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SUSTAINABLE EMPLOYMENT AND INJURED LABOUR HIRE WORKERS
the need for a shift in responsibility?

Elsa Underhill

The growing awareness of sustainable employment as an integral component of corporate social responsibility raises questions about the definition of sustainable employment. Elsa Underhill argues that return to work and rehabilitation processes for injured workers should be included in any such definition. These processes may be at risk when organisations are faced with the often contradictory demands of labour flexibility and sustainable employment. A review of outcomes for injured labour hire employees demonstrates this and highlights the need for organisations to adopt a more inclusive perspective of sustainable employment which incorporates both post-injury outcomes for their own employees, and for other workers injured at their workplace.

Sustainable employment practices are often captured by the term ‘decent work’, an expression coined by the International Labour Organisation. Nelson Mandela (the first recipient of the ILO’s Decent Work Research Prize) described decent work as “the right not only to survive but to prosper and to have a dignified and fulfilling quality of life” (ILO 2007, 4). Whilst the ILO’s decent work objective may be seen as aimed primarily at developing countries, similar objectives are incorporated into performance indicators recommended by international organisations promoting sustainable business practices more generally. The Global Initiative’s Sustainability Reporting Framework, for example, includes employment in two of its six fields of recommended performance indicators (Jubb 2007). Its indicators recognise the benefits that flow to employees, organisations and the economy from a skilled, adaptable and motivated workforce. Integral to both their approach, and that of the ILO, is ensuring a safe and healthy workplace.

Alongside the promotion of sustainable employment, however, are demands for employment flexibility. These practices are not always complementary. Employment flexibility tailored to the needs of organisations and employees can advance sustainable employment (OECD 2007).

But an increasingly common source of flexible labour is labour hire employment (also known as temporary agency work), where an employee’s labour is on sold by the hiring agency to a third party host. In such situations, the needs of the labour hire employer, the host, and labour hire employees converge less often. Researchers agree that most labour hire employees experience employment practices which place them on the debit side of the sustainable employment ledger. Such workers get less training, lower wages and non-wage benefits, weaker union representation, and greater job insecurity. They also experience a higher rate of occupational injury.

One other disadvantage facing temporary workers concerns their employment experience after receiving an injury at work. Rehabilitation after an injury is essential to sustainable employment. An injured worker’s capacity to return to viable and fulfilling employment rests heavily upon the response of their employer. Injured workers who leave their employer often endure lower wages or face a future of dependence upon workers’ compensation or welfare payments.

Regulations governing employer obligations towards injured workers vary between Australian states but have the same objective – to oblige employers to find

About the author

Elsa Underhill is a Senior Lecturer in Human Resource Management at the Deakin Business School. Her doctoral research focused on the OHS implications of labour hire employment in Victoria. She produced a widely-cited report on workers’ compensation claims amongst labour hire employees for WorkSafe Victoria in 2002, and has co-authored research on OHS management systems. Elsa’s other research and professional activities centre on industrial relations in the building industry, and advocacy skills training in her capacity as vice-president of the Industrial Relations Society of Victoria.
suitable employment for their injured workers within a specified time period. This approach was adopted in the late 1980s for two reasons. First, research consistently found that returning injured workers to light or modified duties contributed to a greater likelihood of their full reintegration into the workforce. Second, employers were said to routinely dismiss injured workers, harming their future job prospects.

Overall, this approach appears to have been successful. The most recent evidence shows Australian (and New Zealand) employers have progressively improved their management of injured workers with 87% of injured workers returning to work, and 80% remaining at work up to nine months later (Campbell Research & Consulting 2006).

The return to work experience of injured labour hire employees, however, suffers by comparison. In a study of 198 Victorian labour hire workers injured between 1994/95 and 2000/01, only 35% returned to work with their employer. The study was based on a sample of workers whose workers’ compensation claim was investigated by the insurance claims agency, and included a control group of injured direct hire employees employed in similar occupations. Their return to work outcomes are shown in the table at right.

Injured labour hire workers were more likely to be offered no further placements with a host than be offered suitable work. Indeed one third were effectively dismissed – four times the proportion of direct hire workers. Furthermore, almost 20% were fit for work but had to obtain employment elsewhere. Injured labour hire workers were also only half as likely as direct hire employees to return to work on lighter or modified duties.

Other data on Victorian labour hire employees found a higher return to work rate, but that research primarily involved union members, suggesting a link between union membership and return to work practices. Although labour hire employers have a statutory obligation to return injured workers to work, it is clear from the above that too often this obligation is not met.

