



GUIDE TO MONITORING YOUR LABOUR CONTRACTING



Australian Government

Fair Work
OMBUDSMAN



Australian Security Industry
Association Limited

Why use this guide?

More and more businesses are playing an active role in checking whether their contractors are doing the right thing by their employees (for example, paying minimum wages). This helps protect your business against a number of significant risks including:

- ▶ damage to the reputation of your business – your bottom line may be affected if customers leave because your contractor broke the law.
- ▶ being held legally responsible for your contractor's actions – this is known as 'accessorial liability' and can result in your business facing financial penalties in court.



Accessorial liability – You can be liable if your contractors do the wrong thing

Businesses may be held legally responsible when their contractor (or subcontractor) is underpaying their staff. It's not just direct employers who can be held liable for contraventions such as underpayments – any person knowingly involved in contraventions could be found legally responsible. This could extend to directors, managers, accountants or businesses involved in the supply chain.

Find out more about accessorial liability and what it means for individuals and businesses at www.fairwork.gov.au/about-us/news-media-releases/newsletter/august-2016/what-is-accessorial-liability.

It is important to be aware that there are a variety of ways workers could be engaged by your business, for instance by outsourcing work to a contractor who in turn engages workers as employees (the focus of this guide) or independent contractors, or a combination of both. A business could also engage staff through a third party labour hire service provider. It's good business practice to understand how the workers in your business are engaged so you can mitigate against the risk of non-compliance with workplace laws.

You can minimise your risks by following these three easy steps:

STEP 1 – Map your existing contracts

STEP 2 – Examine compliance with workplace laws

STEP 3 – Act on any problems you find

Step 1 – Map your existing contracts

To have a clear picture of the levels of contracting within your network, you can map your existing contractors and subcontractors. You might need to check your contract documents and/or speak with your contractors to get the information you need to draw it up.

An example is:

Service provided	Contract duration	Contractor name	Contractor's employees	Subcontractor name	Subcontractor's employees
Security services	01/07/2016–31/12/2018	A Pty Ltd	2 full-time employees 6 casual employees	N/A	N/A
Cleaning services	01/07/2016–31/12/2017	B Pty Ltd	6 casual employees	1 Pty Ltd	2 full-time employees
				2 Pty Ltd	3 part-time employees
Secretarial services	01/07/2016–30/06/2017	C Pty Ltd	4 part-time employees	N/A	N/A

Flow chart map of labour contracting network



Step 2: Examine compliance with workplace laws

Now that you have a clear picture of your network, you can contact each of your contractors to check their compliance with workplace laws. An easy way to do this is to set up a meeting or email them with a list of questions, telling them that you are running a routine check as part of your compliance obligations.

Below are some sample questions you can ask. You can also add extra questions to suit your business and ask for further details/records to support the answers given.

Checklist for contractors		
Subcontracting	Yes	No
Do you subcontract any of the services you provide to my business?	<input type="checkbox"/> What work do you subcontract?	<input type="checkbox"/>
Do you monitor your subcontractor's compliance with workplace laws?	<input type="checkbox"/> How do you do this? _____ _____	<input type="checkbox"/>
Employee entitlements	Yes	No
Do you directly employ any staff to carry out the services you provide to my business?	<input type="checkbox"/> Are they covered by an award, registered agreement or the national minimum wage? Please provide the name or number of any award or registered agreement.	<input type="checkbox"/>
Do you provide your employees with their minimum pay rates (including penalties, allowances and overtime), breaks and leave?	<input type="checkbox"/>	<input type="checkbox"/>
Do you keep employee records and give pay slips?	<input type="checkbox"/>	<input type="checkbox"/>
Have you ever been investigated by the Fair Work Ombudsman?	<input type="checkbox"/> What was the outcome? _____ _____	<input type="checkbox"/>



Practical tip – Check in regularly

One way to ensure that your contractors are doing the right thing is to review their workplace practices on a regular basis. Schedule a time to check in with your contractors every few months and use the checklist above to guide you.

