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AIM-PROGRESS Task Force



SESSION II: Implementing Responsible Sourcing Principles, Standards and Local Law



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Introduction to common Labour issues (Group Discussion)



Discussion : Typical Types of Labour Issues – Casual Labour

The Situation

It is a common practice for employers to hire casual workers on a temporary labour contract of 90-120 days. These workers are meant to be hired for periods of high production.

What could happen

After the contracts expire, employers either re-sign the workers to another temporary labour contract or simply discontinue the relationship with the worker.

The Issue

1. This practice is illegal as it excludes workers from obtaining access to benefits provided under the Laws of Kenya.
2. Any period of work in excess of 3 Months (90 days) shall compel an employer to convert the employee from a casual to a full time employee.

Discussion : Typical Types of Labour Issues – Forced Labour

Some Common situations

1. Employee needs money to pay for his wife's operation. He offers to work "for free" in exchange for an advance of payment.
2. When employee is hired, the Human Resources Manager takes possession of the employee's passport, birth certificate, and other personal papers and tells the employee the Company will retain the paperwork until the employee has completed at least six months of employment.
3. It takes 8 hours, with breaks, to cap 1,000 bottles. Employee is told that he cannot take a break until 1,000 bottles are capped.

Discussion : Typical Types of Labour Issues – Wage and Benefits

- Facility XYZ is a family enterprise, going back three generations. The son of the present manager returns after finishing his studies overseas. In an attempt to modernize the facility, he introduces many automation techniques including Direct Deposit. All employees are now paid through direct bank transfers. This takes care of issues like the Accountant taking a cut of the employees' salary. The employees also feel that this is a better method as now they do not need to carry cash and thus, are saved from cases of robbery on the day of wage payment. With modernization, old paper payroll records are also deemed obsolete and all records are maintained in the computers. The aim is to create a paperless work environment so workers are no longer issued a wage slip unless requested.
- **For Discussion:**
 1. What is wrong with this scenario?
 2. What could be plausible solutions to this situation?

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LABOUR STANDARDS



Legal Compliance

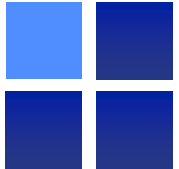


Aim-Progress Member Principles

- **Baseline Requirement:** Comply with all applicable local and national laws, rules, regulations and requirements in the manufacturing and distribution of products and supplies and in the provision of services to the Company.
- **ETI BASE CODE**-Companies applying this code are expected to comply with national and other applicable law and, where the provisions of law and this Base Code address the same subject, to apply that provision which affords the greater protection (marked as **Good Practice** in presentation)

Local Kenyan Laws include:

- The Employment Act (2007)
- The Trade Disputes Act (CAP 234)
- Regulation of Wages and Conditions of Employment Act (Cap. 229)
- Occupational Safety and Health Act (2007)
- Work Injury Benefits Act (2007)
- National Hospital Insurance Fund (1998)
- The Labour Institutions Act (2007)
- Environmental Management and Coordination Act (EMCA) (1999)
- The Children Act, 2001
- The Public Health Act, 1986
- The Income Tax Act (Cap. 470)
- The Immigration Act (Chapter 172)



Forced Labour



Aim-Progress Member Principles

Requirement:

- Supplier will not use forced, bonded, prison, military or compulsory labor.
- Workers are not required to lodge “deposits” or their identity papers with their employer and are free to leave their employer after reasonable notice.
- Workers will be aware of their terms of employment

Forced Labour – Relevant Laws

Requirement:

- “Forced or compulsory labour” means any work or service which is extracted from any person under the threat of any penalty ,including the threat of a loss of rights or privileges, which is not offered voluntarily by the person doing the work or performing the service” (Employment Act 2007)
- No person shall use or assist any other person in recruiting, trafficking or using forced labour (Employment Act, Art 4)
- Workers must receive written information about their particulars of employment within 2 months of starting work (Employment Act, Art 10), this contains information related to job descriptions, place of work, hours of work, remuneration, etc.
- Workers should always have reasonable access to their conditions of work or collective agreement (Employment Act Art 14).

