

EMPLOYMENT

## When should employers use a licensed gangmaster?

- *Understanding the Gangmaster (Licensing) Act 2004*

Employers within the food production or fresh produce sector should be cautious when using a recruitment agency to supply workers.

The Gangmaster (Licensing) Act 2004 (the Act) established the Gangmaster and Labour Abuse Authority (GLAA). The aim of the GLAA is to prevent the exploitation of workers in the fresh produce sector. This includes agriculture, horticulture, shellfish gathering and all associated processing and packaging.

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## The Gangmaster (Licensing) Act 2004

Under the Act, labour suppliers within the fresh produce sector must hold a gangmasters licence when supplying workers for certain roles. The Act established offences for operating without a licence, using a false licence, using an unlicensed gangmaster and obstructing enforcement officers.

Of particular note for an employer is the offence of entering into an arrangement with an unlicensed gangmaster. If an employer is not excluded from the Act, and the specified roles are included within the Act, then the employer must ensure they use a gangmaster who holds the appropriate licence.

## Roles that require a licence

The Act itself did not contain sufficient information in relation to which roles require a licensed gangmaster. The GLAA then has had to produce guidance notes explaining the Act, and in particular the 'Guidance on who needs a licence' (the **Guidance**), (updated in April 2019) which is useful for listing roles or tasks that are either included or excluded from the Act, although it is still not always immediately clear.

For example, in a processing factory, the employer does not need to use a licensed gangmaster for a cleaner if that cleaner is carrying out general cleaning tasks away from the production line, such as the floor or walls of the factory. However, if the cleaner is required to clean any part of the production line, such as machinery or trays being used, then the gangmaster must have a licence. These roles can, at times, become blurred. Other roles that are covered by the Act includes a food taster and any worker who puts already packed food items into other containers, such as multi-sale boxes or selection boxes.

Some roles that an employer might think require a licensed gangmaster may not, such as on-site engineers and fork-lift drivers. That said, anomalies remain, such that while engineers are not covered by the Act, mechanics for farm machinery are.

The common thread in these examples is that each role requires an individualistic consideration based on the sector, role and

duties of the worker. Focus is not on job 'title', but job role as a functional analysis.

## The Gangmasters Licensing (Exclusions) Regulations (Northern Ireland) 2014

The Gangmasters Licensing (Exclusions) Regulations (Northern Ireland) 2014 allow for exclusions within each sector. By way of example, within the processing and packaging sector, the supply of a worker is excluded if they are supplied to a catering establishment, a shop or other retail establishment, a wholesale market, a wholesale establishment or a distribution warehouse. There are considerably more exclusions within the agriculture sector and shellfish gathering industry, and are again dependent on a case by case basis.

## Next steps

An employer must assess the job role and function in its workforce and supply chain. Employers must then ensure they use a licensed gangmaster for the relevant roles under the Act. As noted, the requirement is based on the sector in which the employer operates and the tasks of each role, rather than the title. Some roles are clearly covered by the Act, while some may be more difficult to determine. Therefore, the best practice for the employer would be to either seek legal advice on each role to determine if it is included within the Act, or only use labour suppliers with a gangmasters licence.



A&L Goodbody are happy to advise on all matters relating to employment law issues, including the Modern Slavery Act and the gangmasters legislation. If you have any queries, or wish to discuss this further, please do not hesitate to get in touch with our team.

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