

STANDARD GUIDANCE

(COP 13) General Employment Terms

A. Definitions and applicability

Employment relationships are the legal link between employers and employees that exist when a person performs work or services under certain conditions in return for remuneration.

An **Employee** is an individual who has entered into or works under a contract of employment or a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing, or as defined by Applicable Law, with a Member. This includes permanent, temporary, full-time, part-time, casual, home-work and/or seasonal employees at any level.

Home-work is where a person who is contracted by the company or by a supplier, sub-supplier or subcontractor, but does not work on their premises.

Source:

- *International Labour Organisation (ILO) - Industrial and Employment Relations Department*
www.ilo.org/public/english/dialogue/ifpdial/areas/legislation/employ.htm
- *International Labour Organisation (ILO) - Decent Work Indicators - Concepts and definitions*
www.ilo.org/stat/Publications/WCMS_183859/lang--en/index.htm
- *Social Accountability International (SAI) - SA[®] 8000 Abridged Guidance: 2008 Standard*
www.sa-intl.org/_data/n_0001/resources/live/SAI_AbridgedGuidance_SA8000_2008.pdf

The **General Employment Terms and Practices** section of the COP is applicable to all Members with employees.

B. Issue background

The employment relationship is the legal link between employers and employees. It exists when a person performs work or services under certain conditions in return for remuneration. The corresponding legal instrument is a contract of employment, which may be expressed or implied, in writing or verbal.

It is through the employment relationship, however contractually defined, that reciprocal rights and obligations are created between the employee and the employer. It is also the main vehicle through which workers gain access to the rights and benefits associated with employment in the areas of labour law and social security. Accurate record-keeping of employees' benefits and entitlements is an essential part of the employer's role to ensure that workers rights and benefits are upheld.

The traditional employment relationship used to be based on full time work with a single employer, under a contract of employment for unlimited duration, with protection against unjustified dismissal. Over the last thirty years, new patterns of employment have emerged in the global economy. These include an increasing use of fixed term contracts and contractual arrangements where workers are not strictly employees. Some workers under these arrangements may have weak protection under labour or social security law, particularly migrant workers and home-workers. Exploitative working arrangements have also emerged, such as false apprenticeship schemes where workers are on lower wages during a 'training period' but there is no real intent to impart skills or provide regular or ongoing employment once that period ends.

Home-working, successive short-term contracts, apprenticeships, sub-contracting and labour-only contracting can all be legitimately used within employment relationships. However these kinds of arrangements can present higher risks that legal obligations to workers are not being upheld. Therefore the RJC Code of Practices

does not unduly restrict general use of these working arrangements, but does require that they *not* be used as a means to avoid labour and social security obligations.

C. Key regulations

International standards

In recognition of the increasing number of workers who lack protection in their employment relationships, the International Labour Organisation (ILO) adopted Recommendation 198 on the Employment Relationship in 2006. This provides guidance to member States on reforming national law and practice to protect workers against the circumvention of obligations through contractual and/or other legal arrangements.

National law

National laws and regulations, as well as collective agreements, offer protections to workers which are linked to the existence of an employment relationship between an employer and an employee. It is essential to keep up to date on the legal requirements for employment contracts in all jurisdictions of operation.

D. Suggested implementation approach

- **COP 13.1: Employment terms:** *Members shall ensure that Employees understand their current employment terms with regards to wages, working hours and other employment conditions.*
Points to consider:
 - Written contracts of employment are a straightforward way to communicate employment terms. Members should provide written contracts of employment in a language that workers can understand, and that indicate their rights and responsibilities with regard to wages, working hours and other conditions.
 - Contracts of employment are not always written, for example in some small businesses or for some or long-standing senior staff. In these cases, Members need to ensure that such employees are familiar with their employment terms and conditions. These might consist of statutory information made available to the employee.
 - The following practices *do not* meet the requirements of 13.1:
 - The terms and conditions of employment agreed upon at the time of recruitment are not those contained in the employment contract, because changes have been made without the knowledge or consent of the worker;
 - The original contract provisions agreed to at the time of recruitment are replaced by provisions less favourable to the worker, either one or more times over the course of the hiring and deployment process (“contract substitution”) or once the worker arrives at the worksite (so-called “supplemental agreements”).
 - Migrant workers in manufacturing, production or low-skill occupations can be more vulnerable in the negotiation of employment terms, because of language barriers, cultural and social differences.
 - Check that senior managers are aware of legal requirements for employment relationships, as well as the key risk areas across all areas of the business accountable for compliance.

