

Health and Safety Bulletin

Agency workers

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In the last bulletin we focused on contractor management but started by differentiating between agency workers and contractors. Most agency workers have a contract of employment with an employment agency (sometimes called a “recruitment agency”). The employment agency places the worker with a company (the 'hiring' or 'host' organisation) for a temporary period of work ('assignment'). During the assignment the employment agency is legally responsible for employment rights (such as pay, holiday and sick leave), but the hiring organisation bears a level of responsibility for the health and safety of the individual along with the agency.

Legal requirements

The legal responsibility of the hiring organisation for agency workers, in terms of health and safety, depends on their employment status. If the agency worker is self-employed – not employed by the agency - under health and safety legislation, they are regarded as employees because their work is controlled directly by the host employer. Where the agency employs the workers, then the agency has legal responsibility for their health and safety alongside the host employer.

For example, an agency worker employed in a warehouse may need safety footwear. If they are an employee of the agency, the agency should provide this equipment free of charge under HASWA. If they are self-employed, unless agreed otherwise in the employment contract, it is the host company's responsibility to provide any personal protective equipment.

It is always the host employer's responsibility to provide all agency or temporary workers with relevant health and safety information such as the risks and controls associated with the work and emergency procedures. In addition, the Agency Workers Regulations specify that all workers should have access to suitable welfare facilities (e.g. canteen, toilets, showers etc.) from day one of working on the hiring organisation's site.

If employment agencies are supplying workers to the agricultural, food processing and packaging sectors they must be licensed by the Gangmasters Licensing Authority (GLA).

Risk assessment

Agency workers are potentially vulnerable to a wider number of risks than employees, due to: -

- their lack of knowledge and experience of the host employer's activities
- possibly a lack experience of the country they are working in (e.g. language, health and safety standards)
- irregular working hours

Under the Management of Health and Safety at Work Regulations, the host employer is responsible for completing risk assessments that identify the risks to anyone that may be affected by their activities – and this will include agency workers.

In order to ensure their assessments are “suitable and sufficient,” the host employer must consider the specific risks that agency workers face and if the risk to them is unacceptable, implement additional control measures to protect their health and safety.

Conclusion

In the current economic climate, many businesses see the employment of agency workers as a cheap, flexible and easy option, but it is important that they implement the additional resources required to comply with health and safety legislation.

Recently issued health and safety information:

- HSG141 Electrical safety on construction sites
<https://www.hse.gov.uk/pubns/pri/ced/hsg141.pdf>
- HSE safety alert for pop up toilets
<https://www.hse.gov.uk/safetybulletins/popup-toilets.htm>
- HSE safety alert for forklift fire risk
<https://www.hse.gov.uk/safetybulletins/forklift-fires.htm>
- acas: reasonable adjustments for mental health
<https://www.acas.org.uk/reasonable-adjustments-for-mental-health>
- Mental health in the trades: 2023 report
<https://www.ironmongerydirect.co.uk/research/mental-health-in-the-trades>

Asbestos quiz

A recent survey by ElectricalDirect has found that 72% of tradespeople are still encountering asbestos during their working lives and 60% come across it every year. One in twenty know someone who has died from an asbestos-related disease.

The HSE has put together a short online quiz as part of their 'Asbestos and You' campaign to encourage people to find out how much they really know about protecting themselves and others from asbestos fibres.

As well as giving people a score, it provides additional underpinning information explaining the correct answer and also allows people to publicize their score on social media.

The quiz is available at [HSE Asbestos & You Quiz \(involve.me\)](https://www.involve.me)



Do you know enough to protect yourself and others from asbestos?

Asbestos didn't disappear when it was banned in the UK. Test your knowledge with 8 quick questions.

TAKE QUIZ

Case Law update

This issue focuses on recent cases involving agency workers

A poultry processing company was fined **£300,000** with **£5,046** costs after an agency worker had her thumb severed on a moving part of a processing line. The worker was rehangng chickens on a hook on an overhead conveyor when her thumb got stuck, and she was pulled around with the conveyor to a fixed upright post attached to a drip tray where her thumb was traumatically severed

An agency worker, working as a delivery driver, was fatally crushed by a pallet of stone tiles

that fell on him. the weight of the pallet was recorded as 1,200 kg but the actual weight was in excess of 1,400 kg. The pallet was therefore in excess of the 1,000 kg weight limit set by the host employer for tail-lift deliveries, but although the driver had worked for the company for two weeks, he had not received any training for the safe delivery of pallets using a tail-lift. The transport company were only fined **£5,000** because they were in liquidation

A waste management company, was fined **£140,000** with costs of **£9,322.48** after an agency worker suffered lower leg amputation after being struck by a moving excavator. The worker, who had been observing a tipping activity in the blind spot of the excavator, had his leg crushed by the machine which had reversed to accommodate

another vehicle tipping off waste in an adjacent part of the site

An agency worker suffered a severe crush injury to his arm as he attempted to remove dirt from a press roller and his hand was dragged into a nip point. He was working on a production line that glued sponge to abrasive sheets to make scourer sponges - his job was to remove the sheets of scourer sponges from the conveyor onto a pallet. He was diagnosed with forearm compartment syndrome, a painful condition caused by bleeding or swelling within an enclosed bundle of muscles. He had an operation on his arm and had to stay in hospital for six days. The company was found to have provided inadequate guarding on the machine and were fined **£80,000** and ordered to pay costs of **£5,314**

About Clwyd Associates...

We are a management consultancy, focusing on health and safety, and SAP based in the Midlands.

We employ consultants with at least 15 years practical experience backed up by recognised professional and academic qualifications - ensuring our clients receive first class service.



CE marking extended

Following the UK's decision to leave the EU, UK Conformity Assessed (UKCA) marking was introduced to replace CE marking.

However, the UK Government recently announced they have decided to drop the original 31 December 2022 deadline for moving from CE to UKCA marking – they explained the decision had been taken in the context of the difficult economic conditions. Therefore, the use of CE marking will now be allowed until 31 December 2024. Until that time, organisations can choose to apply either CE or UKCA marking.



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