including for some contractors in the construction industry, it will be readily apparent that many normal business structures that would not normally be considered labour hire will be within the ambit of this definition and therefore the obligations of the LHL Act.

By way of example:

- companies which employ their employees through a single entity and then have those employees work for multiple group entities;
- professional service firms which use the common service entity to provide services to partnerships; and
- employers who second employees to other employers,

based on the current definition are likely to be considered providers of labour hire services requiring compliance with the legislation and the recipient employers being banned from engaging the employees until the provider is licensed.

Obtaining a labour hire provider licence

Apart from the relatively small licensing fee of up to $5,000, the LHL Act will require labour hire providers to:

- pass a “fit and proper” person test to establish that they comply with all relevant laws and that the business is financially viable;
- comply with workplace laws, including workers’ compensation, wages and superannuation;
- report regularly on their operations, including numbers of employees, how they are engaged, the type of work performed and where it is performed.

Factors considered in assessing whether a person is a fit and proper person to be a license holder will include:

- the applicant’s (or relevant management’s) character (such as their honesty, integrity and professionalism);
- the applicant’s history of compliance with relevant laws (ie. laws about record-keeping, payment of tax and superannuation, work health and safety, or laws about building standards as it relates to the accommodation of a worker); and
- whether applicant can demonstrate an ability financially (for example by deed of cross guarantee) to comply with relevant laws.

Penalties

The LHL Act establishes a number of new offences with substantial penalties (up to $130,439.10 for individuals and $378,450 for companies) for the most serious contraventions, such as:

- operating as a labour hire provider without a licence;
- entering into labour hire arrangements with unlicensed providers; and
- entering into arrangements to avoid the LHL Act’s obligations.

Key actions

Given the current breadth of the obligations in the legislation and its potential impacts on many businesses that would not normally consider themselves as providers of labour hire services, all clients who potentially fall within section 7 of the LHL Act should assess their employment structures and strategies for compliance and obtaining a license upon commencement of the legislation or risk substantial penalties.

Businesses in Queensland that use labour hire workers also need to adapt their labour hire contracts and protocols to ensure they only use licenced labour hire providers.

Should you wish to discuss any matters arising out of this article, please contact the author:

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