

**Ethical and
sustainable
work practices**

A guide for Auditors

February 2023

This guide helps you as an auditor understand ethical and sustainable work practices from a labour and human rights perspective. Find out what they are and why they are so important.

**EMPLOYMENT
NEW ZEALAND**





Understand ethical and sustainable work practices

Today's consumers, employees, procurers and investors expect certain ethical standards. They increasingly want businesses to treat workers fairly, ethically and sustainably – not just their own workers but also the workers in the organisations they engage with.

New Zealanders are becoming more aware of exploitation and mistreatment of workers, especially of migrants, and do not want to engage with businesses that exploit their workers. When deciding where to shop, consumers consider how businesses treat their workers.

A 2021 Colmar Brunton survey found New Zealanders want fairer businesses.

- › 59% of respondents wanted their future employer to be socially and environmentally responsible.
- › 73% would stop buying from a company that was irresponsible or unethical.

What ethical and sustainable means

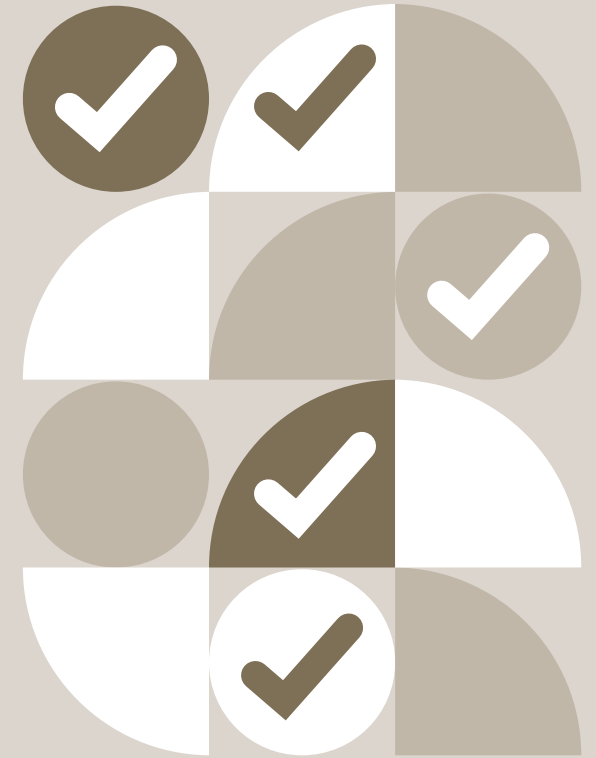
Having ethical work practices means treating your workers legally, fairly and with dignity. It includes providing safe working conditions and meeting or exceeding all minimum employment standards.

Sustainability means working in a way that meets the needs of your business or industry now and in the long term.

Exploitation, child labour, forced labour, human trafficking and slavery are the opposite of ethical and sustainable work practices.

➦ Ethical and sustainable work practices

or go to www.employment.govt.nz and search for 'ethical and sustainable practices'



Why good work practices matter

Behaving ethically and sustainably is the right thing to do.

Good work practices help create a level playing field where those who meet employment obligations cannot be undercut by those who cut corners using unfair work practices. Good work practices can have a positive impact on customer goodwill, loyalty and demand for your goods and services. They can also help to attract and retain good workers. On the other hand, employment practices that are not legal, ethical or sustainable can hurt your reputation and brand. This could reduce your company's revenue, profit, financial viability and market value.

Businesses that have been penalised for exploiting or mistreating their workers are identified in publicly available information. The law fines and penalises these businesses, and prevents them from supporting visa applications from overseas workers for a specific period.



Understand who an auditor is

Auditors review an organisation's records and systems to see if they are accurate and sound. For example, they may check if a company's financial statements are accurate, or if an organisation follows certain standards.

Understand the key elements of auditing employment standards

Four things are important in an audit of employment standards.

