

Code of practice for labour providers – updates and clarification 22nd August 2005

Introduction

The preparation of the code of practice was a lengthy and tortuous affair. Given also that the code was breaking new ground it is not surprising that there are some parts that are unclear. Also, experience from the audits has indicated the need for clarification in some areas. In addition, there have been a few changes in the law (notably in respect of figures such as tax thresholds and the minimum wage).

This note provides the necessary clarification and updating. There is no attempt to change the code. In some areas uncertainty remains; in such cases the generally accepted minimum requirement is accepted.

Taxation

The Inland Revenue and HM Customs & Excise have now been merged as HM Revenue & Customs (HMRC).

Para 1.2

Tax and employee records should be kept for 6 years from the end of the tax year

Para 1.3 VAT

The VAT threshold for the current year is £60,000.

Para 2.2.1 Preventing illegal working

The legal requirements are wrongly stated. Where a worker is from the EU or other European Economic Area country then it is sufficient for them to present either an identity card or a passport. Two documents are required only in more complex circumstances. The information in the Appendix to the code is correct.

Para 2.2.2 Workers Registration Scheme

Evaluation Requirements

- As a minimum, there are copies of completed application forms for each worker that needs to register with the Home Office within 1 month of them starting work with the Labour Provider.

Para 2.4.3 Working holidaymakers

Under the scheme, visas are issued for 2 years but the visa holder is only permitted to work for 1 year.

Para 2.7 Data Protection

(L) To release personal details about your workers to a third party, you must first obtain the individual's written permission to do so

Para 3.1 Employment Contracts

(L) Workers must be issued with either a contract of employment or a contract for service. If workers are on a contract for service, this must be issued and signed by the worker before they commence their first job.

Where there is a contract for services there can be no grievance or disciplinary procedures. However, the same rules in respect of minimum wage, holiday pay and sick pay apply. The TLWG would however require a complaints mechanism to be in place to prevent a NC being raised in section 4.9

Para 3.2 Written Service Level Agreements with Customers

(L) The Employment Agencies and Employment Businesses regulations 2003 makes it a legal requirement to:

Amendments to TLWG Code of Practice

- Provide the hirer (Labour User) with a set of terms of business or a letter setting out all the terms agreed. These terms must be listed in a single document and if changes are made, a new statement issued. These terms must specify:
 - If the LP an agency or business
 - Details of any fee
 - The amount of the fee or how it is calculated
 - The circumstances, if any in which refunds or rebates should be made
 - The procedure to follow should a worker provided be unsatisfactory

(L) Workers pay should not be withheld for any reason e.g. non-payment by the client

Para 3.3 ACU2 forms

It seems that HMRC (formerly Inland Revenue) makes no use of these forms and they are generally not supplied.

(G) An accurate list of workers supplied should be provided to each customer on a regular basis. This may include information such as hours worked.

Para 3.4 Health and safety issues

Evaluation Requirements

- The Labour Provider should have their own copies of risk assessments that have been carried out for each site they send workers to. If risk assessments carried out by their customers are job specific, then the Labour Provider should have copies of the risk assessment for each job performed by their workers.
- Any H&S issues found that are under the control of the Labour User (such as blocked fire escapes) will be recorded as an observation for the labour user only, not a non-compliance against the labour provider.

Para 3.4.2 Employer's liability insurance

(L) This is the responsibility of whoever controls the workers (generally the labour user).

(G) If it is the responsibility of the Labour User, the LP should check that their customers have the required ELCI.

Para 3.4.3 Providing transport

There is uncertainty about the legal provisions as to when a PSV licence is required. The TLWG has decided to take the lowest common denominator position.

(L) A PSV licence is required only if the vehicles have more than eight passenger seats and workers are charged.

(L) Drivers need the appropriate licences only if they are driving vehicles classed as PSV vehicles.

(L) Drivers from the EU can drive in the UK without swapping this for a UK licence. Drivers from outside the EU can only stay on a non-EU licence for a maximum of 1 year.

(L) Workers must give their written permission for this deduction to be made.

Para 4.4 Income tax and national insurance

(L) In 2004/05 the earning threshold for national insurance contributions is £94 a week. The Lower Earning Limit (above which details must be included on form P35) is £82.

Para 4.5 Minimum wages

(L) The agricultural minimum wage is £4.85 for manual harvest workers and £5.40 for other adult workers. These figures will increase on 1 October 2005 but the new rates have not yet been decided.

(L) The National Minimum Wage is £4.85. This will increase to £5.05 on 1 October 2005. For workers under 21 the figure is £4.10, increasing to £4.25 on 1 October 2005.

4.9 Harsh or inhumane treatment

Where contracts for services are used there will no disciplinary or grievance procedures.
There will need to be complaints mechanism to enable workers to appeal against poor treatment

(L) If workers are on a contract of employment, then there should be disciplinary and grievance procedures.

If workers are on contract for services, then the TLWG require a complaints mechanism for worker to address ill treatment.