

Compliance Code 4 of 4

Cooperating with labour hire employers about return to work

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1.

Preface

This compliance code provides practical guidance to **hosts**¹ who have an obligation under section 109 of the *Workplace Injury Rehabilitation and Compensation Act 2013* (the Act) to cooperate with a labour hire employer on how to comply with that obligation.

It was approved under the Act by the Hon. Gordon Rich-Phillips MLC, Assistant Treasurer.

This compliance code has been developed by the WorkSafe Victoria (WorkSafe).

The public and representatives of employers, unions, occupational rehabilitation providers and health practitioners were consulted during its preparation.

Hosts should use this compliance code in conjunction with the Act.

This compliance code is not mandatory. A host who complies with this compliance code will – to the extent that the compliance code deals with their obligations under Part 4 of the Act – be taken to have complied with their obligation.

A host can put into place other compliance solutions. These solutions must also meet the host's obligations set out in section 109 of the Act.

Compliance with the Act in relation to obligations not covered by this compliance code must be achieved by other means.

WorkSafe publishes guidance to assist with matters not covered in this compliance code. Refer to **Appendix D** or visit **worksafe.vic.gov.au** for a list of useful publications.

Evidence of a failure to observe a compliance code may be used as evidence in proceedings for an offence under the Act. However, a failure to comply with a compliance code does not, of itself, give rise to any civil or criminal liability. A host who complies with a compliance code in relation to an obligation under Part 4 of the Act is, however, taken to have complied with the Act in respect of that obligation.

A Return to Work Inspector may cite this or other compliance codes in a direction or condition in a Return to Work Improvement Notice as a means of achieving compliance.

An approved compliance code may be varied or revoked by the Minister. To confirm that this compliance code is current and in force, visit **worksafe.vic.gov.au**.

Note

Material in this document in grey boxes including the examples and Appendices A, B and D is provided for information only, it does not form part of this compliance code.

¹ A 'host' is a person (whether an individual or body corporate) to whom the services of a worker are let on hire by the employer with whom the worker had entered into a contract of employment. A host includes a person who hires an apprentice or trainee employed by a group training organisation.

2.

Introduction

2.1 Purpose

1. The purpose of this compliance code is to help hosts to cooperate with labour hire employers in respect of actions taken by the labour hire employer to meet their obligations. The labour hire employer obligations referred to are the obligations under the Act to provide employment (section 103), plan return to work (section 104) and consult about the return to work of a worker (section 105).
2. A 'host' is a person (whether an individual or body corporate) to whom the services of a worker are let on hire by the employer with whom the worker had entered into a contract of employment (the labour hire employer). A host includes a person who hires an apprentice or trainee employed by a group training organisation.
3. Section 97 of the Act sets out the purpose of the Act in relation to return to work. The purpose is to provide:
 - (a) that employers, workers and other persons involved in the return to work process cooperate to ensure that workers successfully return to work
 - (b) that employers are responsible for providing pre-injury employment or suitable employment to enable workers to return to work
 - (c) that workers are responsible for participating in the return to work process consistent with their capacity for work
 - (d) for workers to be represented, assisted and supported in the return to work process, and
 - (e) for effective occupational rehabilitation for workers to facilitate their early and sustainable return to work.
4. Part 4 of the Act sets out the obligations of employers and others in relation to return to work. The Act also sets out the maximum penalties for non-compliance with obligations under the Act.

2.2 Scope

5. This compliance code covers a host's obligations in relation to cooperating with labour hire employers under section 109 of the Act – Host to cooperate with labour hire employer in all workplaces.

