



Regulated labour hire arrangement orders (Closing the labour hire loophole)

The *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* amends the *Fair Work Act 2009* (the Act) to allow employees, unions and host employers to apply to the Fair Work Commission (the Commission) for an order that labour hire employees must be paid at least what they would receive under a host business's enterprise agreement.

What has changed?

The changes allow employees, unions and host employers to apply to the Commission for an order that labour hire employees must be paid at least what they would receive under a host's enterprise agreement or equivalent public sector determination. The Commission can only make an order if satisfied the host's enterprise agreement would apply to the labour hire worker if they were directly employed.

The Commission must not make an order unless it is satisfied that the work to be performed for the host employer is not for the provision of a service, rather than the supply of labour. The Commission must also not make an order if it is not fair and reasonable in the circumstances.

The changes do not apply where employees are working for a host business under a training arrangement, or where the host is a small business employer (employing fewer than 15 employees).

The provisions include a default 3-month exemption period from orders (if made) so as not to impact labour hire for surge work or where a short-term replacement worker is needed. This period can be shortened or lengthened in exceptional circumstances on application to the Commission.

What do these changes mean?

Labour hire employees covered by an order of the Commission will be entitled to be paid at least what they would receive under the host's enterprise agreement (or equivalent public sector determination).

The changes do not impact the wages of host employees or labour hire employees already being paid at least what they would receive under the host's enterprise agreement.

Labour hire employers can request information from hosts to assist their compliance with this obligation, where information is needed to calculate the correct rate of pay, and hosts must comply with such requests.

Hosts are required to apply to the Commission to vary existing orders when there is a change in circumstances, such as a change in labour hire providers or where the relevant enterprise agreement is

replaced. Hosts are also required to notify participants in tender processes for the provision of labour about Commission orders and that successful tenderers may be required to comply with those orders.

The changes include requirements for calculating termination payments when the employment of a labour hire employee covered by an order comes to an end.

The legislation also prohibits avoidance behaviours, including behaviour intended to prevent a Commission order being made and behaviour intended to avoid orders that are in force.

When will these changes come into effect?

These changes commenced on 15 December 2023; however, regulated labour hire arrangement orders cannot come into force until at least 1 November 2024.

For more information on the Closing Loopholes legislation, visit: <https://www.dewr.gov.au/workplace-relations>