



**Michael Quinlan University of NSW**

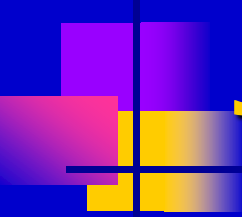
***Meeting OHS and Workers'  
Compensation Challenges  
Posed by Precarious  
Employment***

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# Overview

- ◆ **Overview of changes to work organisation & OHS and regulatory effects of precarious employment**
- ◆ **How does insecure damage health and safety?**
- ◆ **Lessons on managing a contingent workforce**
- ◆ **Some final reflections**



# Changes to Work Organisation & Job Insecurity (1975-2011)

- ◆ Repeated downsizing, restructuring & work reorganisation (work intensification via task changes, multi-tasking etc)
- ◆ Outsourcing/growing use subcontractors/labour leasing (means privatisation in public sector) & franchising
- ◆ Decline in permanent jobs
- ◆ Corresponding growth of temporary, fixed contract & leased jobs as well as home-based work & telework
- ◆ More multiple jobholding, long shifts, unpaid overtime/presenteeism
- ◆ Increased immigration/use of temporary guestworkers
- ◆ Global recession exacerbating these trends

# Review of research on OHS effects of changing work arrangements



Published international research 1966-2008 (weaker and 'repeat' studies culled)

- ◆ Measures include injury rates, disease, hazard exposures, violence, mental health, knowledge and compliance
- ◆ 86 studies of job insecurity/downsizing (73 or 85% found adverse OHS effects)
- ◆ 25 studies of outsourcing/subcontracting & home-based work (23 or 92% found adverse effect, 2 mixed)
- ◆ 22 studies of casual work/labour hire (17 or 77% found adverse effect). Recent unpublished research consistent
- ◆ Few studies of permanent part-time work (evidence mixed)
- ◆ How to explain these effects?



# ***Implications for regulation & social protection***

- ◆ **OHS & workers' compensation laws**
  - ◆ **Coverage**
    - ◆ **Defining duty-holders & worker/employee**
    - ◆ **Responsible parties (supply chains, corporate veil & off-shoring)**
    - ◆ **worker knowledge/access (de facto & de jure)**
  - ◆ **Inspection/enforcement (guidance, resources)**
  - ◆ **Injury and disease surveillance effects**
  - ◆ **Cost shifting (special premiums, understated workforce)**
  - ◆ **Return to work (eg Underhill study found poor RTW experience for contingent workers-difficult to place & just 'disappear' from workers' compensation records)**



# OHS Law Harmonisation and contingent workers

Model Work Health and Safety Bill has 3 provisions with significant potential for precarious workers & downsizing

- ◆ 1) Primary duty of care, rather than imposing duty on the employer and self employed in relation to 'employees' and **'others' imposes duty on 'person conducting a business or undertaking'** (PCBU), and duty is owed to 'workers' (defined broadly to include any person who carries out work in any capacity). In short, a PCBU owes same duty to all workers, howsoever categorised. Also section 46 requires all duty holders (in this instance PCBUs) to consult, co-operate and co-ordinate activities.
- ◆ But draft Model regulations and codes of practice provide very little guidance as to how this crucial duty should be implemented.



# OHS Law Harmonisation and contingent workers

- ◆ 2) The worker participation provisions have been broadened in coverage simply by the model Work Health and Safety Act using the above definition of 'workers' rather than 'employee'. In other words, any worker can be involved in negotiations for work groups, and can stand and vote in an election for the HSR for that group.
- ◆ But no guidance in the draft regulations and codes of practice
- ◆ 3) Where PCBU makes changes to work which may affect health & safety must undertake risk assessment and consult with workforce or their representatives (see below)

# How restructuring and downsizing can alter work systems, process & environment

- ◆ Reallocation of tasks/loads to smaller staff pool
- ◆ Changes to job descriptions, multi-tasking
- ◆ Changes to workplace facilities (space etc)
- ◆ Changes to training, supervision (hard HR)
- ◆ Disorganisation (communication, isolation etc)
- ◆ Changes to hours (paid/unpaid), leave access
- ◆ Changes to grievance/consultation mechanisms
- ◆ Uncertainty and insecurity affects organisation priorities