2.3 Application

6. A worker may be represented, assisted and supported at any stage of the return to work process, including in the consultation process. A worker may choose any person (except a legal practitioner) to perform this function. If a worker has chosen an individual to represent, support and assist them, the employer should liaise with this person at all stages of the return to work process. Any reference in this compliance code to 'the worker' should be taken to read the worker and the individual they have chosen to represent, assist and support them, if the worker has appointed one. Employers are required to notify workers of their right to be represented, assisted and supported in the return to work information they must make available to their workers. For more information on this obligation see WorkSafe's *Compliance Code 3 of 4: Return to work information*.
7. Apart from the exceptions listed below, this compliance code applies to all employers, including self-insurers. The references in this compliance code indicating that an employer or Return to Work Coordinator should involve WorkSafe's Agent (the Agent) do not apply to self-insurers. Self-insurers are employers approved by WorkSafe to manage their own workers compensation claims.
8. This compliance code applies to hosts, including self-insurers, if:
 - (a) the services of a worker are let on hire to the host by an employer (the labour hire employer) with whom the worker had entered into a contract of employment, and
 - (b) a worker's incapacity for work resulted from, or was materially contributed to, by an injury arising out of or in the course of employment with the labour hire employer whilst the worker was let on hire to the host.
9. This compliance code does not apply to hosts in relation to a worker who:
 - (a) at the time of their injury is a student at a school within the meaning of Part 5.4 of the *Education and Training Reform Act 2006*; and
 - (b) is employed under a work experience arrangement under that Part.
10. Further, the following classes of employer are not required to comply with section 109 of the Act.
 - (a) employers (including owners corporations within the meaning of the *Owners Corporation Act 2006*) who employ domestic or similar workers other than for the purposes of the employer's trade or business (but only to the extent that such workers are concerned)
 - (b) employers who hold owner-builders' permits under the *Building Act 1993* (this relates only to the workers employed to conduct the work to which the permits relate)
 - (c) employers (being corporations) who only employ workers who are directors of the corporation
 - (d) employers who only employ workers who are members of the employer's family, and
 - (e) employers who only employ workers who only perform work while outside Victoria.

3.

What does the law say?

11. The law relating to a host's cooperation with a labour hire employer is detailed in subsection 109(2). To the extent that it is reasonable to do so, the law requires a host to cooperate with the labour hire employer in respect of action taken by the labour hire employer in order to comply with the labour hire employer's obligations to facilitate the worker's return to work by providing employment (section 103), planning return to work (section 104) and consult about the return to work of a worker (section 105).
12. Subsection 109(1) provides that the obligation in subsection 109(2) (to cooperate) applies to hosts if an on hire worker incurs an incapacity for work resulting from, or materially contributed to, by an injury arising out of or in the course of employment whilst they are let on hire to the host.
13. For more information on the labour hire employer's obligations refer to the following Compliance Codes:
 - *Compliance Code 1 of 4: Providing employment, planning and consulting about return to work*
 - *Compliance Code 2 of 4: Return to Work Coordinators*
 - *Compliance Code 3 of 4: Return to work information.*

4.

How to comply

14. To the extent that it is reasonable to do so, in order to cooperate with a labour hire employer in respect of action taken by the labour hire employer to comply with the labour hire employer's obligations to facilitate the worker's return to work, the host needs to:
 - respond as soon as possible to the labour hire employer's requests for cooperation
 - provide the labour hire employer with a nominated workplace contact for return to work issues
 - provide the labour hire employer and other parties involved in the return to work process with reasonable access to the workplace
 - be available for discussions initiated by the labour hire employer on providing duties, return to work planning and consultation
 - provide the labour hire employer with information regarding progress of the worker's rehabilitation and their return to work duties
 - explore with the labour hire employer options for providing suitable duties at the host's workplace consistent with the worker's capacity
 - explore solutions with the labour hire employer that address barriers to the worker's return to work, and
 - provide reasons to the labour hire employer for a decision to not provide the worker with suitable duties.

5.

Appendices

Appendix A

Examples of cooperation with a labour hire employer

These examples are provided for information only and do not form part of the compliance code itself.