Wages and Benefits



Wages and Benefits

- **Baseline Requirement:** Supplier will comply with all applicable local and national wage and benefits laws.
- **Good Practices:**
 - Wages and benefits paid for a standard working week meet, at a minimum, national legal standards or industry benchmark standards, whichever is higher. In any event wages should always be enough to meet basic needs and to provide some discretionary income.
 - All workers shall be provided with written and understandable Information about their employment conditions in respect to wages before they enter employment and about the particulars of their wages for the pay period concerned each time that they are paid.
 - Deductions from wages as a disciplinary measure shall not be permitted nor shall any deductions from wages not provided for by national law be permitted without the expressed permission of the worker concerned. All disciplinary measures should be recorded.

Wages and Benefits – Relevant Laws (1)



- All amounts should be paid directly to employees and in full (Employment Act Art. 17)
- Every worker should be entitled to a fair wage which shall meet the minimum wage requirements (Regulation of Wages and Kenyan Constitution)
- Workers must receive an **Itemised Pay Statement** they can understand (Employment Act Art 20)
- Deductions are as prescribed in law (Employment Act Art 19) – this does allow deductions for loss or damage.
- All Social Security requirements (eg. NHIF, NSSF, etc) need to be complied with.
- An employee has legal recourse where wages are incorrectly calculated or unfairly deducted (Employment Act Art 25)

Wages and Benefits – Relevant Laws (2)



- An employee is entitled to 21 days of paid annual leave after completing 12 months of service (Employment Act Art 28), if service has been less than 12 months then an entitlement of $1\frac{3}{4}$ days for each month applies.
- Female employees are entitled to 3 months maternity leave at full pay (Employment Act Art 29), while males are allowed 2 weeks paid leave.
- Overtime should be paid at premium rates as per the laws of Kenya. Overtime rates in is 1.5 times, but if on a Sunday or public holiday is 2 times (Employment Act Art 6)
- Sick leave provisions are made for all employees with service of 2 months [minimum 7 days] (Employment Act Art 30).
- Employees are entitled to a Housing Allowance subsidy from the employer (Employment Act Art 31).

Wages and Benefits – Relevant Laws (3) - Casual Labour



- Leave entitlements (including weekly rest) for casual workers are the same as full time employees (Employment Act Art 37)
- Where an individual works on a casual basis for a cumulative period of 1 Month, they are deemed to be full time employees and should have all rights and associated benefits (Employment Act Art 37)
- If the work required exceeds a period of 3 months, they are also deemed to have the same rights as full time employees.

Methods of Verification

- Review wage records
- Review time card records
- Review company policies
- Review discipline records
- Interview management
- Interview employees
- Factory tour & observations

Hours of Work



Hours of Work Principles

AIM-PROGRESS Member Principles:

Required: Supplier will comply with all applicable local and national working hours and overtime laws.

Good Practice:

- Workers shall not on a regular basis be required to work in excess of 48 hours per week and shall be provided with at least one day off for every 7 day period on average. Overtime shall be voluntary, shall not exceed 12 hours per week, shall not be demanded on a regular basis and shall always be compensated at a premium rate.

Hours of Work - Local Laws

- Working hours should meet those prescribed in local law - Overtime plus time worked in normal hours per week shall not exceed the following number of hours in any period of two consecutive weeks:
 - (a) 144 hours for employees engaged in night work; [72 hours per week**]
 - (b) 116 hours for all other adult employees. [58 hours per week**]
 - **NOTE: Some industries have lower limits and should be governed by the respective Regulation of Wages orders – eg. Tailoring is 45 hours per 6 day week.
- Employees shall not work for more than 6 consecutive days without a day of rest (Employment Act Art 27)

Freedom of Association



Aim-Progress Member Principles

Baseline Requirement: Respect employee's right to join, form or not to join a labor union without fear of reprisal, intimidation, or harassment. Where employees are represented by a legally recognized union, establish a constructive dialogue with their freely chosen representatives and bargain in good faith with such representatives.