# Adverse effects of downsizing, restructuring & job insecurity



- ◆ Increased risk of injury & disease/illness (eg cardiac disease)
- ◆ Increased stress due to overload, insecurity & disorganisation (flow-on effects & externalities)
- ◆ Increased risk of bullying & occupational violence (eg client)
- ◆ Presenteeism, burnout & adverse effects on work/life balance
- ◆ Older and more committed workers suffer worst
- ◆ Those losing jobs get inferior jobs, intermittent jobs or none at all (esp older)

# PDR model: Risk factors associated with Insecure and contingent work

<i>Effort/Reward Pressures</i>	<i>Disorganization</i>	<i>Regulatory Failure</i>	<i>Spill-over Effects</i>
Insecure jobs (fear of losing job)	Short tenure, inexperience	Poor knowledge of legal rights, obligations	Extra tasks, workload shifting
Contingent, irregular payment	Poor induction, training & supervision	Limited access to OHS, workers comp rights	Eroded pay, security, entitlements
Long or irregular work hours	Ineffective procedures & communication	Fractured or disputed legal obligations	Eroded work quality, public health
Multiple jobs (may work for several employers)	Ineffective OHSMS / inability to organise	Non-compliance & regulator oversight (stretched resources)	Work-life conflict

# Examples of economic pressure – Underhill labour hire study

## Accept unsafe tasks

*At present, safety concerns are ignored, accidents are not investigated. I am concerned it will take a death to have OHS become an issue. I feel very unsafe at my current workplace... (tradesperson, shipbuilding, survey respondent)*

## Work with injury

*I kept working and put up with the pain which was worse when I stopped and I didn't mention it to anyone at the time as I was concerned my job would be terminated...I needed the money and didn't want to attract attention by wearing a brace." (process worker)*

## Accept work intensification

*We've had labour hire guys pass out, working hard...was stifling hot up there (3<sup>rd</sup> level, warehouse) ...they were under the impression they wouldn't get hours, so they went flogging themselves then they passed out (storeperson, distribution, focus group)*



## Examples of disorganisation – Underhill labour hire study – poor placement, poor fit

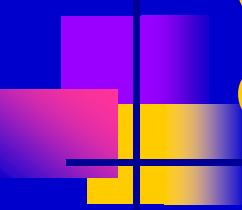
- ◆ *...a small, rather overweight man with very poor muscles...his very diffuse symptoms can only be accounted for by muscular soreness due to unaccustomed activity for 3 days, having previously done no physical work at all for several years... (42 year old, injury to upper limbs)*
- ◆ *...appears the claimant is not physically suited to the work she performs...she told our investigators she has always been prone to back pain from bending and lifting... (25 year old, back injury)*
- ◆ Pressure to fill placements quickly
- ◆ Agencies assume unskilled tasks can be completed by anyone
- ◆ Hosts assume agency has supplied appropriate worker
- ◆ Agency can easily dismiss/replace 'inappropriate' workers

# Examples of regulatory failure – Underhill labour hire study



## Lack of compliance

- ◆ Placements involving high risk tasks
- ◆ Lack of, poor standard of training
- ◆ Failure to respond to OHS issues
- ◆ Dismissal for raising issues
- ◆ Underpinned by:
  - ◆ Vulnerability to dismissal – weak employment protection
  - ◆ Large number of small agencies & ability to avoid prosecutions



# Queensland Dept of WHS -2010 study of options for improving compliance within existing legislation (Underhill & Quinlan)

- ◆ 11 focus groups, metro & regional Qld
- ◆ 5 of hosts, 6 of labour hire employers
- ◆ 3 semi-structured interviews with union officials
- ◆ 62 participants
- ◆ Construction, mnfg, warehousing, health services, mining, pastoral & agriculture
- ◆ What works to safeguard the OHS of labour hire workers?
- ◆ What measures would improve their safe placement?
- ◆ How can regulatory agencies enhance their activities to secure safe placement?
- ◆ Emphasis upon improving existing practices



# What works to safeguard the OHS of labour hire workers? Large v/ Small

- ◆ Strategic & comprehensive approach to placements & OHS
- ◆ **Larger labour hire & host employers**
  - ◆ Advanced planning of placements
  - ◆ Avoidance of short-notice placements
  - ◆ Avoidance of high risk placements
  - ◆ Risk Assessments performed by OHS qualified staff
- ◆ Long term relationships between hosts & agencies
  - ◆ Enhanced understanding of placement requirements
  - ◆ Better access to host workplaces
  - ◆ Better communication
- ◆ Hosts promoted better practices amongst agencies (esp. regional areas)