Example 1

- David, a labourer, working in an abattoir on an ongoing assignment from a labour hire employer, sustains a significant soft tissue injury to his ankle. David is unable to do his usual duties.
- David notifies his labour hire employer of the incident.
- The Return to Work Coordinator at the labour hire employer talks to David and confirms that he is seeking appropriate treatment. David opts to involve a representative, his union delegate, in the discussions.
- The Return to Work Coordinator, David and his representative discuss the nature of David's injuries and the associated work restrictions. This helps the Return to Work Coordinator better understand David's current situation.
- After discussing and obtaining relevant information, the Return to Work Coordinator contacts David's host by telephone as part of meeting the obligations to plan for David's return to work.
- To the extent that it is reasonable to do so, the host cooperates with the labour hire employer by nominating a contact person. That person and the Return to Work Coordinator from the labour hire employer, liaise about planning David's return to work. The host further cooperates by advising the labour hire employer that the return to work contact person will be available for discussions for the purposes of meeting its obligations under the Act to provide employment (section 103), plan return to work (section 104) and consult about David's return to work (section 105). This includes face to face meetings and contact by phone or email.
- The Return to Work Coordinator at the labour hire employer contacts the host's contact person and informs them that an occupational rehabilitation (OR) provider has been engaged by its Agent to explore and identify suitable duties for David and to facilitate David's return to work.
- The labour hire employer requests that the OR provider is granted access to the host's worksite to conduct a worksite assessment. The OR provider will assess the availability of potential suitable duties for David and consider if workplace aids and/or modifications might facilitate David's return to work at the host's worksite.

Example 1 (continued)

- The host cooperates with the labour hire employer by granting this access. The host agrees to meet the OR provider and show them around the workplace. David and his representative are invited to accompany the OR provider while they do the workplace assessment.
- The OR provider identifies suitable duties that David could carry out at the host's worksite once his recovery has progressed.
- The Return to Work Coordinator at the labour hire company discusses the suitable duties identified by the OR provider with David and his representative. The Return to Work Coordinator sends the list of duties and proposed return to work arrangements to the host's nominated return to work contact person to review. The host cooperates with the labour hire employer by reviewing the proposed suitable duties and return to work arrangements and contacts the labour hire employer by phone to discuss the proposal.
- The host agrees to provide David with the proposed suitable duties. The Return to Work Coordinator at the labour hire employer provides the host's return to work contact person, David and David's doctor with written copies of the information discussed.
- David's doctor confirms with David and the Return to Work Coordinator at the labour hire employer that the proposed duties and arrangements will be appropriate in two weeks' time but David must take regular breaks (5 minutes every half hour).
- The Return to Work Coordinator from the labour hire employer informs the host's nominated return to work contact person by email of the changes to David's return to work arrangements. The host agrees to these changes in writing and cooperates by responding quickly. They work with the labour hire employer's Return to Work Coordinator to resolve the barrier to David's return to work – the requirement for regular breaks.
- To the extent that it is reasonable to do so, the Return to Work Coordinator from the labour hire employer provides all parties involved in David's return to work with a written copy of David's return to work arrangements. Working together enables David to get back to suitable duties at the host employer within three weeks of his injury.

Example 2

- James is employed by a group training organisation and is on assignment at a host who manufactures plastic products.
- James suffers a knee strain while unloading a container and reports the incident and injury to both his host and his group training organisation.
- James visits his doctor who certifies him unfit for all duties for seven days.
- James' host has contacted James' group training organisation to notify them of his injury. To the extent that it is reasonable to do so, they cooperate by trying to get James back to work as soon as possible.
- The group training organisation asks the host for a contact person that their Return to Work Coordinator can talk to about planning and facilitating James' return to work. The host cooperates by providing the return to work person's name and contact details.
- The group training organisation's Return to Work Coordinator reviews James' initial *Certificate of Capacity*. They contact the host's return to work contact person to inform them of his prognosis and discuss the return to work planning and process. The host cooperates with the group training organisation by taking the calls and actively participating in discussions relating to James' return to work.
- The group training organisation's Return to Work Coordinator and the host's return to work contact person talk about suitable duties at the host's workplace that are in line with the information provided by James' doctor. They agree there are some options available and talk about the arrangements that need to be put in place to support James' return to work.
- The group training company's Return to Work Coordinator consults with James, who wants to get back to work. They talk through the proposed suitable duties available at the host. James takes written details of the proposed suitable duties and makes an appointment with his doctor so his doctor can consider them.
- James' doctor supports the proposal and issues a subsequent *Certificate of Capacity* certifying James as fit for modified duties in line with the proposed suitable duties.
- James talks over the phone with the Return to Work Coordinator from the group training organisation. He advises he is happy with the proposed return to work arrangements. The Return to Work Coordinator from the group training organisation formally details James' return to work arrangements and gives a copy to James, James' doctor and the host.
- By working cooperatively with the group training organisation, to the extent that it is reasonable to do so, James can return to work on suitable duties four days after his injury. Before James returns to work, the host ensures his supervisor and fellow workers are briefed on his return to work arrangements so he is well supported in the workplace.
- Throughout the return to work process the group training organisation has maintained close contact with the host. By responding quickly to the group training organisation's phone and email contacts, the host has demonstrated cooperation with the group training organisation in relation to James' return to work.

