

The Gangmasters (Licensing) Act 2004

The Gangmasters (Licensing) Act 2004 is concerned with prevention of the exploitation of labour within agriculture, horticulture, fish processing, gathering shellfish, dairy farming industries or the packing or processing of these products.

The Regulatory Authority, the Gangmasters Licensing Authority (GLA) was set up in April 2005 to ensure compliance with the Act and to maintain standards within these sectors. From 1 October 2006 (6 April 2007 for the shellfish industry), it became illegal to supply workers in areas covered by the licensing scheme without a licence. Gangmasters are referred to under the scheme as Labour Providers. From 1 December 2006 it will be illegal for Labour Users, such as farmers or fish processors, to obtain labour through an unlicensed Labour Provider. There are also a variety of offences which can be committed by Labour Providers using false licensing documentation.

Obtaining a Licence

In order to obtain a licence, a Labour Provider must demonstrate that it operates in accordance with the licensing standards. The standards cover many aspects of business which will be readily identifiable to Labour Providers as current legal requirements such as VAT, payment of wages, tax and national insurance. However, the licensing standards also cover areas with which some Labour Providers will be less familiar.

The licensing standards cover the following areas:

1. Possession of a valid GLA issued licence to operate as a Labour Provider;
2. Payment of wages, tax, national insurance, VAT;
3. Debt bondage, harsh treatment or intimidation of workers;
4. Workers' accommodation;
5. Hours worked, Working Time Regulations;
6. Breaches in health and safety, including training;
7. Recruitment and contractual arrangements;
8. Sub contracting;
9. Identity issues and Under Age working;
10. Legality and rights of workers.

The onus is generally on the Labour Provider to ensure compliance in these areas. However, this is not always the case and in relation to Health and Safety, there is also an obligation on the Labour Provider and the Labour User to demonstrate that they have co-operated and clearly assigned responsibility for management of the health and safety of the workers to one or the other. The GLA will expect to see written evidence of the arrangements in place. The GLA will also look for written evidence of who will be responsible for providing health and safety training to workers, which should take place during working hours at no cost to the workers.

The GLA will check that working conditions meet the necessary legal standards and that workers are provided with the appropriate clothing/equipment in order to carry out their duties. The checks will ensure amongst other things, that provision for washing facilities, arrangements for rest and consumption of food and drink and the arrangements in place for first aid, reporting and recording accidents, meet required standards.

The Labour Provider is required to keep records concerning the agreement in place with the Labour User. These will include details such as the date the terms are agreed between the licence holder and the Labour User, details of the position the Labour User seeks to fill and likely duration of the post, the names of workers supplied and the terms offered in respect of the post. This will invariably require co-operation on both sides. Labour Users would be wise to keep copies of these documents and in particular those dealing with the management of health and safety and the training provided.

A Labour User can find out whether a Labour Provider is in possession of a licence by accessing the GLA website.

Compliance

In order to establish whether a Labour Provider has complied with the necessary standards, the GLA has its own intelligence teams and inspection/enforcement officers. In order to decide whether the Labour Provider complies with the necessary standards, the inspection teams will be able to conduct face to face interviews with workers and Labour Providers, use data collected by GLA's own officers, use data collected from the application process, and other intelligence sources. A failure to co-operate with the officers may be viewed as obstructing a GLA officer in the course of his duties and is classed as a separate offence. Labour Users should check with Labour Providers whether their sites will form part of the assessment.

Where the officers decide that an existing licence holder has failed to meet the requisite standards and the non compliance in question is given a "critical" rating, the licence can be revoked immediately or with notice.

Where the non compliance is deemed to be less severe, it is open to the Officer to issue a notice of "Additional Licence Conditions" together with a time limit within which to improve standards. In this case, the Labour User should encourage the Labour Provider to meet the required standards as it is obviously in the Labour User's interests that the Labour Provider fulfils the necessary conditions.

In order to obtain a licence, new businesses will be expected to show that they have systems in place which are capable of complying with the standards. Where a licence is refused on first application, the Applicant will not be able to trade as a Labour Provider. Where an existing licence holder has its licence revoked, the GLA will advise whether trading must cease immediately or whether they may continue trading for a certain period, usually to give time in which to hear an appeal.

A Labour Provider should also be aware that any changes which affect the licence details should be notified to the GLA within 20 working days. These include change of address, name on the licence, directors etc.

Penalties

A failure to obtain a licence could result in a maximum penalty of 10 years imprisonment and a fine on conviction.

The penalty for a Labour User such as a farmer knowingly employing an unlicensed Labour Provider could result in a conviction of up to 6 months in Scotland and Ireland or 51 weeks in England and/or a fine.



A defence can be established by the Labour User if he can show that he took all reasonable steps to satisfy himself that the Labour Provider was acting under the authority of a valid licence and did not know and had no reasonable grounds for suspecting that the Labour Provider was not licensed.

Conclusion

The message from the GLA appears to be that the main aim of these measures is to target the “*persistent and systematic exploitation of workers*” as opposed to “*concentrating on the isolated occurrence of non compliance*”. However, as the GLA points out, a failure to meet the standards and subsequent prosecution, apart from potentially attracting a custodial sentence, is also likely to result in bad publicity which any organisation is unlikely to welcome.

This e-briefing is sent to you by Anderson Strathern's Employment Unit. We hope you find it useful. If we can help with any matters arising from this e-zine, or any employment law matter please contact Lizzy Kell on 0131 625 2155, or any other member of our team.