

8. Regular Employment is Provided

8.A Provide a written contract or other binding agreement that specifies the terms and conditions of employment, that meet all legal requirements, in a language workers can understand.

Issue Titles Available under this Workplace Requirement:

- Systemic occurrence of no contracts/letters of appointment in place
- Isolated instances of no contracts/letters of appointment in place
- Systemic occurrence of workers not being given a copy of their contracts or letter of appointment (including digital copy)
- Isolated occurrence of workers not being given a copy of their contracts or letter of appointment (including digital copy)
- Contractual terms are not communicated in a language the worker can understand
- Contractual terms not clearly communicated prior to recruitment
- Contracts changed during the course of employment without communication or facility imposing additional terms or requirements on worker without their knowledge and consent (contract substitution/supplemental agreements)
- Workers are required to sign blank papers, resignation letters, etc.
- Inadequate contracts in place, i.e. missing critical elements such as job description, wages (regular and overtime), hours of work (including overtime), notice period etc.
- Contracts or work agreements stipulate that spouses, children, or any other family members of workers are required to work.
- Evidence of contracts or work agreements in place that apply to more than one individual worker.
- Systemic occurrence of contracts in place but not signed by the worker
- Isolated occurrence of contracts in place but not signed by the worker

Interpretation guidance

Contractual terms of employment should be agreed and captured in writing. These terms should be transparently and freely agreed to by the employee.

In many national contexts, individual written contracts which are signed by the worker are legally mandated, however in other contexts, terms of employment may legally be communicated in other ways. Both are acceptable, if the audited site can demonstrate that terms are transparently communicated, accessible, and agreed to by every employee. Terms should not be changed without transparent re-communication and free agreement, and without undertaking any legally required process to do so.

The contractual terms should be communicated to workers, and in a language which they understand, even if there is no legal requirement to do so.

The terms should include all legally required elements, and none of the terms should be contrary to law.

8.B Meet its contractual and legal obligations in cases of dismissal, termination or redundancy.**Issue Titles Available under this Workplace Requirement:**

- Site has not met its contractual obligations relating to dismissal, termination or redundancy (no evidence of discrimination) – Systemic
- Site has not met its contractual obligations relating to dismissal, termination or redundancy (no evidence of discrimination) – Isolated

Interpretation guidance

If the terms of employment or local law include obligations on the employer in regard to fair dismissal (including additional requirements that may relate to mass redundancy), these should be assessed against this workplace requirement. This may include requirements relating to, for example; notice periods, severance pay, consultation with employees, fair process.

The auditor should request sample records to demonstrate that all legally required processes were undertaken in regard to employees who ceased their employment during the sample period of the audit, including where the recorded reason is resignation. Where it can be determined that dismissal has occurred but there are no records to demonstrate legally mandated processes were undertaken, this should be raised as a finding.

Findings relating to patterns of dismissal which are discriminatory should not be raised here and instead be raised under Code Section 7.

8.C Use an employment or engagement model appropriate to and intended for the nature of work undertaken in the local context.**Issue Titles Available under this Workplace Requirement:**

- The contractual model used to engage workers is not appropriate for the nature of the work undertaken (e.g. contravenes legal guidance that such a model is to be used for specific kinds of work, duration of employment, degree of supervision etc. – systemic
- The contractual model used to engage workers is not appropriate for the nature of the work undertaken, e.g. contravenes legal guidance that such a model is to be used for specific kinds of work, duration of employment, degree of supervision etc. – isolated
- Freelancers or subcontracted workers are held to the same obligations as employees but do not receive the same benefits and protections – systemic
- Freelancers or subcontracted workers are held to the same obligations as employees but do not receive the same benefits and protections – isolated
- Form of using irregular employment, contracting or self-employment is comparable to employment and could provide legal risk to the company

Interpretation guidance

Some national legal structures make available specific models of employment or engagement/self-employment which are more flexible or offer less protection to workers but have restrictions on the contexts in which they can be utilised by employing/engaging businesses. These restrictions may be in terms of the industry or specialism of the engaged worker, the nature of the specific tasks undertaken (for example whether these tasks are specialist/occasional), or the relationship between the employer and workers employed/engaged (for example whether the work could be considered genuinely freelance/unsupervised). In general, these legal provisions are intended to allow for the specific circumstances of a particular industry and have restrictions placed on their use.

Auditors should ensure they understand the frameworks relevant to the national conduct in which the audit is conducted. If alternative employment/self-employment engagement models are used which offer less or different protections to workers, they make checks to ascertain whether the actual situation onsite meets any legal restrictions on their use. For example, in terms of;

- Management oversight or lack of
- Defined working hours or lack of
- Type of work being undertaken
- Terms of pay
- Right to work status

If the situation does not meet the conditions for utilising such an employment model, a non-conformance should be raised.

8.D Not utilise apprenticeships, temporary, irregular, sub-contracted or non-employment models of labour for the purpose of avoiding its obligations relating to regular employment, regardless of legality.

