

LABOUR HIRE BE WARNED -

Game on!

In my first labour hire article I discussed the basic points of the new Labour Hire Licensing Act 2017 (QLD). This article looks at the finer points of the recently released regulations governing the Act.

The new legislation came into force on 16 April 2018 and introduces a mandatory licence scheme whereby all labour hire providers in Queensland must obtain a licence to operate, and persons who engage labour hire providers must only engage labour hire providers who are licenced.

Who is, and who is not, covered

The regulations provide the much needed clarity around the type of workers excluded within the legislation:

- Workers temporarily supplied to another person/business i.e. temporary secondments;
- High income workers (earning over \$142,000 per annum excluding superannuation and not covered by an industrial award);
- A director of a business who is the only worker 'supplied'; and
- Workers engaged by an employing, or service entity, within a single group of companies and works only within that business.

Aside from the exclusion for employees hired by an employer or service entity, this exclusion appears to be limited to workers who work "only for and within that single recognisable business". It may not cover those workers where a group of companies has two (or more) distinct and recognisable businesses. Accordingly, whilst the regulations narrow the scope, there are many internal labour hire arrangements that may likely be caught out by the changes.

What you need to do

Existing labour hire providers have 60 days (to 15 June 2018) to lodge an application for a licence. If an application is made within the 60-day period, the obligations and penalties of the Act will not apply until the applicant's licence has been granted. Labour hire

providers who apply for a licence after 15 June 2018 must not operate until their licence is granted.

The regulations also set out the financial documents required to demonstrate a business's ability to:

- Meet its actual, or projected, operating costs and expenses;
- Pay each worker as and when they are due to be paid; and
- Pay other financial obligations or entitlements in relation to workers (such as payroll tax and superannuation).

These documents may not be readily available or exist (i.e. a cash flow forecast) however a prudent business operator should be able to provide them quickly.

The Government will have regard to whether the applicant for the licence is fit and proper to be a provider of labour hire services. This requirement will also extend to any close associate (i.e. family members) or related companies to determine if they have previously been made insolvent. At this stage the regulations do not dictate how far back they will look to check for an insolvency event. It appears this requirement of proving financial viability is to prevent potential applicants appointing their partner or relative as a figurehead director in a new business. This may be a hurdle for several businesses in obtaining a licence.

Application and annual license renewal fees are calculated based on wages paid during the previous financial year, or on projected

wages for the current financial year for a new business. The table below lists the fee schedule:

Wages paid	Annual licence fee
\$1.5 million or less	\$1,000
\$1.5 million and up to \$5 million	\$3,000
Over \$5 million	\$5,000

Remember, financial viability will need to be substantiated each year for licence renewal and therefore continued operation in the industry. The decision not to issue a licence will have a 28-day window for appeal.

A change in government policy or regulation is a red flag and could likely be an early warning sign that a business is at risk of operational stress, or worse, insolvency. Given the potential catastrophic consequences of a non-licensed business (i.e. unable to operate in Queensland, and soon maybe Victoria and South Australia too) it is imperative your clients seek advice now.

How we can help

Our team of specialist advisors can support businesses by completing a turnaround or restructure, assisting them to secure and maintain their licence. We can also provide the most appropriate guidance to manage a business's risk and ensure timely action is taken if / when required.

For more information and the licence application portal visit www.labourhire.qld.gov.au.

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Andrew Weatherley
 Managing Director
 +61 7 3225 4935
andrew.weatherley@fticonsulting.com



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