Good Practice:

- 2.1 Workers, without distinction, have the right to join or form trade unions of their own choosing and to bargain collectively.
- 2.2 The employer adopts an open attitude towards the activities of trade unions and their organisational activities.
- 2.3 Workers' representatives are not discriminated against and have access to carry out their representative functions in the workplace.
- 2.4 Where the right to freedom of association and collective bargaining is restricted under law, the employer facilitates, and does not hinder, the development of parallel means for independent and free association and bargaining.

Freedom of Association (Reference - Labour Relations Act 2007)

- Workers should have the choice to join or not to join a union
- They should be allowed to collectively bargain.
- Union representatives should be allowed to hold meetings with workers.
- Where a union is not in place, an alternative method of communication between workers and management should be implemented. For example, a grievance mechanism should be available for the employees to voice concerns
- Workers who are members of a trade union should not be discriminated against. Workers may not be dismissed for participating in union related activities.

Freedom of Association - Challenges

- Many facilities and farms have no means through which to communicate to their workers.
- A framework for dialogue between workers and management is useful on an ongoing basis, rather than at times of crisis. Worker's committees often play this role very well.

CHILD LABOR



Aim-Progress Member Principles

Required: Supplier will comply with all applicable local and national laws

Good Practice:

4.1 There shall be no new recruitment of child labour.

4.2 Companies shall develop or participate in and contribute to policies and programmes which provide for the transition of any child found to be performing child labour to enable her or him to attend and remain in quality education until no longer a child; "child" and "child labour" being defined in the appendices.

4.3 Children and young persons under 18 shall not be employed at night or in hazardous conditions.

These policies and procedures shall conform to the provisions of the relevant ILO standards.

Child Labor – Local Laws

- There is no employment of children under the age of 13, severe restrictions apply to children between the ages of 13-16 to ensure that the child's development is not affected (Employment Act Art 56) and that the time of work and type of work is controlled.
- The employer keeps copies of identity documents or other proof of age (Employment Act Art 62)
- The age of new employees is reliably checked before hiring
- A person who uses a child in any activity constituting worst form of child labour commits an offence and shall on conviction be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both. (Employment Act Art 64 (2))

Methods of Verification

- Review personnel files
- Review time card records
- Review company policies
- Interview management
- Interview employees
- Factory tour & observation

DISCRIMINATION



AIM-PROGRESS Member Principles

Baseline Requirement: Maintain workplaces that are free from discrimination. The basis for recruitment, hiring, placement, training, compensation, and advancement should be qualifications, performance skills and experience.

Good Practice: 7.1. There is no discrimination in hiring, compensation, access to training, promotion, termination or retirement based on race, caste, national origin, religion, age, disability, gender, marital status, sexual orientation, union membership or political affiliation.

Discrimination – Common Assessment Topics

- Recruitment, Hiring, Employment Practices
- Nondiscrimination Policy
- Pregnancy, HIV testing
- Equal Compensation
- Grievance Procedure
- Union nondiscrimination

ABUSE OF LABOR



Aim-Progress Member Principles

Baseline Requirement: Maintain workplaces free from physical or verbal harassment.

Good Practice: 9.1. Physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation shall be prohibited.

Abuse of Labor – Local Laws

Every person has the right to freedom and security of the person, which includes the right not to be—(c) subject to torture in any manner, whether physical or psychological; (e) subjected to corporal punishment; or (f) treated or punished in a cruel, inhuman or degrading manner [The Constitution Of Kenya (2010), Art. 29]

- All employees should be treated with respect. No physical and verbal abuse should be practiced.
- Disciplinary practices should be reasonable and a process for determination of extent of infractions and consequences needs to be established (Regulation of Wages (General) Order Art. 16)
- Wage deductions must be legal and not a form of penalty (Employment Act Art 19)

HEALTH & SAFETY



Aim-Progress Member Principles

Baseline Requirement: Supplier will comply with all applicable local and National health and safety laws.