# What works to safeguard the OHS of labour hire workers? Large v/ small

- ◆ *I invite the agency out for a tour of the factory so that they can understand what I need in a work...they get to see the whole factory operating under normal circumstances...and then they can select more suitable candidates*
- ◆ *Like a partnership. They're not just supplying a service; they're actually involved with the ongoing function of the workers in the workplace...*
- ◆ **But problems remain re:**
  - ◆ Hosts moving workers without prior notice
  - ◆ Risk assessments
  - ◆ Agency labour turnover
  - ◆ Agency reward / incentive systems



What works to safeguard the OHS of labour hire workers? Large v/ Small

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## **Small Niche Suppliers**

- ◆ Specialised by occupation (but not necessarily specialised skills)
- ◆ Better understanding of host needs
- ◆ Better communication
- ◆ Better understanding of specialised staff needs
- ◆ Longer term relationships with their employees



What works to safeguard the OHS of labour hire workers? Large v/ Small

## The “don’t care” small suppliers & hosts

- ◆ **No background, no knowledge**

*I don't think it is an ambiguity around what they're reading. They're just not reading. There is no exposure to it.*

- ◆ **Calculated avoidance**

*Send us the fittest of your fittest, young blokes that aren't broken. And when we finish with them, and they've got problems later in life, they'll be some else's issue*

- ◆ **Ease of establishing operations & ability to respond to host requests at short notice**

- ◆ **Hosts can always find an agency willing to supply on these terms**



# Other facilitators & barriers

## Facilitators:

- ◆ Pre-placement risk assessments, job safety analysis
  - ◆ But concerns re competence for on-going monitoring & assessment
- ◆ Regular interaction & worksite visits, extending to involvement in host OHS committees
  - ◆ **But interaction with workers potentially impeded by hosts' attitudes towards workers**

## Barriers:

- ◆ Insufficient information regarding placements supplied by hosts
- ◆ *It's easy enough to get the qualifications, formal qualifications & licensing but it's far more difficult if you've got to be thinking in terms of what kinds of experience does the person have to have had to be able to do that work?*
- ◆ **Growth of 'hold harmless' clauses**
- ◆ Less stable work environments eg. construction, home care



## How can regulatory agencies enhance their activities to secure safe placement ?

- ◆ Registration/licensing for labour hire agencies
  - ◆ Minimum requirements eg. All labour hire staff involved in placements hold OHS qualifications (WHSO issue!)
  - ◆ Mechanism for provision of information by regulators – checklists etc.
  - ◆ Mechanism for information/education, and prosecution purposes
- ◆ Develop check lists for use in **selecting** hosts/agencies
- ◆ Promote more strategic approach by LH agencies & hosts
  - ◆ Encourage planning; stronger relationships between agencies & hosts etc.



## How can regulatory agencies enhance their activities to secure safe placement ?

- ◆ Encourage inspectorate to identify whether labour hire workers present during all site visits & assess adequacy of arrangements
- ◆ Prosecute for breaches of processes, irrespective of injuries
  - ◆ Eg. not conducting risk assessments; moving placed workers to new tasks without advising agency or undertaking risk assessment; hosts not providing adequate detail in job specifications

Targeted campaigns – information, education followed by audit program & then prosecutions (by region & by industry)

- ◆ **'safe' niche suppliers show small does not have to be high risk**
- ◆ Prohibit hold harmless clauses



# Some broader lessons

- ◆ Managing labour hire has parallels with subcontracting & other contingent work arrangements
  - ◆ Adequate risk assessment & controls must be factored in (expect dislocation & corner cutting)
  - ◆ Careful task selection to minimise risks
  - ◆ Planned use and establishing long term relationships works best (preferred subcontractor)
  - ◆ Strategic approach that recognises hidden costs (eg training/skills, workplace control/quality, morale, OHS). Less can be more!



# Final observations

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- ◆ Evidence changes to work organisation are having profound effects on OHS (serious emerging risk-linked to psychosocial too)
- ◆ Governments and regulators are responding to this (eg EC project) & expect more
- ◆ There are ways of better managing exposure to these risks
- ◆ But most considered response is minimise use to only circumstances where strategically beneficial & risks can be controlled effectively (not just via a manual or contract clauses)