

## Building the 2012 Games



This guidance applies to employers, employment agencies, employment businesses, gangmasters and other labour providers on their responsibilities under health and safety law towards workers from overseas (migrant workers).

A **migrant worker** is considered to be someone who is or has been working in Great Britain (GB) in the last 12 months, and has come to GB from abroad to work within the last 5 years.

A **labour provider** is a person or company who supplies workers to a third party. This includes employment agencies, employment businesses and gangmasters.

A **gangmaster** is someone who supplies a worker to another person to do work to which the Gangmasters (Licensing) Act 2004 applies.

A labour user (user) is a person who hires or uses workers.

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

There is no simple answer to this question - it depends on the relationship between the labour provider and user and the circumstances under which the work is being carried out. In many cases, the employer, for the purposes of health and safety legislation, is likely to be the user rather than the labour provider, particularly where he/she controls and directs their activities. However, this will not always be the case.

### What are the main responsibilities?

Employers have wide-ranging responsibilities towards migrant workers under health and safety law including:

- a duty to provide information, instruction, training and supervision and making sure all their workers can understand it
- making sure overseas workers have the necessary knowledge and skills to do the work for which they have been employed, competently and safely
- making sure workers understand that the employer and employment agency/business or other labour provider (eg gangmaster) have responsibilities for their health and safety.

### What do labour providers and users have to do?

Labour providers and users should clarify and agree their relationship and their respective responsibilities for health and safety. Both parties need:

- to think about whether the workers are to be employed directly or if the workforce (or part of it) is to be supplied by a labour provider
- who has day-to-day direction and control over the work

- if labour providers based abroad do not have a UK-based representative, to remember that the user will have to take full responsibility for the health and safety of any labour supplied
- to consider the involvement of employment agencies and employment businesses which have specific legal responsibilities to provide information to businesses which use their workers
- before workers start at the workplace, to consider if any special qualifications or skills are needed for the job and to ensure that any worker supplied has them
- to think about the extent of English language skills of workers before they start work
- to consider what information, instruction and training will need to be provided at the workplace, by whom and how

### **What is risk assessment?**

A risk assessment is a careful examination of what, in your workplace, could cause harm to people. It lets you weigh up whether you have taken enough precautions to protect them or need to do more.

**Assessing the risks from work activities is a legal requirement, but it is also the key to effectively managing health and safety.** It reduces the potential for accidents and ill health that can not only ruin lives but also seriously affect your business if output is lost, or plant machinery or property is damaged.

If you are a labour user you should:

- carry out a risk assessment of the tasks the worker will be expected to undertake
- ensure the control measures identified in the assessment are effective, are in place and are maintained
- pass relevant information on to your labour provider(s)

If you are a labour provider you should:

- ensure that your clients have carried out risk assessments for the tasks the workers you are supplying will be carrying out
- agree with your client who will check the implementation and maintenance of the identified control measures, eg providing any necessary personal protective clothing

Both labour providers and users should take account of the needs of overseas workers and consider:

- language issues
- basic competencies, eg literacy, numeracy, physical attributes, general health, relevant work experience etc
- whether their vocational qualifications are compatible with those in GB
- ensure that assessments are regularly reviewed to ensure they keep up to date with any changes to processes or working practices

## **What about information, instruction, training and supervision?**

If you are a labour provider you should:

- make sure you know what induction and job-related training the labour user is providing for the workers you supply
- agree with the labour user how, when and by whom training will be provided for the workers you supply
- advise the labour user about how well the workers you supply can speak and read English

If you are a labour user you should:

- provide essential induction training and any necessary job-related/vocational training
- provide relevant information about the risks to which they may be exposed and the precautions they will need to take to avoid those risks
- consider the needs of workers who may not speak English well, if at all, and whether you need translation services
- make sure workers have received and understood the information, instruction and training they need to work safely and consider how to ensure it is acted upon
- make sure workers are adequately supervised and can communicate with their supervisors
- make sure workers know where and how to raise any concerns about their health and safety and about any emergency arrangements or procedures

## **Do I need to keep records?**

Labour providers and users should make sure:

- the terms and conditions under which the workers are employed comply with relevant employment law
- accurate records of the hours worked are kept and are available for inspection
- there are suitable arrangements for recording accidents and cases of ill health and reporting relevant accidents to the enforcing authority.

## **Can I get help with language issues?**

You should consider providing English for Speakers of Other Languages (ESOL) courses for workers who need to improve their English. This can be done in the workplace itself or through local teaching providers, and either within or outside working hours subject to operational requirements. A range of flexible and work-focused ESOL qualifications, with health and safety content included, is now available.

## **Information on funding**

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.

Other options include:

- Asking an employee who speaks good English to act as an interpreter (as long as they can do this to a reasonable standard) or seeking outside help.
- Using experienced foreign language speakers who can help smooth the transition when agency-supplied workers are first taken on.
- Employers co-operating to employ the services of a professional (accredited) interpreter, eg for training sessions.
- Seeking advice from local Citizens' Advice Bureau which may have contacts with overseas worker communities who can provide help.
- Providing written information in a relevant language(s), but ensuring they use a competent translator familiar with any technical terms.

**You will also need to make sure:**

- that any machinery guarding or other safety devices, vehicles, lifting equipment, ventilation plant, ladders, fixed or mobile elevated work platforms, fixed and portable electrical equipment, guards and barriers and other work equipment are in good condition, and are being properly used and maintained
- that, if required, any necessary and suitable personal protective equipment has been provided without cost to the workers
- suitable provision has been made for toilet and washing facilities, even at remote worksites away from the main business base
- where relevant, appropriate arrangements have been made to transport workers to and from their place of work
- there is agreement on the arrangements for providing any necessary health surveillance or computer screen eyesight tests
- there are procedures to review the control measures to ensure they remain appropriate and are being implemented correctly



If you require further details log on to  
<http://www.hse.gov.uk/migrantworkers/employer.htm>