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Member Brief No 47

Charging Workers for Services / Tools / Non-PPE Clothing etc

Introduction

Many labour users specify terms that require workers to provide their own tools or other equipment yet do not include cost provision for this in the margin paid to labour providers.

This Brief provides guidance to labour providers on the legal requirements that must be met where a labour provider seeks to pass on this cost to workers. It covers such items as knives and other tools, non-personal protective clothing, ID cards and services such as translation, insurance etc.

This Brief does not relate to PPE which is covered by Member Brief 48

The Gangmasters (Licensing Conditions) (No.2) Rules 2006 Regulation 2 states: "A licence holder may not charge a fee to a worker for any work-finding services."

Regulation 3 requires that: "A licence holder may not make the provision of work-finding services conditional upon the worker (a) using other services; or (b) hiring or purchasing goods, whether provided by the licence holder or by any person with whom the licence holder is connected."

Requirements for Charging Workers for items

A labour provider who seeks to charge workers for items or services must meet the following licensing requirements:

Requirement 1

*GLA Licensing Standard 7.2 - **Correctable** - The gangmaster will not have supplied a worker to a labour user unless they have confirmed workers are not charged a finder's fee for finding them work / they are not obliged to use the services of the licence holder to hire or purchase goods or services as a condition of finding work.*

The provision of work-finding services must not be conditional on the worker hiring or purchasing services or items from the labour provider or by any person with whom the labour provider is connected.

The labour provider may offer such services or items for hire or sale but these must clearly be optional or where mandatory the worker must be allowed (and in practice given sufficient time and opportunity) to obtain them from an alternative source unconnected with the labour provider.

So if the worker declined to hire or buy such items or services from the labour provider, the worker must not be refused a job solely for that reason.

Requirement 2

*GLA Licensing Standard 2.5 - **Major** - Where deductions from wages, other than those legally required, are made (e.g. for transport), there is evidence on file of workers' written consent to those deductions.*

*GLA Licensing Standard 2.6 - **Major** - [Scotland - agricultural workers only: No deductions from wages are made, other than those legally allowed, and any other payments being made by workers outwith the wages system to the gangmaster are supported by evidence on file of workers' written consent.]*

Before the services or items are provided by the labour provider, the worker must be given comprehensible details explaining what they are and including costs charged either as a specific contractual term or in other written form.

This must specify in writing that the service or item is optional (and in reality it must be optional) and the worker must agree in writing to the charge or deduction.

Requirement 3

*GLA Licensing Standard 2.8 - **Critical** - The worker is paid at least the national or agricultural minimum wage, taking into account the rules on accommodation charges.*

If a worker is deducted pay or charged by the labour provider for services or items that are needed to do his job then this will reduce national minimum wage pay regardless of whether the employer deducts the amount from wages or takes a payment for it after workers have been paid their wages.

Whether purchasing the services or items from the labour provider is optional does not matter as this will still reduce national minimum wage because the amount is expenditure in connection with the employment and the charge or deduction will also be retained for the use and benefit of the employer.

Where a worker is required to purchase items or services needed to do his job from a 3rd party then it does not matter whether the worker is i) deducted pay ii) charged by the labour provider separately or iii) required to pay the 3rd party directly it will still reduce national minimum wage pay as it is expenditure in connection with the employment.

A worker is protected by national minimum wage legislation when he undertakes to perform work personally for another under a contract as defined by the National Minimum Wage Act 1998. If no contract is yet in existence then the individual will not be a worker. It follows that there is no breach of NMW legislation or a breach of Licensing Standard 7.2, if prior to engaging an individual under contract, he is advised that he is required to be in possession of items that are needed to do his job (e.g. clothing or tools) and the individual sources these from a 3rd party without any charge or deduction being made by the labour provider. This however must be the true situation and take place before any contract is formed or offered and not, in reality, be a requirement of a contract that has in fact already been entered into.

Alternatives to Charging Workers for items

Refundable Deposit

The labour provider may charge the worker a refundable deposit, to be retained if the item is not returned to the labour provider at the end of the assignment in a reasonable condition, barring wear and tear.

This will require a written agreement and must not be operated as “a fee to a worker for any work-finding services”.

The amount of the deposit will reduce NMW pay in the pay reference period in which it is charged, regardless of whether it is charged by a deduction or payment. If the amount is paid back to the worker at the end of the employment, the amount will count towards NMW pay in the pay reference period it is returned.

Deduction from the final wage

The labour provider may make a deduction from the final wage if the item is not returned at the end of the assignment in a reasonable condition, barring wear and tear.

If the worker is allowed free use of an item but fails to return it or does not return it in acceptable condition, then any deduction of a specified amount for this item from the final wage will not reduce NMW pay, provided the details of the arrangement have been clearly set out and agreed previously in the worker’s contract or other document.