Make sure your contractors know they're expected to inform you about any changes to their arrangements when they happen. We also recommend encouraging them to self-audit regularly. They can do this by following the five easy steps in our **Guide to self-auditing your business** at www.fairwork.gov.au/supplychain.

Step 3: Action any problems you find

After speaking to your contractors, you may find issues within your network. It's a good idea to work through these before they turn into a bigger problem. By acting early, you can:

- ▶ deal with issues before they risk your business reputation
- ▶ minimise the amount of any back-payment required
- ▶ show that your business is a best practice employer.

Depending on the issue and the response of your contractor, the appropriate action could be anything from organising a meeting to resolve the issue through to termination of the contract.



Practical tip – Set out your expectations from the start

You can minimise the risk of future non-compliance by contractors (and subcontractors) by making sure your contract requires them to comply with workplace laws, and that your approval is required before subcontracting starts.

To ensure these situations are appropriately managed it's a good idea to have a policy that sets out how you will deal with these types of issues. A policy can also help to clarify the expectations you have for your contractors and how any non-compliance will be dealt with.



Case study – Action problems

Problem: Margaret runs a hospitality business. To minimise costs, she has contracted the work to the cheapest security contractor she could find.

Last Friday, an employee of her contractor complained to Margaret that he was being underpaid for working at her premises. Margaret uses the Fair Work Ombudsman's Pay Calculator to check the award rates. Based on what she knows about the hours that the employee worked, Margaret realises the amount she's paying the contractor is not enough to cover the award rates for the times the contractor's employees are working.

What should Margaret do?



Despite being aware of a concern, Margaret continues to use the same contractor and doesn't raise it with them. She knows the contract price is very low. Based on her security requirements, Margaret suspects a contractor could not correctly pay the number of people needed to do the job and also make a profit. Because she doesn't do anything, Margaret is at risk of knowingly taking part in underpaying her contractor's employees. This could mean Margaret and/or her business is at risk of being named as a party to court action, based on her involvement in breaches of the law.



Margaret has a meeting with her contractor where she raises her concerns about the possible underpayment. She asks her contractor to complete the Checklist for contractors (in Step 2 above) so they can step through any issues together. She requires her contractor to provide information such as pay slips and time records to check the contractor's answers. She makes sure the contractor is applying the correct pay rates and minimum standards.

After reviewing the information, which shows that the contractor is unable pay correct minimum rates for the amount being paid, Margaret agrees to change her security requirements (without changing the overall contract price) so she has enough security at her premises whilst allowing her contractor to afford the correct pay rates.

The security contractor agrees to back-pay all the affected employees, meet all award pay rates and conditions in the future and to show Margaret when the payroll systems are updated. Margaret reflects the requirement in her contractual arrangement and continues to review her security requirements and the contract price from time to time. She also speaks regularly to her contractor about any issues and to check that the contractor is paying employees the correct rates. Margaret has managed her labour contracting to minimise the legal risk to her and her business.

We recommend working with your contractor to agree on what actions to take. Your contractor may appreciate the chance to address the problem and ensure its business systems are compliant. This can be the best way to ensure the employee, contractor and your business are happy and can continue to work together. In some circumstances, you may choose to get independent legal advice.



Practical tip – Learn from the experience

After you've dealt with the problem, take time to consider:

- ▶ how it happened and what you can do to stop something similar happening in the future
- ▶ how the matter was resolved and what you could do differently next time.

Need further help?

For help on how to select a potential contractor and identify if they are complying with workplace laws refer to our **Guide to labour contracting** at www.fairwork.gov.au/supplychain.

For information on how to conduct a general self-audit of your business to ensure you're complying with workplace laws, see our **Guide to self-auditing your business** at www.fairwork.gov.au/supplychain.

For tips and guidance on discussing workplace issues, you can access the Fair Work Ombudsman's [Difficult Conversations in the Workplace online learning course](http://www.fairwork.gov.au/learning) at www.fairwork.gov.au/learning.

For tailored advice and assistance, you can contact ASIAL on 1300 127 425 or visit www.asial.com.au.

Disclaimer: The Fair Work Ombudsman is committed to providing you with advice that you can rely on. The information contained in this guide is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or a workplace relations professional.