Records must be in writing

Having written records is a requirement. A lack of written records could mean that employers are not meeting employment standards.

Records could be electronic. If employers use payroll software, they must understand any calculations the software makes, and be sure the calculations are right. Mistakes often happen because organisations have not set up or operated software correctly.

Employment agreements must be in writing

Having written employment agreements is a basic part of employment law. A lack of written agreements is a red flag – the employer may be breaching other parts of employment law too.

Wages must be correctly calculated and paid

The most important things that the Labour Inspectorate looks for are whether:

- › employers pay at least the minimum wage for each hour worked
- › deductions from wages are legal, agreed in writing with the employee, and reasonable
- › employees have to pay to get or keep a job.

Holidays and leave must be correctly calculated and paid

Getting holidays and leave right is tricky, especially if hours of work are variable or if the pay structure is complicated (for example, if it includes commissions or allowances). We discuss common failings below.



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work practices

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Auditors

Check these compliance requirements when auditing

This section provides guidance on what to look out for when auditing. Randomly review a sample of what you are checking (records, employment agreements, wage deductions, calculations and so on), including records of past employees.

You may wish to use this information to inform the content of any Audit flowcharts or checklists you use.

If you find failings, please refer to your organisation's internal policy in respect of next steps ie. investigate further, make recommendations to management in respect of rectification and remediation. We anticipate this would be based on the severity of the issue/s and management would develop an Action Plan in response.

➔ Auditor's approach to assuring compliance with employment standards
or go to www.employment.govt.nz
and search for 'auditors'

We expect standard audit approaches will be used in respect of the following:

- › Sample sizes.
- › Conflict of interest identification and resolution for the person/s conducting the audit.
- › The use of privacy waivers and policy around this work, as the auditors will be accessing personal data of employees.



Auditing records

Requirements	Ways to check compliance	Common failings
<p>Wages and time records must contain all required information, and be kept for at least six years.</p>	<ul style="list-style-type: none"> › Ask the employer about who keeps the records and how the wages and time record are kept. › Review a sample of the records consisting of different types of employees such as employees working fixed/set hours and days, employees on flexible and variable working patterns and terminated employees. <p>See the law on wages and time records – New Zealand Legislation</p>	<ul style="list-style-type: none"> › Assuming that the accountant (or similar) is keeping the required records. › Assigning the role of record keeping to an untrained or unsupported person. › Keeping wage records but not time records. › Entering the hours of work as a total amount and destroying the detailed time records.
<p>Holiday and leave records must contain all required information, and be kept for at least six years.</p>	<ul style="list-style-type: none"> › Ask the employer about who keeps the records and how the holiday and leave records are kept. › Review a sample of the records consisting of different types of employees. <p>See the Holidays Act – New Zealand Legislation</p>	<ul style="list-style-type: none"> › Assuming the use of a payroll system means that all recording requirements are being met. › Failing to update the payroll system when employee conditions change, for example., when hours increase. Taking a ‘set and forget’ approach to record keeping. › Assigning the role of record keeping to an untrained and/or unsupported person. › Recording payments when leave is taken but missing off leave balances. › Failing to clearly record the earning of, and balance of, alternative holidays.