### Return to work experience, labour hire and direct hire claimants

<table>
<thead>
<tr>
<th>Returned to work</th>
<th>LABOUR HIRE</th>
<th>DIRECT HIRE</th>
</tr>
</thead>
<tbody>
<tr>
<td>No lost time, remained at work</td>
<td>8</td>
<td>13</td>
</tr>
<tr>
<td>Returned to normal duties</td>
<td>38</td>
<td>49</td>
</tr>
<tr>
<td>Returned to lighter or modified duties</td>
<td>23</td>
<td>52</td>
</tr>
<tr>
<td><strong>SUBTOTAL</strong></td>
<td><strong>69</strong></td>
<td><strong>11</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Did not return to work:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>No further placements offered/dismissed</td>
<td>72</td>
<td>16</td>
</tr>
<tr>
<td>Employee found alternate employment</td>
<td>37</td>
<td>-</td>
</tr>
<tr>
<td>Employee resigned</td>
<td>-</td>
<td>24</td>
</tr>
<tr>
<td><strong>SUBTOTAL</strong></td>
<td><strong>109</strong></td>
<td><strong>40</strong></td>
</tr>
</tbody>
</table>

| Return to work precluded *                           | 20          | 44          |

| **TOTAL**                                             | **198**     | **8**       |

* for miscellaneous reasons (including claim lodged post employment cessation, permanent disability and death)

What remedies do injured workers have if their entitlement to return to work is breached? Statutory authorities can prosecute labour hire employers for failing to meet return to work obligations. However, this does not enable the injured worker to return to work. The only result is a fine imposed on the employer. The ease with which labour hire employers dismissed the above injured workers was facilitated by the employees’ casual employment status – they were not technically dismissed, they were only offered no further placements. Unfair dismissal protection did not apply. A minority were permanent employees, and they were significantly more likely to receive further placements than their casual counterparts. What happened to those injured workers offered no further placements? The tracking of their employment experience ended once their workers’ compensation payments ceased. Whether they eventually found employment elsewhere could not be determined. However, less than one-third of the more severely injured labour hire workers (in receipt of workers’ compensation for more than 6 months) were offered further placements compared to 70% of severely injured direct hire employees. The future employment prospects of the remaining two-thirds would not be promising.
Labour hire employers face impediments to rehabilitating injured workers. Finding a host willing to accept an injured worker may not be easy. Host and labour hire employers share occupational health and safety (OHS) responsibilities towards labour hire employees, but hosts do not share responsibility once a worker is injured. Interestingly, the labour hire claimants in the above study who returned to modified duties were more likely to be placed with a new host, performing different tasks, than the host with whom they were injured. The range of possible hosts may also be limited by the labour hire businesses’ operations. Blue collar placement specialists, for example, may have difficulty locating less physically demanding tasks than generalist suppliers. But further analysis of the data found no significant differences in the return to work practices of specialist and generalist labour hire suppliers. Both were more likely to dismiss than rehabilitate injured workers.

Not all labour hire employers adopt this approach. The Victorian Government’s inquiry into labour hire employment found some larger labour hire companies worked with long-term hosts to rehabilitate injured workers; and one labour hire employer now has a rehabilitation centre to facilitate return to work processes (Economic Development Committee 2005). In 2006, the Victorian WorkCover Authority introduced a new inspectorate to promote return-to-work, and refer non-complying employers for prosecution. In April 2007, they prosecuted one of the larger labour hire companies for failing to develop a return to work plan for an injured worker. However, the $3000 fine imposed is unlikely to have a strong deterrent or demonstration effect upon others.

Labour hire employers, government agencies and unions recognise the problematic nature of return to work for injured labour hire workers. Yet solutions beyond ad hoc fines and waiting for market forces to interact with workers’ compensation premiums have not been endorsed.

Sustainable employment practices for injured labour hire workers are more likely when hosts and labour hire companies jointly support injured workers’ reintegration into the workforce. The present regulatory framework, however, does not encourage this. The ability of hosts to withdraw responsibility once a worker is injured is inconsistent with their shared responsibility for the prevention of injuries to labour hire workers. Labour hire employers’ ability to dismiss injured workers allows them to continue to offer no further placements.

**Conclusion**

OHS indicators which document sustainable business practices often include injury and lost time rates, but exclude return-to-work rates. It is appropriate that sustainable employment should focus foremost upon the prevention of workplace injury. Also, the effective prevention of injury may spill-over into better return to work practices. Those factors which prevent injury, such as OHS consultative processes and independent representation of workers on health and safety matters, are consistent with practices which facilitate successful rehabilitation of injured workers. Nevertheless, the inclusion of return-to-work outcomes, to capture both labour hire and host employers’ approaches to injured workers, would provide a fuller measure of the extent of sustainable employment practices.

**References**


