

6. Contracts and Human Resources



BETTER WORK

Employment contracts define the relationship between workers and their employer. They should include the terms and conditions of employment, comply with legal requirements and be understandable to workers. Employment security is central to workers' rights, including protection against unjustified termination and subsequent financial hardship. Disciplinary measures should be established and made known to all workers and supervisors, so that workers know what is expected of them and the consequences for poor performance or misconduct. Grievance and dispute resolution procedures also are important, because they enable workers to raise concerns about their employment and to have them heard, and they help to ensure that disputes are handled fairly and effectively.

6.1 Employment Contracts

National law may set out different requirements regarding employment contracts for different types of workers, such as migrants, training workers, temporary workers, fixed-term contract workers, probationary workers, seasonal workers, homeworkers and sub-contractors. For example, migrant workers' contracts may be required to include payment for the return trip home. These requirements should be checked carefully. All contracts should specify the terms and conditions of employment. National law also may require the employer to adopt internal work rules.

6.2 Contracting Procedures

Employers must comply with the legal limits set for workers to be considered in training, working as apprentices, or on probation. There also may be limitations on the use of fixed-term contracts. The employer should follow all procedures for recruiting migrant workers, including for example, work permit and visa requirements, and provisions governing recruitment fees and the use of recruitment agents.

6.3 Termination

Termination of a worker's employment should only be carried out for valid reasons (i.e., reasons relating to the conduct or performance of the worker or the operational needs of the enterprise) and according to legal procedures. Workers facing termination because of their conduct or performance should be given a chance to defend themselves and be allowed help from another person to do so.

Workers should not be terminated due to their union membership or activities; lodging a complaint or taking part in proceedings against the employer; personal characteristics such as race, colour, sex, religion, political opinion, national extraction or social origin; or temporary absence from work due to illness or maternity leave.

When dismissing workers, the employer should comply with all requirements regarding notice, and payment of unused annual leave, severance and other termination payments required by national law.

Before reducing the size of the workforce due to economic, technological or structural changes, the employer should comply with legal requirements to inform and consult with workers' representatives, and to notify the relevant authority.

6.4 Discipline and Disputes

Internal discipline and grievance procedures should be established. A reasonable disciplinary measure is a written warning. Discipline should not involve physical punishment or humiliating treatment such as hitting, pushing or throwing things; restricting access to food, water or toilets; or threatening, shouting at or publicly scolding workers. Disputes should be resolved fairly and effectively, in accordance with internal work rules and applicable legal requirements.

Types of employer action that can lead to non-compliance

- Not following legal requirements for recruitment or contracts for different types of workers (e.g., migrants, sub-contractors or homeworkers), or for different types of contracts (e.g., fixed-term contracts).
- Not specifying the terms and conditions of employment or other legal requirements in contracts.
- Failing to clearly explain the terms and conditions of employment to workers.
- Failing to conduct legally required consultations with workers' representatives before reducing the size of the workforce.
- Terminating workers without a valid reason, or without providing legally required notice, payment for unused annual leave, severance or other termination payments.
- Not reinstating or compensating unjustly terminated workers.
- Failing to resolve grievances or disputes in line with internal rules or legal requirements.
- Using unlawful disciplinary measures, such as humiliation or physical punishment.
- Bullying or harassing workers.

Key action points for employers

- Check national law for requirements pertaining to different categories of workers (e.g., migrants, temporary workers, sub-contractors, and homeworkers), and treat all workers in accordance with the law.
- Ensure that contracts specify the terms and conditions of employment (e.g., period of employment, pay, hours of work, and benefits).
- Ensure that workers receive a copy of their employment contract and understand its contents.
- Respect legal limits on training periods (e.g., for apprentices or probationary workers) and on the use of fixed-term contracts.
- Ensure that workers are terminated in accordance with legal requirements, and that they are given the chance to defend themselves if the termination relates to their conduct or performance.
- Pay unused annual leave and required severance payments when workers resign or are terminated.
- If planning significant layoffs due to changes in operations, consult and notify workers and their representatives as per national law.
- Establish grievance and disciplinary procedures that are in line with national law, and make sure that supervisors and workers are aware of them.
- Do not use physical punishment or humiliating treatment when disciplining workers.
- Resolve collective and individual disputes in compliance with legal requirements.

Key references

ILO Convention 158 and Recommendation 166 on Termination of Employment; Recommendation 130 on Examination of Grievances

<http://betterwork.org/global>