



## Improving conditions for New Zealand workers - employment standards

Government procurement can help protect workers from unfair and unsafe behaviours by requiring suppliers in designated contract areas and the suppliers in their domestic supply chains, to comply with employment standards.

For detailed information about employment standards, see:

[www.employment.govt.nz](http://www.employment.govt.nz)

### Definition of domestic supply chain

Domestic supply chain has a specific meaning in the Rules. It refers to suppliers and the sub-contractors they use to help them deliver services within the geographic boundaries of New Zealand.

### Designated contract areas

The Government has made it a priority to focus on workers who are providing services to its agencies in the following designated contract areas:

- cleaning services
- security services
- forestry.

Workers in these areas tend to be on lower wages and more vulnerable to poor labour practices. If your agency has a contract for service in one of these areas you must:

- carry out due diligence to make sure your suppliers are meeting employment standards
- make sure your suppliers carry out due diligence to make sure any sub-contractors they use are also meeting employment standards
- monitor both suppliers and their domestic supply chain to make sure they continue to comply with employment standards for the duration of the contract.

This helps to protect all workers delivering these services to your agency in New Zealand.

For more information, see:

- [Rule 19: Improving conditions for New Zealand workers](#)
- [Designated contract areas](#)

### Contracts not in designated contract areas

If you have contracts that aren't in a designated area, you should still ensure that those contracts set out the expectation that suppliers and sub-contractors comply with employment standards.

For contracts that are not in designated areas, but are in areas where there's a higher risk of employment standards not being met, agencies should consider treating them in the same way as designated contracts. This

means carrying out due diligence and monitoring to make sure employment standards are complied with throughout the supply chain. Doing this can help:

- ensure that workers employed to fulfil government contracts are treated fairly and not exploited, and
- reduce the risk of your agency becoming associated with employment standard breaches and labour exploitation.

For more information, see:

- [Rule 19: Improving conditions for New Zealand workers](#)

## About employment standards

Employment standards set the minimum requirements that apply by law for how employers must treat, pay, and protect their employees.

Employers are legally responsible for meeting employment standards. These include, making sure:

- they correctly classify contractors and employees – this is important because employees and contractors have different rights
- their employees have a written employment agreement that includes all the clauses required by law
- any deductions for work accommodation and other payment arrangements are reasonable, documented, and authorised
- they pay employees at least the minimum wage, and preferably provide them with payslips detailing their pay and any authorised deductions
- their employees receive and are paid correctly for annual leave
- their employees receive the bereavement leave, alternate holidays, public holidays, sick leave, and domestic violence leave they are entitled to
- their workers receive rest and meal breaks
- they keep accurate and up-to-date records of time worked, payments made, holidays and leave taken, and make these available when required
- they provide all employees with equal pay and equal rights, and
- they act in good faith communicating with their employees honestly, openly and without hidden motives.

For more information about employment standards, see:

- [www.employment.govt.nz](http://www.employment.govt.nz)

Employers are also responsible for making sure they only employ workers who have the right to work in New Zealand – this means checking workers are New Zealand citizens or have the right kind of visa to work in New Zealand.

## Why it's important to correctly classify contractors and employees

Employment standards don't apply to independent contractors. An independent contractor is someone who is self-employed and who is engaged to perform services under a contract. Some suppliers choose to use independent contractors instead of employing staff.

It's OK for employers to do this, as long as:

- there are genuine reasons to do so, for example the worker is required for a limited time or for specialised skills their business doesn't ordinarily need, and

- the contract for service is not being used simply to avoid meeting employment standards.

Look out for ‘sham’ independent contracting arrangements.

Sometimes suppliers deliberately try to disguise employment relationships as independent contracting arrangements so they can avoid meeting employment standards.

In your procurement process and for existing contracts, consider asking to see the supplier’s contracting models so you can identify such situations. This is important to assure yourself that genuine, but low wage, independent contractors receive fair working conditions too.

For information about the differences between contractors and employees, see:

- [Contractor versus employee](#)

## Plan

When planning your procurement, you should start by thinking about whether there is a heightened risk of employment standards not being met by the suppliers in the market you are procuring from.

Suppliers in markets with one or more of the following characteristics may have a higher risk of employment standard breaches and labour exploitation, including in their supply chains:

- sectors that have a history of human and labour rights issues
- industries that use a lot of migrant, young or older workers, and
- industries that use unskilled, temporary and/or seasonal labour.

Think about the best way to make sure suppliers in designated contract areas, that is, cleaning services, security services and forestry, and their supply chain comply with employment standards. This could include using mandatory conditions, tender questions and contractual clauses.