Example 3

- Diane, a labour hire employee, is on a two week assignment as a cleaner at a large pharmaceutical manufacturing company (the host). While working, she strains her arm moving a floor polisher.
- The host immediately notifies the labour hire employer of Diane's injury. The host cooperates with the labour hire employer by providing them with a return to work contact person that the labour hire employer's Return to Work Coordinator can liaise with regarding Diane's injury.
- Diane agrees to meet with her doctor, the labour hire employer and the host at her doctor's clinic to discuss her return to work. To the extent that it is reasonable to do so, the host demonstrates its cooperation with the labour hire employer by agreeing to attend the meeting.
- The host brings to the meeting a description of Diane's current duties and options for modified duties. The host cooperates by actively participating in the discussions. During the meeting, modified duties are identified. Diane's Return to Work Coordinator writes up the proposed return to work arrangements. These arrangements include her hours of work and the contact details at the host and labour hire employer for any injury and return to work related matters.
- The host demonstrates ongoing cooperation with the labour hire employer by allowing Diane to return to work the next day on modified duties. The host also responds to the labour hire employer's ad-hoc requests for updates on Diane's recovery and return to work.

Example 4

- Stephen is a building and construction worker. While on a one week assignment he injures his shoulder while carrying a large beam on a construction site for a small building company (four workers).
- After extensive discussions with the host, the Return to Work Coordinator for the labour hire employer concludes that due to the nature of Stephen's injury and the type of work done on the site there are no suitable employment options at the host's workplace.
- Although a positive return to work outcome at the host's workplace was not achieved, the host has cooperated with the labour hire employer. The host demonstrated this by actively participating in discussions relating to Stephen's return to work. They nominated a workplace contact and made them available to discuss Stephen's return to work arrangements.
- In an effort to meet their own return to work obligations, the labour hire employer commenced exploring other suitable employment options.

Appendix B

The Return to Work Compliance Framework

The table below sets out the elements of the Return to Work Compliance Framework. It also describes the legal status of each element under the *Workplace Injury Rehabilitation and Compensation Act 2013* (the Act).

<i>Workplace Injury Rehabilitation and Compensation Act 2013</i>	Workplace Injury Rehabilitation and Compensation Act 2013 Sets out the law in relation to workers compensation in Victoria.
<i>Ministerial Directions</i>	Ministerial Directions specify the way in which an obligation under the Act must be performed or prescribe procedural or administrative matters to support the Act.
<i>Compliance Codes</i>	Compliance Codes provide practical guidance in relation to obligations under the Act. A compliance code is not mandatory. A person or entity that has an obligation under Part 4 of the Act and complies with a compliance code will – to the extent that the compliance code deals with that obligation under the Act – be considered to have complied with their obligations.
<i>Non-statutory guidance</i>	Non-statutory guidance includes information published by WorkSafe which assists with building people's knowledge and awareness of return to work related matters. Non-statutory guidance is not mandatory, nor does it provide any 'deemed to comply' outcomes in relation to an obligation.

