



Coal Services Pty Limited

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Order 41 and Contractors

Coal Industry Order 41 requires that all coal mine workers undertake both pre-placement and periodic health assessments.

Some coal operators have raised questions regarding their responsibility to ensure that any Contractors they utilise on their site comply with the Order. What level of responsibility does an operator of a coal mine site have in this regard?

On the matter of pre-placement medical assessments, Order 41 states the following:

1. An employer of a coal mine worker or a person who contracts a coal mine worker to work in a coal operation must not permit a coal mine worker to commence working in a coal operation unless:
 - I. they have caused the coal mine worker to undertake a pre-placement medical assessment; or
 - II. they are satisfied the coal mine worker has already undertaken a pre-placement medical assessment in the previous twelve months.

What does this mean for an operator of a coal mine site? The key word on this point is 'or'. In terms of the Order the word 'or' means 'either, in the alternative'. Applying this definition, this point in the Order in a practical sense reads as follows:

1. An employer or 'in the alternative' the operator must not permit a coal mine worker to commence working in a coal operation unless they have caused a worker to undertake a pre-placement medical before commencing work, or 'in the alternative' be satisfied that the worker has undertaken a pre-placement medical in the previous 12 months."

As the employer of the Contractor is primarily responsible for the worker, the onus to comply would fall on them. The operator would only be liable under the Order 'as the alternative' if the operator allowed a worker on site knowing that the contractor's employer had failed to comply with the Order and the operator failed to act 'as the alternative' as required by the Order.

How may this work in some everyday situations? Following are some possible scenarios involving Contractors and how Order 41 would apply.

1. ABC Contractors provides a worker to a XYZ Mining. ABC Contractors provides proof that the worker undertook a pre-placement medical when he commenced work with them 6 months earlier. XYZ Mining is required to satisfy themselves of this by sighting the pre-placement certificate before the worker commences on their site. By doing so, both ABC Contractors and XYZ Mining have complied with the Order.
2. ABC Contractors provides a worker to XYZ Mining. ABC Contractors provides proof that the worker undertook a pre-placement medical when he commenced work with them 2 years ago. The worker does not require another pre-placement medical before commencing on the XYZ Mining site because they are still employed by ABC Contractors – they have not changed employers. XYZ Mining are required to satisfy themselves of this by sighting the pre-placement certificate before the worker commences on their site. By doing so, both ABC Contractors and XYZ Mining have complied with the Order.
3. ABC Contractors provides a worker to XYZ Mining. ABC Contractors provides proof that the worker undertook a pre-placement medical when he commenced work with them 4 years ago. The worker does not require another pre-placement medical because they are still employed by ABC Contractors – they have not changed employers. XYZ Mining are required to satisfy themselves of this by sighting the pre-placement certificate as well as evidence that the worker has undertaken their 3 yearly periodic medical before the worker commences on the XYZ Mining site. By doing so, both ABC Contractors and XYZ Mining have complied with the Order.
4. ABC Contractors provides a worker to XYZ Mining. The worker has been employed by ABC Contractors for 6 months but they cannot provide proof that the employee has undertaken a pre-placement medical at any time in the last 12 months. ABC Contractors may be liable under the Order for not having the worker assessed prior to them commencing work. XYZ Mining would only be liable if knowing this they still allowed the worker to commence work on their site.
5. A coal mine worker leaves ABC Contractors after 6 months and commences work with DEF Contractors. He is not required under the Order to have a new pre-employment medical before commencing with DEF Contractors as his previous medical was completed within the last 12 months. DEF Contractors though must be able to obtain a copy of this medical and certificate to comply with the Order.
6. A coal mine worker leaves ABC Contractors after 2 years and commences work with DEF Contractors. DEF Contractors must conduct a pre-employment

medical for the worker. As his new employer they cannot place him onsite as according to Order 41 they haven't caused him to have a pre-employment medical, nor can satisfy themselves that he had one in the previous 12 months. His 3 yearly periodic medical cycle would then start from the date of the new pre-employment medical completed with DEF Contractors.

In summary, in regards to Contractors, the employer of the Contractor is responsible for ensuring they comply with the Order and for arranging to have their employees medically assessed as required by the Order. Coal operators must be able to satisfy themselves that any Contractors utilised on the coal operation are complying with the Order by sighting copies of the relevant medical documentation.

For further clarification of any points please contact Mark O'Neill on (02) 6571 9900 or email mark.oneill@coalservices.com.au