Make sure the approach you decide to take is appropriate for the size of contract and the kinds of suppliers that might bid for it. For example, if the suppliers are likely to be small businesses, they may not have the capacity or capability to carry out comprehensive audits but may be able to show their compliance in other ways.

Make sure you factor in the ongoing costs of ensuring compliance with employment standards that may be passed on to your agency by the supplier. These include the costs associated with:

- employing workers, such as leave and holidays, ACC levies, and KiwiSaver (estimated at around 25%)
- minimum wage increases, and
- assurance activities, such as auditing.

## Source

It’s important to engage with the market early, to make sure they understand your expectation that suppliers provide assurance that they, and their supply chain, comply with employment standards. This will help prepare suppliers to respond appropriately.

It’s important to explicitly state employment standard requirements in your tender documents. As part of this, consider asking suppliers to detail:

- the suppliers that make up their domestic supply chain
- their processes for auditing compliance with employment standards
- their processes for dealing with employment standard breaches, and
- their process for managing changes to key sub-contractors.

## Supplier Code of Conduct

Suppliers are expected to comply with the Supplier Code of Conduct, which sets out the government's expectations for the suppliers it engages. You can ask suppliers to do this as part of your tender process, or separately, if they already have a contract with your agency. Suppliers are expected to make their sub-contractors aware of the Code too. The Supplier Code of Conduct works alongside existing codes of conduct and employment standards.

For more information, see:

- [Supplier code of conduct](#)

## What to include in an RFx

Asking suppliers and their sub-contractors to comply with the Supplier Code of Conduct is one way to seek assurance suppliers will comply with employment standards. Another is to include questions about employment standards in your tender documents. You'll find 'Questions to include in an RFx' at the end of this document.

## Other ways to get assurance

The questions you choose for your tender documents can also be used for assurance activities with your existing suppliers.

Some industry bodies and associations already have, or are planning to put in place, third-party audits to make sure their members are complying with employment standards. Others offer certifications that provide assurance that members are going above and beyond what they need to do to comply with employment standards. Suppliers who have these member requirements and certifications can provide these in place of responding to specific due diligence questions and assurance exercises.

## Pricing

When developing response templates for pricing, it's important to ask for enough information to determine whether suppliers are paying their workers at least the minimum wage.

Ask for suppliers to break down their hourly rates into the costs of materials and labour, and then check the cost of labour is not less than the minimum hourly wage.

For current rates, see:

- [Current minimum wages rates](#)

## Contract terms and conditions

The requirement for suppliers, and their supply chains, to meet New Zealand employment standards for the life of contract should be built into the terms and conditions of the contract. Designated and high-risk contracts should also require suppliers to:

- report any investigations by the Labour Inspectorate or pending Employment Relations Authority (ERA) or Employment Court actions
- report breaches of employment standards and non-compliance with other legislation, and
- consider remediation pathways.

Designated and higher-risk contracts should also detail the assurance process your agency will use to make sure the supplier continues to meet employment standards over the life of the contract.

## About the Labour Inspectorate

The role of the Labour Inspectorate is to ensure compliance with employment standards by:

- identifying and investigating breaches
- taking enforcement action – including standing down employers who breach minimum standards, and

- working with industry and sector leaders and other key parties to strengthen the systems that underpin employment standards compliance.

It's important to check suppliers have not been stood down for breaching minimum employment standards before entering into a contract with them. You can do this, by checking:

- [Employers who have breached minimum employment standards](#)

## Manage

Your agency should identify which of your existing contracts are in designated contract areas, that is, cleaning services, security services, and forestry, and any other contracts where there may be a heightened risk of employment standard breaches. You can then use the following guidance to help you manage these contracts, and new contracts in these areas too.

### Supplier relationship management

The level of supplier relationship management you'll need to do will depend on the overall risk level of the contract.

When government contracts suppliers to deliver higher-risk contracts, the relationship needs stronger management. This means:

- engaging with suppliers more frequently
- undertaking more due diligence, and
- sharing more information between you.

This can help:

- mitigate and manage risks and issues as they arise
- identify changes to the supply chain, such as new sub-contractors
- make sure that breaches of employment standards are raised immediately.

Suppliers engaged in smaller, lower-risk contracts don't need the same level of management. For these suppliers, an annual due diligence exercise to confirm they continue to comply with employment standards may be enough.

### Due diligence

The purpose of due diligence is to give your agency assurance that suppliers and their supply chains comply with employment standards throughout the life of the contract.

The assurance activities your agency carries out, will depend on the contract's level of risk, and how much information the supplier provided about their compliance with employment standards during the sourcing phase of your procurement.

For a lower-risk contract, your agency could require suppliers to submit a yearly declaration to confirm they continue to meet employment standards. For a higher-risk contract, you'll need more assurance than this.