Good Practice:

- A safe and hygienic working environment shall be provided, bearing in mind the prevailing knowledge of the industry and of any specific hazards. Adequate steps shall be taken to prevent accidents and injury to health arising out of, associated with, or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment.
- Workers shall receive regular and recorded health and safety training, and such training shall be repeated for new or reassigned workers.
- Access to clean toilet facilities and to potable water, and, if appropriate, sanitary facilities for food storage shall be provided.
- Accommodation, where provided, shall be clean, safe, and meet the basic needs of the workers.
- The company observing the code shall assign responsibility for health and safety to a senior management representative.

Health & Safety

Common Assessment Topics:

H&S Training

Chemical Handling

Blocked Aisles/Exits

PPE /First Aid

Licenses/Certificates

Electrical Safety

Emergency Preparedness

Examples of Common Findings:

- Information on safety issues not availed in language understood by workers
- Lack of fire alarms + drills in Pack houses
- Worker accommodation for seasonal workers often below standard required.
- Availability of potable drinking water
- Adequate number of toilets on farms.
- Protection of dams close to housing
- Exposure to hazardous farm and process chemicals - Re-entry periods to areas sprayed with chemicals.
- Ventilation and eye wash in chemical store.
- PPE Cleaned in an unsafe manner

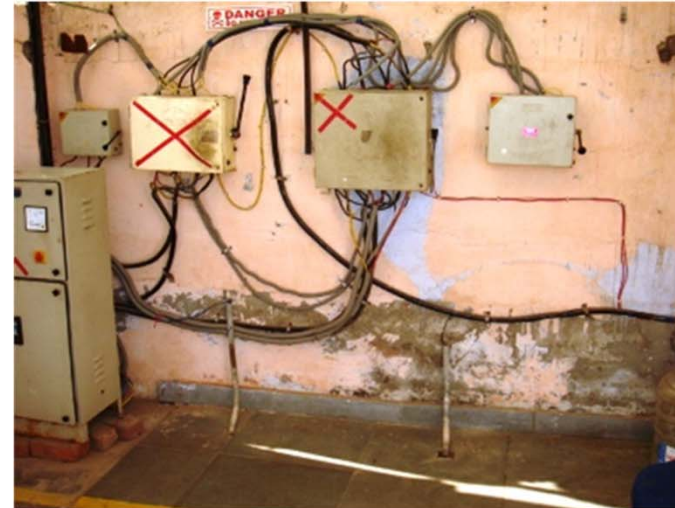
Health and Safety – Local Laws

- Provisions of Protective clothing and appliances by the employer: Occupational Safety and Health Act, 2007 Section 101
- Medical surveillance of workers exposed to process hazards: Occupational Safety and Health Act, 2007 Section 103
- Training and supervision of inexperienced workers: Occupational Safety and Health Act, 2007, Section 99
- Restrictions from Work processes which may harm persons below eighteen years. Section 97 of Occupational Safety and Health Act, 2007
- Provision of First-aid in the workplace. Section 95 of Occupational Safety and Health Act, 2007
- Accommodation for clothing not worn during work hours. Section 93 of Occupational Safety and Health Act, 2007
- Supply of drinking water in the workplace. Occupational Safety and Health Act, 2007, Section 91
- Designing and posting of evacuation procedures to be used during any emergency. Occupational Safety and Health Act, 2007, Section 82
- Safety provisions in case of fire. Section 81:(1-9) of Occupational Safety and Health Act, 2007

Health and Safety – Local Laws

- Ensuring of Safe means of access and safe place of employment. Section 77 (1-4) of Occupational Safety and Health Act, 2007
- Ergonomics at the workplace. Section 76 (4) of Occupational Safety and Health Act, 2007
- Provision of Sanitary conveniences. Section 52 (1) of Occupational Safety and Health Act, 2007
- Provision of adequate Lighting in the workplace: Section 50 of Occupational Safety and Health Act, 2007
- Need for ventilation to ensure that effective circulation of fresh air in the workroom; Section 49 of Occupational Safety and Health Act, 2007
- Overcrowding in the workplace. Section 48 of Occupational Safety and Health Act, 2007
- Cleanliness of the workplace. Section 47 of Occupational Safety and Health Act, 2007
- Notice of accidents and dangerous occurrences. Section 21:1 of Occupational Safety and Health Act, 2007
- Duties of occupiers: Section 6 (1-2) of Occupational Safety and Health Act, 2007

What's Wrong with These Pictures?