- **COP 13.2: Avoiding labour and social security obligations:** *Members shall not avoid fulfilling obligations to Employees relating to labour and social security under Applicable Law through the use of labour-only contracting arrangements, false apprenticeship schemes, excessive consecutive short-term employment contracts, and/or sub-contracting or home-working arrangements.*
Points to consider:
 - Some forms of labour-only contracting are prohibited under applicable law. Many jurisdictions will have established guidelines or criteria for distinguishing permissible contracting arrangements of this nature. These can include, for example, whether the worker provides the materials and/or equipment to undertake the task, whether they have the right to delegate their work, whether they are providing their services through an independent business, and whether they also provide these services to others. Members using labour-only contracting should ensure

the contracts are legitimate and not being used as a means to avoid fulfilling legal obligations to employees.

- Apprenticeship schemes play an important role in training and are permitted under the Code of Practices. Many jurisdictions regulate the period of training and compensation that is payable to apprentices in various sectors. ‘Apprenticeships’ or ‘traineeships’ are false if they are used for the purpose to underpay workers or avoid legal obligations, with no real intent to impart skills or provide regular employment. Child labour and young persons are particularly vulnerable to being exploited through such false schemes. Members must ensure that apprenticeships and training positions are legitimate and in accordance with Applicable Law.
 - Use of short-term employment contracts (e.g. temporary employees), sub-contracting and home-working is permitted under the Code of Practices. Temporary or outsourced labour is sometimes needed to manage varying business demand. However, these employment arrangements cannot be used to avoid statutory obligations to employees. For example, the use of short-term contracts (such as less than six months) might be considered excessive if large numbers of workers are employed under these, and workers need to continue to re-apply for successive short-term contracts, sometimes over many years. Where such practices exist, consider developing policies and programs for how business planning could be improved to enhance job security for workers.
 - The use of labour brokers can present risks where the conditions of recruitment and hiring are no longer under the control over oversight of employers. See **Forced Labour** for guidance on monitoring for risks of human trafficking.
- **COP 13.3: Record-keeping:** *Members shall maintain appropriate Employee records, including records of piece rate and wage payments as well as working hours, for all Employees, whether on a full time, part time or seasonal basis.*

Points to consider:

- Where wage payments vary depending on working hours, those individual employees’ hours should be recorded on a daily, weekly or monthly basis, as appropriate.
- A piece rate wage system is one in which employees are paid on the basis of the units of output produced, rather than the time spent. Because piece rates systems can be complex, accurate records of output as well as the basis for corresponding calculations of wages are essential. Recording hours worked and total wage payments are also relevant for checking conformance with the RJC’s **Working Hours** and **Remuneration** requirements.
- Employee records should be maintained in a manner that is consistent with the terms and conditions of the employment contract. Where working hours do not vary or are set, such as in a general office or retail environment, or are at the discretion of the employee (for example, those in management roles), it is sufficient to have working hours recorded at the level of the premises or as described in contracts of employment.

Check:

- ✓ Can you show the auditor that employees understand their employment terms, either via written contracts or other means?
- ✓ If you use labour-only contracting, apprenticeships, consecutive short-term employment contracts, sub-contracting or home-work arrangements, are they structured to ensure that employees receive the relevant labour and social security benefits?
- ✓ Do you have appropriate records of piece rate and wage payments and working hours for all employees?

E. Further information

The following websites have further information on general employment terms and practices:

- International Labour Organisation (ILO) – Employment relationship
www.ilo.org/public/english/dialogue/ifpdial/areas/legislation/employ.htm
- International Labour Organisation (ILO) – The Employment Relationship: An Annotated Guide to Recommendation 198 (2007)
www.ilo.org/ifpdial/areas-of-work/labour-law/WCMS_172417/lang--en/index.htm

- International Labour Organisation (ILO) - Industrial and Employment Relations Department
www.ilo.org/public/english/dialogue/ifpdial/areas/legislation/employ.htm
- International Labour Organisation (ILO) - Decent Work Indicators - Concepts and definitions
www.ilo.org/stat/Publications/WCMS_183859/lang--en/index.htm
- Social Accountability International (SAI) - SA[®] 8000 Abridged Guidance: 2008 Standard
www.sa-intl.org/_data/n_0001/resources/live/SAI_AbridgedGuidance_SA8000_2008.pdf
- Verité - A Fair Hiring Framework for Responsible Business (2011)
www.verite.org/sites/default/files/images/Verite-Help-Wanted-A Fair Hiring Framework for Responsible Business.pdf
- Verité - Fair Hiring Toolkit
www.verite.org/helpwanted/toolkit.
- Verité - What Should You Look For? Identifying Company Risk & Vulnerability to the Human Trafficking and Forced Labor of Migrant Workers
www.verite.org/node/719/