Auditing employment agreements

Requirements	Ways to check compliance	Common failings
Individual employment agreements must be in writing – a copy must be given to the employee and a copy retained at the business. These should not contain anything contrary to the law.	<ul style="list-style-type: none"> › Confirm with the employer that these are provided and retained and ask what system they have in place for offering and retaining agreements. › Ask some employees if they were offered and provided with a copy of their individual employment agreements. › Select a sample from a list of employees and witness that there are written employment agreements. <p>See the law on individual employment agreements – New Zealand Legislation</p>	<ul style="list-style-type: none"> › Assuming an ‘old school’ approach of verbal agreement is sufficient. › Assuming that the rules are different for ‘casual’ employees. › Assuming the rules are different when employing friends and family. › Failing to create and keep employment agreements during busy periods. › Failing to include a job description and all the mandatory clauses.
Individual employment agreements must contain certain mandatory clauses.	<ul style="list-style-type: none"> › Review a sample of agreements. › Ask a few employees who their employer is and if the job description, place and hours of work, and so on match reality. <p>See the law on individual employment agreements – New Zealand Legislation</p>	<ul style="list-style-type: none"> › Failing to accurately reflect the agreed hours in the individual employment agreement. › Failing to include a clause on paying relating to time-and-a-half or work performed on public holidays. › Failing to include a clause covering restructuring. › Failing to include close down clauses when the business actually has a close down period. › Including clauses that cancel out holiday entitlements, such as limiting the carry-over of unused annual holidays. › Requiring someone to be available for work without paying them to be on stand-by. › Using a trading name instead of the employer’s legal name.



Auditing wages and salaries

Requirements	Ways to check compliance	Common failings
Employees must be paid at least the applicable minimum wage.	<ul style="list-style-type: none"> › Ask the employer if they know what the current minimum wage rates are. › Ask the employer about how pay is calculated – hourly rate, salary, commission, piece rates, allowances, and so on. › Ask the employer about hours of work and what work employees complete in that time. › Calculate the hourly pay per hour if the employee is paid piece rates. › Ask some employees about their hours of work, what work they complete in that time, and if they are paid for all hours worked. › Review samples of wages and time records. <p>See the law on individual employment agreements – New Zealand Legislation</p>	<ul style="list-style-type: none"> › Failing to record all hours of work as work. Examples include deliberate exploitation, travel time, sleep overs, work required training, and team meetings prior to and after shifts. Another example is asking employees to start work 15 minutes earlier to set up shop or to finish later to clean up, but not paying them for it. › Failing to pay a new employee or paying them a reduced rate while they are receiving on-the-job training. › Allowing a salaried employee to work long hours for a period to the point that they are not receiving the minimum wage. › Failing to top up pay to the minimum hourly wage when required, if workers are on piece rates. › Failing to pay workers for all their hours worked. › Failing to pay workers all their hours while on training.
Employers must pay wages without deduction.	<ul style="list-style-type: none"> › Ask the employer if there are deductions made from employee wages. If so, check what they are for. If other than for legal purposes such as tax, is there a written consent from the employee? › Ask some employees if deductions have been made from their wages and if yes, have they given a written consent to do so? › Review a sample of wages and time records and any written consent. Include some employees who have ended their employment. 	<ul style="list-style-type: none"> › Making unreasonable deductions for business costs. Examples of what is unreasonable include deductions for breakages or theft by customers, recruitment expenses, and personal protective equipment required to perform the job. › Failing to get employees' written consent to make a deduction. › Deducting wages when employees leave without working out their notice period. › Requiring employees to pay for personal protective equipment.
Employers must not charge employees for their jobs.	<ul style="list-style-type: none"> › Ask some employees if they have to pay any money to get or retain their jobs. › Check a sample of employment agreements for any disguised premiums, such as unlawful bonds or penalty clauses. 	<ul style="list-style-type: none"> › Making employees pay to get or retain a job. › Including clauses in employment agreements that require employees to repay costs when their employment ends, such as costs for on-the-job training.