### Fair work

You may decide to work with suppliers toward adopting fair work practices, including in their supply chains. This is when suppliers go above and beyond what they're required to do by law (and employment standards). Practices that suppliers can adopt include:

- setting up a group to focus on labour market issues
- creating channels for workers to raise issues about employment rights
- providing vocational training

- making buildings easier for all workers to access
- paying a living wage.

This can start by agreeing strategic objectives with suppliers. You can then use balanced scorecards to monitor the supplier's performance against those objectives at regular intervals over the life of the contract.

For more information about fair work, see:

- [Improving conditions for New Zealand workers](#)
- [Living wage](#)

## Questions to include in an RFx

For designated contracts, your agency must carry out due diligence to ensure your suppliers are meeting employment standards. One way to is to include the following questions in your RFx.

<b>Opening questions</b>				
Does your company agree to comply with the Supplier Code of Conduct and make your sub-contractors aware of the code?	Yes		No	
Is your company complying with New Zealand employment standards, including:				
Do all of your employees have a written employment agreement?	Yes		No	
Do your employment agreements include all of the clauses required by law to ensure employment standards are met?	Yes		No	
Does your company keep accurate and up-to-date wage, time, leave, and holiday records?	Yes		No	
Do you pay all of your employees at least the minimum wage?	Yes		No	
Do you correctly pay all of your employees for their annual leave?	Yes		No	
Do your employees receive the bereavement leave, alternate holidays, public holidays, sick leave, family violence leave they are entitled to?	Yes		No	
Do your employees receive appropriate breaks?	Yes		No	
Do you provide all of your employees with information about their employment rights?	Yes		No	
Do all of your workers, including contractors, have the right to work in New Zealand?	Yes		No	
Do you provide all of your employees with equal opportunities?	Yes		No	

## Policy and compliance records

For designated contracts, your agency must also ensure the statements suppliers make about their compliance with employment standards are supported by evidence. This should include checking if new and existing suppliers and their supply chains have been found to have breached employment standards. If they have, you'll need to find out what action has been taken to resolve the issues that resulted in the breach.

A previous breach does not necessarily preclude a supplier from being awarded a contract. But you will need to carefully consider whether the supplier is at risk of breaching again. This should take into account:

- the seriousness of the breach
- how long ago the breach happened, and
- what has been done to resolve the breach.

Policy and compliance records				
Do you have policies in place detailing your commitment to employment standards? If yes, provide a copy of the policies.	Yes		No	
Do you provide information about your employment standards policies and requirements to your sub-contractors and franchisees?	Yes		No	
Has the Labour Inspectorate, Employment Relations Authority (ERA), or the Employment Court ever found you, your sub-contractors or franchisees, in breach of employment standards? If yes, provide details.	Yes		No	
Are you or any of the employers in your supply chain under investigation by the Labour Inspectorate? If yes, provide details.	Yes		No	
Have you, or any of your sub-contractors or franchisees, engaged workers who do not have the right to work in New Zealand? If yes, provide details.	Yes		No	

As well as checking supplier responses, it's a good idea to check if suppliers have been stood down for breaching minimum employment standards. For more information, see:

- [Employers who have breached employment standards](#)



## Sub-contracting arrangements

Your agency may need assurance that suppliers are using sub-contracting arrangements appropriately and not using them to avoid risk or employment standards obligations. Examples of appropriate use might include, engaging a contractor to do work in a remote location that is not easily accessible by their employees, or to do specialist work the supplier's employees don't currently have the capacity and/or capability to do.

Sub-contracting arrangements				
Will you be using any domestic sub-contractors, independent contractors and/or franchisees? If yes: <ul style="list-style-type: none"> <li>• Explain what each of them will deliver.</li> <li>• Provide details or a diagram that explains your contracting model.</li> <li>• Explain why you are not supplying the services directly.</li> </ul>				
	Yes		No	

## Monitoring and reporting

For designated contracts your agency must monitor suppliers and their domestic supply chain to ensure they continue to comply with employment standards. Asking the following questions can help to establish if suppliers have systems and processes in place to monitor their own and their supply chain's compliance with employment standards for the duration of the contract.

You can also ask suppliers to monitor and report on specific risk areas, for example, by carrying out spot checks.

Monitoring and reporting				
What processes do you have in place to monitor your continuing compliance with employment standards?				
Does your business take part in internal and/or third-party audits for assurance it continues to comply with employment standards? If yes, provide details.	Yes		No	
Do you require your sub-contractors to report on their compliance with employment standards, or to take part in third-party audits? If yes, provide details.	Yes		No	
Does your business have a person whose role it is to actively work with and monitor worker rights issues, including for suppliers and sub-contractors?	Yes		No	

You may find it helpful to ask these questions as part of your contract management practices too.