Case Study

FIRE EXTINGUISHERS

Bad Example



Good Example



Case Study

EMERGENCY WAYS	
Bad Example	Good Example
	

Case Study

EMERGENCY EXITS	
Bad Example	Good Example
	

Case Study

PROTECTIVE DEVICES

Bad Example



Good Example



Case Study

ELECTRICAL SAFETY

Bad Example



Good Example



Case Study

CHEMICAL SAFETY

Bad Example



Good Example



Case Study – Good Examples



Emergency Information



PPE Usage



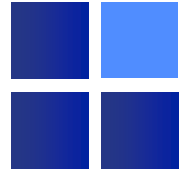
Cover for jewelry worn



First Aid Box

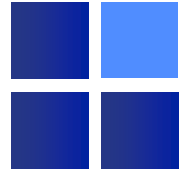
Case Study

➔ Employee Movement, Housekeeping



Health & Safety

➔ Fire Prevention



**Regularly inspected with
checklist, tracking evident**



Hands-on training



**Alarm checks and operation
instructions are posted**

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ENVIRONMENTAL MANAGEMENT



Aim-Progress Member Principles

- **Baseline Requirements:** Supplier will comply with all applicable local and environmental laws

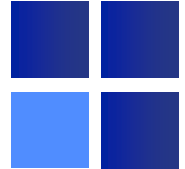


- **Good Practice Additional Requirements:**
 - D1: Suppliers shall seek to make continuous improvements in their environmental performance and, as a minimum, comply with the requirements of local and international laws and regulations.
 - D2 The supplier shall be aware of and comply with their end clients' environmental requirements.

Environment – Local Laws

- Responsibility of waste generator: Section 4: Waste Management Regulations, 2006: (1) Non disposal of any waste on a public highway, street, road, recreational area or in any public place except in a designated waste receptacle; (2) A waste generator to collect, segregate and dispose such waste in the manner provided for under these Regulations
- Cleaner production methods Section 5: a) waste generator shall minimize the waste generated by adopting cleaner production methods: b) monitoring the product from beginning to end by- i) identifying and eliminating potential negative impacts of the product; ii) enabling the recovery and re-use of the product where possible and iii) reclamation and recycling; c) Incorporating environmental concerns in the design and disposal of a product.
- Segregation of Waste by Generator Section 6: A waste generator shall segregate waste by separating hazardous waste from non-hazardous waste and shall dispose of such waste in such a facility as shall be provided by the relevant local authority.

Environmental Management



Common Assessment Topics:

- Air Emissions
- Hazardous Material
- Waste & Waste Water Treatment
- Inspections

Examples of Common Findings:

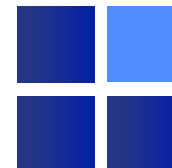
- Improper waste management
- Permits/Licenses not available

Methods of Verification

- Training records
- Records of material usage
- Valid Permits
- Assignment of Environmental management
- Documented risk mitigation

5.2.3 Environmental Management

➔ Chemical Storage, Use and Handling



Proper storage in air-tight containers



No chemical spills, proper storage area



MSDS available at location of use

5.2.3 Environmental Management


➔ Chemical Storage, Use and Handling

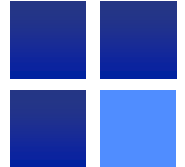


Business Practices/Integrity



5.2.4 Business Practices/Integrity

- 
- Companies should operate honestly and fairly in accordance with local law



Common Assessment Topics:

Evidence of Bribes

Evidence of Fraud

Grievance Procedure

Policies/Procedures

Example Finding:

- Bribes offered to auditor or local authority

Methods of Verification

- Policies and procedures to cover Business Integrity/ Anti-corruption
- Respect for company and personal data
- Training of relevant employees
- Maintaining proper records to verify compliance with laws & regulations

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TEA BREAK

Session resumes at 15:20



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WRAP UP



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SEDEX for AIM-Progress Suppliers



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QUESTIONS?