Appendix C

Terminology from the Act

Host (109(1)(a) of the Act)	A person to whom the services of a worker are let on hire by a labour hire employer with whom the worker had entered into a contract of employment.
Labour hire employer (109(1)(a) of the Act)	An employer who has let on hire the services of a worker to another person (host).
Occupational Rehabilitation Service (s3 of the Act)	Occupational rehabilitation service means any of the following services provided by a person who is approved by The Authority as a provider of an occupational rehabilitation service: <ul style="list-style-type: none"> (a) initial rehabilitation assessment (b) functional assessment (c) workplace assessment (d) job analysis (e) advice concerning job modification (f) occupational rehabilitation counselling (g) vocational assessment (h) advice or assistance concerning job seeking (i) vocational re-education (j) advice or assistance in arranging vocational re-education (k) advice or assistance in return to work planning (l) the provision of aids, appliances, apparatus or other material likely to facilitate the return to work of a worker after an injury (m) modification to a work station or equipment used by a worker that is likely to facilitate the return to work of the worker after the injury (n) any other service authorised by the Authority – but does not include a hospital service.
Pre-injury employment (s96 of the Act)	The employment of a worker in a position which is the same as or equivalent to the position in which the worker was employed prior to the injury.

Terminology from the Act (continued)

Suitable employment (s3 of the Act)

In relation to a worker, suitable employment means employment in work for which the worker is currently suited having regard to –

- (a) the nature of the worker's incapacity and the details provided in medical information including, but not limited to, the *Certificate of Capacity* supplied by the worker
- (b) the nature of the worker's pre-injury employment
- (c) the worker's age, education, skills and work experience
- (d) the worker's place of residence
- (e) any plan or document prepared as part of the return to work planning process
- (f) any occupational rehabilitation services that are being, or have been, provided to or for the worker, and
regardless of whether –
 - i. the work or the employment is available, and
 - ii. the work or the employment is of a type or nature that is generally available in the employment market.

For the purposes of Part 4 of the Act, suitable employment also includes:

- (a) employment in respect of which the number of hours each day or week that the worker performs work or the range of duties the worker performs is suitably increased in stages in accordance with return to work planning or otherwise
- (b) employment the worker is undertaking or that is offered to the worker regardless of whether the work or the employment is of a type or nature that is generally available in the employment market, and
- (c) suitable training or vocational re-education provided by the employer or under arrangements approved by the employer (whether or not the employer also provides employment involving the performance of work duties), but only if the employer pays an appropriate wage or salary to the worker in respect of the time the worker attends suitable training or vocational re-education.

The Act

Workplace Injury Rehabilitation and Compensation Act 2013

Appendix D

Further information

WorkSafe has a range of publications, tools and templates that may assist with undertaking return to work activity and meeting return to work obligations. These are available from worksafe.vic.gov.au.

To order hard copies of publications, please contact WorkSafe Advisory Service.

WorkSafe publications

- *What to do if a worker is injured – A guide for employers*
- *Return to Work Coordination – The basics you need to know*
- *Suitable employment for injured workers – A step by step guide to assessing suitable employment options*
- *Return to Work Arrangements Template*
- *Labour Hire and return to work*
- *Return to Work Coordinators*
- *Return to work obligations – Information for employers*
- *Steps to resolving return to work issues*
- *Who's who in the claims process – A glossary for injured workers*
- *Return to Work Inspectors*
- *Returning to work – A guide for injured workers*
- *Introducing WorkSafe – A guide for injured workers*
- *Return to work obligations – Information for workers*

Other Return to Work Compliance Codes

- *Compliance Code 1 of 4: Providing employment, planning and consulting about return to work*
- *Compliance Code 2 of 4: Return to Work Coordinators*
- *Compliance Code 3 of 4: Return to work information*

Other useful references

Further information can also be provided by Agents, industry associations and unions. Agents can also provide assistance regarding the management of workers compensation claims. Small businesses may also request the Agent to assist in obtaining the involvement of an occupational rehabilitation provider.

WorkSafe Victoria

Advisory Service

Phone.....(03) 9641 1444
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 Email.....info@worksafe.vic.gov.au
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WorkSafe Agents

ALLIANZ Workers' Compensation (Vic) Limited

Freecall: 1800 240 335

CGU Workers Compensation (Vic) Limited

Freecall: 1800 066 204

Gallagher Bassett Services Workers Compensation Vic Pty Ltd

Freecall: 1800 774 377

QBE Workers Compensation (Vic) Limited

Freecall: 1800 817 820

Xchanging Pty Ltd

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