Issue Titles Available under this Workplace Requirement:

- Irregular models of labour engagement are used for the purpose of avoiding obligations relating to regular employment
- Temporary workers are systematically fired and rehired in order to avoid obligations related to continual employment
- Excessive and repeated use of agency, subcontracted or temporary labour used to replace regular employment

Interpretation guidance

Many national legal structures make available models of employment or engagement which are less protective to workers in order to meet practical needs in certain contexts, such as the need for training / apprenticeship/probationary periods, to meet flexible demand, undertake short-term work, or seasonal work. Where such contracts are used this must be for the purpose of meeting such practical requirements, rather than only for the purpose of employing / engaging workers on less protective terms.

If such contracts are used but there is no evidence of a practical business need for doing so other than to reduce protections offered by full employment, a finding should be raised, for example where;

- Employees are engaged on multiple consecutive temporary contracts with no meaningful gap in between and therefore are effectively engaged as permanent employees, but without benefitting from the rights associated with permanent employment.
- Irregular employees without fixed hours defined by contract in fact do consistently work full-time hours, but without the benefits associated with a guaranteed income.
- Workers are engaged via a contractor but are engaged in full-time work over a long period and are under supervision of the site.
- Workers are habitually hired and rehired before they reach an employment duration necessary to achieve full employment rights.

8.E Meet legal conditions for the use of apprenticeships, temporary, irregular, sub-contracted or non-employment models of labour.**Issue Titles Available under this Workplace Requirement:**

- Legal conditions for the use of apprenticeships, temporary, irregular, sub-contracted or non-employment models of labour have not been met - systemic
- Legal conditions for the use of apprenticeships, temporary, irregular, sub-contracted or non-employment models of labour have not been met - isolated
- Systemic occurrence of workers in precarious employment (e.g. seasonal contract, apprentices, trainees, probationary workers) not moved to permanent status in line with law
- Isolated occurrence of workers in precarious employment (e.g. seasonal contract, apprentices, trainees, probationary workers) not moved to permanent status in line with law
- Legal restrictions on the use of temporary labour are contravened, for example the frequency, extent or duration of use
- Isolated incidents of temporary workers not being offered permanent contracts, contrary to law
- Total number or percentage of the workforce that are apprentices/trainees exceed legal limits

Interpretation guidance

Many national legal structures place conditions on the use of less protective forms of employment/engagement. For example, restrictions on the proportion of the workforce that may be employed/engaged on such terms, obligations to offer permanent / full employment after a determined period, or licensing/reporting requirements.

If less protective forms of engagement/employment are used and any such conditions on their use are not met, a finding should be raised here.

8.F Not unfairly restrict those working under apprenticeships, temporary, irregular, sub-contracted or non-employment models of labour from seeking regular employment.**Issue Titles Available under this Workplace Requirement:**

- Those working under apprenticeships, temporary, irregular, sub-contracted or non-employment models of labour are not made aware of regular employment opportunities
- Service agreements with labour providers proscribe the employment of workers by the site or impose excessive transfer fees for doing so

Interpretation guidance

Those working under less protective forms of engagement/employment should not be restricted from seeking permanent work, where such options are available. Such restrictions might be found in the terms between the site and recruitment partners/agencies, or within the terms of the workers themselves. For example;

- Stipulation that agency workers may not seek work with the engaged business under any circumstance.
- The imposition of fines on the business for engaging a contracted worker directly, for an indefinite period.

8.G Demonstrate real intent to impart skills and/or provide regular employment once the apprenticeship term is completed, where apprenticeship schemes are used.**Issue Titles Available under this Workplace Requirement:**

- Apprentices used but without any real intent to impart skills or provide regular employment

Interpretation guidance

Many national legal structures include provision for apprentices (or those on similar scholarship-related programmes) to be employed on less protective terms, or paid a reduced minimum rate of pay, in recognition of the skills/training which they are receiving. If apprentices are engaged on these reduced terms but are not receiving any real training/skills development, a finding should be raised.

Where apprentices are used, the auditor should look for a documented and structured programme of training and/or skill development, or validate a pattern that apprentices finish their period of apprenticeship after a defined period and that many achieve permanent employment with the business.

8.H Comply with all other applicable laws that impose conditions on Code Area 8.**Issue Titles Available under this Workplace Requirement:**

- Contracts in place with no minimum hours contrary to local law
- Labour contracts not authenticated or registered by/with the local labour bureau where it is a legal requirement
- Information about internal rules and regulations is not available (e.g. by providing handbooks or terms & conditions for workers and it is a legal requirement)
- Occurrence of agency, subcontracted or temporary workers being requested then turned away at the beginning of the day without pay where this is contrary to law
- Probation period required from the worker is in excess of the legal maximum
- A systemic, deliberate or severe breach of a local law which represents a danger to workers or others, or which denies a basic human right (relating to Code Area 8: Regular Employment is Provided but which cannot be captured under another Workplace Requirement)
- A systemic breach of a local law that could present a danger to workers or violate upon a human right (relating to Code Area 8: Regular Employment is Provided but which cannot be captured under another Workplace Requirement)
- An isolated breach of local law which represents low risk to workers (relating to Code Area 8: Regular Employment is Provided but which cannot be captured under another Workplace Requirement)

Interpretation guidance

Not required