

TRIANGULAR EMPLOYMENT

GUIDE FOR HIRING MANAGERS

July 2020



Madison has compiled this guide to provide leaders, and managers who may be supervising Madison's employees to perform temporary work, with an introduction to the recent changes delivered through the Employment Relations (Triangular Employment) Amendment Act 2019, which came into force on 27th June 2020.

These changes introduce the concept of a 'controlling third party', which is defined as someone who:

- has a contract or other arrangement with an employer under which an employee of the employer performs work for the benefit of the person, and;
- exercises, or is entitled to exercise, control or direction over the employee.

The Triangular Employment Act will remove the current difficulties in pursuing personal grievances against third parties, and now gives an employee, the employer, the Employment Relations Authority or the court the ability to apply to have a 'controlling third party' joined to a grievance raised by an employee with their employer. This may occur if the grievance relates to an action that is alleged to have taken place while the employee was working under the control or direction of the 'controlling third party'.

This information will help provide you and your team with relevant guidelines, which will reinforce the need to partner closely with Madison, engaging with us about matters relating to our employees and their employment relationship with us.

As the employer, Madison will continue to operate in accordance with the intent of this new piece of legislation, where we directly manage the employment relationship of our employees.



BACKGROUND

Madison's clients engage us to provide contingent labour to support your business. Engagement with contingent labour hire provides you with flexibility and support, and allows you to engage particular skill sets to support the needs of your business in relation to staffing.



THE MODEL

Madison partners with our clients to understand your requirements, and then places suitably skilled and experienced workers on assignment at your organisation. These workers are employees of Madison, and are under the direction and supervision of our client's hiring manager/supervisor. This is known as a Triangular relationship.

Considerations

Because Madison is the legal employer, our clients' risk increases significantly if your leader or manager engages directly with Madison workers around employment relationship elements. In general, there are a number of elements that your leaders and managers should not discuss directly with the worker provided by Madison, which we have outlined for you on the following page under 'Madison's Responsibilities'.

Madison's role is to manage these types of situations, and to hold the relevant discussions with our employee. Your leaders and managers need to contact their Madison Consultant when there is a matter relating to the employment of a Madison worker, and Madison will take the necessary action.

This may include disciplinary action, leave approval including sick leave, requests for employment references, and details around the start or the end of an assignment – all of these things must be dealt with by Madison. We will work with you and propose appropriate actions or next steps, or in some cases provide advice, to ensure we minimise the risk of potential grievances for both Madison and our clients.



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MADISON'S RESPONSIBILITIES

Only Madison should discuss the following with the employee:

- Any offer of, or discussion around, permanent work
- Ending their work or assignment
- Changes to the worker's duties, where they deviate from those originally assigned
- Changes to hours of work
- Remuneration in particular changes, this includes allowances or benefits
- Approval of all types of leave
- Performance or behaviour concerns
- Outcomes of a non-negative post incident or reasonable cause drug or alcohol test
- Conducting reference checks, either officially or unofficially

YOUR RESPONSIBILITIES

As a client of Madison, there are several areas that remain under your control. You should:

- Induct Madison workers providing them with appropriate training and a safe working environment, and report any incidents
- Give Madison's workers supervision and direction so they can perform their tasks, in-line with the duties they have been assigned by Madison
- Advise Madison if an offer of permanent employment is being considered, before any discussion occurs with the worker
- Advise Madison if any disciplinary or performance issues arise or if there are attendance concerns as soon as possible

Potential Implications

It is important that these guidelines are followed. In a worst-case scenario, Madison's employee could challenge the employment relationship, and could claim that you are acting as the employer because you are making decisions that affect the employee's employment conditions, tasks or duties.

The Triangular Employment Amendment Act changes mean that where an employee is employed by an employer (e.g. a labour hire company such as Madison), but is in fact under the control and direction of another business or organisation (the “controlling third party”) that is you, our client, and the employee raises a personal grievance, that the employee, the employer, or both, may apply to the Employment Relations Authority or the Employment Court to join the controlling third party to the proceedings. In addition the Authority or the Court may also join a controlling third party to the proceedings at any stage. These actions would be taken to resolve the grievance and if it is thought that the controlling third party arguably caused or contributed to the events giving rise to the personal grievance.

The new legislation focuses on allowing a pathway for a grievance (where one may exist) to be heard and responded to by parties to the grievance. This could see Madison and you, our client, defending a personal grievance together. If there are remedies awarded to an employee as a result of any Employment Relations Authority or Employment Court decision, the employer and the controlling third party could be jointly or severally liable for the remedies, if they are found to have contributed to or caused the grievance.

While we cannot prevent the joining of Madison and you, our client, to a personal grievance, we can make sure we reduce the risk and ensure we act in the spirit of and in accordance with the intent of a Triangular relationship: Madison's clients provide the work, tasks and supervision, and Madison sources, recruits and manages the assignment and employment relationship of the worker.

We are confident that if we continue to work together with our clients to respect the employment relationship and its boundaries, and act in good faith (as is required of all employers towards our workers), the impact of the introduction of the Triangular Amendment Bill will be negligible.

**For further information,
please contact your local
Madison Consultant.**



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