Auditing holidays and leave

Requirements	Ways to check compliance	Common failings
Employers must calculate annual holiday entitlement and pay correctly.	<ul style="list-style-type: none"> › Ask the employer about their understanding of employees' entitlement to four weeks of annual holidays. › Ask the employer how they calculate annual holiday pay. › Check a sample of holiday and leave records to establish if it meets the legislative requirements. Include records for employees who have ended their employment and those with variable working hours. › Check if commission has been included in holiday pay if employees receive commission. › Check if staff are being paid 8% instead of holiday pay. If they are, check if the practice meets the conditions for this to happen. For example, do varied days and hours of work make it too difficult to calculate annual leave? Do fixed-term employment agreements last fewer than 12 months? › Check if the right methodology is being used to calculate annual leave: Annual holidays must be paid at the higher of: <ul style="list-style-type: none"> – the average weekly earnings, meaning the employee's average weekly earnings for the 12 months just before the end of the last pay period before the annual holiday – the ordinary weekly pay, meaning the employee's ordinary weekly pay at the beginning of the annual holiday. 	<ul style="list-style-type: none"> › Most payroll systems have a process of 'accruing' annual holidays based on the hours employees work which is based on formula of 4/52 for each hour worked from the start date of employment, rather than providing 4 weeks entitlement or 4 weeks' annual holidays after 12 months of service. › Assuming payroll software calculations are correct. › Failing to set up payroll software correctly. › Assigning the role of payroll to an untrained, unqualified, and/or unsupported person. › Using only the average weekly earnings or the ordinary weekly pay – not the higher of the two as required by the law. › Failing to give four weeks leave to employees with variable working patterns. › Failing to increase holiday entitlement when employees increase their hours of work. › Failing to include all applicable gross earnings in holiday calculations.
<p>See the law on calculating annual holiday pay – New Zealand Legislation</p>		



Ethical and sustainable work practices

Requirements	Ways to check compliance	Common failings
Employers must calculate public holiday pay correctly.	<ul style="list-style-type: none"> › Ask the employer to explain their understanding of the public holiday entitlements and how they are applied in their business. › Ask employees if they are given a choice whether to work on public holiday (if not as part of their contractual arrangement). › Review a sample of records to look at the patterns of work around public holidays. › Check if employees are receiving the right entitlements when working on public holidays. › Ask employees how public holidays are treated in regard to payment for working, and entitlement to pay if not worked. › Check a sample of records for how relevant daily pay is calculated. <p>See the law on holiday and leave entitlements – New Zealand Legislation</p>	<ul style="list-style-type: none"> › Believing ‘casual’ employees (or people on rosters) are not entitled to public holidays. › Failing to apply the otherwise working day rule when employee does not work on public holidays. › Incorrectly determining the ‘Mondayisation’ of a public holiday. › Incorrectly determining relevant daily pay. For example, employers may fail to include regular overtime in relevant daily pay. › Failing to give employees a choice about working on public holidays. › Failing to pay time-and-a-half, or failing to give employees an alternative holiday when they are entitled to one. › Changing rosters to avoid paying holiday pay.

Be aware of other risks

Employment standards apply only to employees, not to genuine volunteers and self-employed contractors.

When employees are wrongly called contractors or volunteers, they do not get their minimum employment rights. If you think this may be happening, you can examine the person’s relationship with the employer. Use the intention test, control versus independence tests, and fundamental or economic reality tests.

➔ Contractor versus employee

or go to www.employment.govt.nz and search for ‘contractor employee’



Learn more and use our free resources

Resources on our website

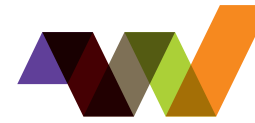
If you are reading a paper version of the brochure, go to www.employment.govt.nz and search for key words.

To learn about...	...search for	What you'll get
Auditor's approach to checking compliance with employment standards	Auditors	A web page
Hours and wages	Hours and wages	A web page
Leave and holidays	Leave and holidays	A web page
Meanings of terms	Glossary	A web page

Details on the legislation.govt.nz website

If you are reading a paper version of the brochure, go to legislation.govt.nz and search for key words.

To learn about...	...search for	What you'll get
Calculating annual holiday pay	'Holidays Act', then go to clause 21	A web page
Entitlement to annual holidays	'Holidays Act', then go to clause 16	A web page
Form and content of individual employment agreements	'Employment relations', then go to clause 65	A web page
Wages and time records	'Employment relations', then go to clause 130	A web page



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